
(1978) 03 KL CK 0028

In the High Court Of Kerala

Case No : T.R.C. No"s. 54, 66 and 67 of 1977

A.L. Antony

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-03-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1978) 42 STC 180

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : B.S. Krishnan, P.R. Raman and K.S. Krishnakumar, for the Appellant;
The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—These tax revision cases relate to the assessment years 1968-69, 1969-70 and 1970-71 respectively. The question raised is regarding the nature of the transaction of sale, viz., whether they are inter-State sales or not. The assessee has got a head office in Thalore (Trichur District) in Kerala State and a branch office in Madras. It is engaged in the manufacture of packing cases. The course of business as summarized by the order of the Tribunal is that the branch office in Madras receives orders from the customers and transmits those orders to the head office at Thalore for compliance with the customers' requirements. The head office at Thalore despatches the consignments of packing cases to the branch office in Madras. The branch office delivers the cases to the customers in execution of the orders placed by them. The Tribunal found that sale had occasioned the movement of the goods from Kerala State to Madras. The case seems to be directly covered by the judgment of a Division Bench in Packwell Packing Cases v. State of Kerala Page 183 infra. (T. R. C. Nos. 20, 21 and 23 of 1975), a copy of which, for the sake of convenience, will be appended to and will form part of this judgment. But counsel for the assessee sought to distinguish this decision on the ground that in

those cases it was found by the Division Bench that the orders were placed by the customers directly with the head office and that the head office despatched the goods directly to the customers. But, in this case, it was pointed out that there is a difference as the goods are despatched not to the buyer directly but to the branch office at Madras. This, it was said, would bring the case directly within case No. II given by way of illustration in the Supreme Court decision in *Balabhagas Hulaschand Vs. State of Orissa*, . Discussing the question whether a sale would take place before the movement of the goods, the Supreme Court observed:

Furthermore, we can hardly conceive of any case where a sale would take place before the movement of goods. Normally what happens is that there is a contract between the two parties in pursuance of which the goods move and when they are accepted and the price is paid the sale takes place. There would, therefore, hardly be any case where a sale would take place even before the movement of the goods. We would illustrate our point of view by giving some concrete instances :

Case No. I.-A is a dealer in goods in State X and enters into an agreement to sell his goods to B in State Y. In pursuance of the agreement A sends the goods from State X to State Y by booking the goods in the name of B. In such a case it is obvious that the sale is preceded by the movement of the goods and the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be deemed to be occasioned by the sale. The present case clearly falls within this category.

Case No. II.-A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of Section 3(a) of the Central Sales Tax Act not being an inter-State sale. (Case No. III-omitted as unnecessary.)

2. Counsel for the assessee contended that the case here in question would fall squarely within case No. II given by the Supreme Court in the above decision *Balabhagas Hulaschand Vs. State of Orissa*, We find it difficult to agree. On the facts stated by us and found by the Tribunal, we think that the Madras branch was really the agent of the buyer and that when it transmitted the orders to the head office and the head office despatched the goods to it in Madras the receipt and the delivery of the goods were really as agents of the buyer and no more. This principle finds ample support in the later decision of the Supreme Court in *English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others*, We extract the relevant passage:

The appellant has branches at different places. The appellant-company is one entity and it carries on business at different branches. Branches have no independent and separate entity. Branches are different agencies. The contract of sale is between the appellant-company and the Bombay buyer.

The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhandup, Bombay. The railway receipt was in the name of the Bombay branch to secure payment against delivery. There was no question of diverting the goods which were sent to the Bombay buyer. When the movement of goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If there is a conceivable link between the movement of the goods and the buyer's contract and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such persons activities prior to or after the implementation of the contract may not alter the position. The steps taken from the beginning to the end by the Bombay branch in co-ordination with the Madras factory show that the Bombay branch was merely acting as the intermediary between the Madras factory and the buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale caused the movement of the goods from Madras to Bombay. The inter-State movement of the goods was a result of the contract of sale and the fact that the contract emanated from correspondence which passed between the Bombay branch and the company could not make any difference.

3. In the light of the principle thus expounded by the Supreme Court, the

reasoning and the conclusion of the Tribunal are correct and warrant no interference. We affirm the decision of the Tribunal and dismiss these tax revision cases with no order as to costs.