(1997) 08 MAD CK 0058

In the Madras High Court

Case No : Tax Case No. 570 of 1987 (Reference No. 211 of 1987)

Ahura Welding Electrode Mfgrs. Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Citation : (1997) 08 MAD CK 0058

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; T. Mathi, Government Advocate (Taxes), for the Respondent

Judgement

Jayasimha Babu, J.—In respect of the assessment year 1980-81 a sum of Rs. 1,92,631.23 being the value of goods transferred by the

assessee to its Bangalore office, was assessed to tax treating them as inter-State sales on the basis of the indents received from the dealer of the

assessee at Bangalore. The Tribunal has rejected the appeal filed by the assessee solely on the ground that the facts of the present case are similar

to those of considered by the Supreme Court in the case of Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and

Others,

2. It is not in dispute that the assessee who is a manufacturer of sun are electrodes has branch offices at Bangalore and Bombay. The assessee had

appointed Murray and Company as its dealer under a dealership agreement dated April 26, 1978 wherein it was, inter alia, stated that the supply

of material will be effected from the Bangalore office. The stocks transferred to the Bangalore office were transferred under the cover of form 27, Central excise gate pass, pro forma, packing note and lorry way bill in the names of the respective branches which in turn furnished form ""F

declarations to the appellant''s head office. The transferred stock had been shown in the stock books of the branch office. The branch office is also

an assessee in the other State.

3. The case of the Revenue is that the indents of the dealer were received at the head office of the assessee at Coimbatore which acknowledged

the same and therefore any movement of the goods subsequent to the date of the indent must be regarded as movement occasioned by the indent.

4. It is not the case of the Revenue that these goods had been specially manufactured for the dealers concerned. The design or the specifications

were not given by the dealer. These were standard goods which in the normal course of manufacture are manufactured by the assessee and which

goods in the normal course of trade have, inter alia, to be taken to the assessees'' branches for stocking the same in those branches and effecting

sales from such branches.

5. In the case of Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, , the Supreme Court considered

the case of non-standard goods there being no dispute about the standard goods, presumably because the sale of such standard goods had not

been regarded by the assessing authorities as goods sold by way of the inter-State sale, as such goods had not been manufactured with any special

specifications. The fact that the goods considered in that case were not standard goods has been emphasised by the court and referred to in the

opening part of the judgment of the apex Court. In the course of the judgment, the court referred to the earlier decision of the apex Court in the

case of Balabhagas Hulaschand v. State of Orissa [1976] 37 STC 207. Reference was made to the illustration given thereon and it was observed

that the case was distinguishable as the goods in the case before the court were in the case of Sahney Steel and Press Works Limited and Another

Vs. Commercial Tax Officer and Others, , goods manufactured at Hyderabad according to the specifications stipulated by the buyer should be the

very goods delivered to the buyer outside the State. The goods were those manufactured for the specifications given by the buyer. The court

therefore held that though the indent had been placed on the branch office, and the goods were despatched by the head office located in the

another State to its branch office, and the sale of the goods effected from the branch office, that sale was nevertheless an inter-State sale as the

order placed on the branch office was an order placed on the company which was but one juristic entity, and the movement of the goods to the

other State in which the branch office was situated was a direct incident of the contract of sale with the buyer in the other State, as the goods to be

delivered to the buyer were the very goods which had been despatched from the other State and which goods had been manufactured to the

specifications given by the buyer.

6. In the instant case, the goods despatched are not goods manufactured to any special specifications of the buyer, and there was no compulsion to

deliver to the buyer the very same goods that were despatched by the assessee in any particular consignment. The goods despatched in any

particular consignment had not been earmarked for delivery to any specified buyer. The goods were not manufactured with any special marks in

order to identify the same as those earmarked for delivery to the buyer. It was open to the branch office to effect the sales of the goods to any

customers of its choice and it was not an incident of the contract of the sale that was entered into between the branch office and the buyer that the

goods to be appropriated to that contract should be the very goods despatched to the branch in any specified consignment. The property in the

goods did not pass to the buyer and could not pass until the goods were appropriated to the contract.

7. It is no doubt true that the place where the sale is completed, is not a material factor for deciding as to whether there was an inter-State sale.

The other facts in this case, apart from the place of sale, are not such as to lead to a conclusive inference that the movement of the goods was

inextricably linked to that the sale was ultimately effected to the buyer from the branch office at Bangalore. One of the sales effected from the

branch office was, to a customer at Mangalore. Had it been the intention to effect inter-State sales directly to the customer, it would have been

easier for the assessee to despatch the goods directly to the customer at Mangalore rather than send it to its Bangalore branch. The goods, as

already noticed are of non-standard (?) specifications and were not the goods of any special specification or specifications meant for the particular

buyer. All the documentation relating to the transfer clearly shown that the assessee is the owner of the goods. The consignee is its branch office.

The goods have been taken into stock at the branch office. The sales to the customers have been effected by the branch office. The assessee has

averred that sales tax has been paid in the State of Karnataka in respect of all those sales.

8. The Tribunal, in our view therefore, erred in holding that the facts of the present case are not capable of being distinguished from those

considered by Supreme Court in the case of Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, , as

pointed out above. That case is clearly distinguishable. As assessee cannot be held liable for the Central sales tax, merely on the basis that the

indent had been received by the head office when the facts show that there was no inextricable links between the movement and the sale.

9. We therefore allow this revision petition, and set aside, the order of the Tribunal. The parties to bear their respective costs.

10. Petition allowed.

