
(1956) 04 MAD CK 0032
In the Madras High Court
Case No : Tax Rev. Case No. 93 of 1955

Ashok Leyland Ltd., Ennore, Madras	APPELLANT
Vs	
The State of Madras	RESPONDENT

Date of Decision : 18-04-1956

Acts Referred:

Constitution of India, 1950 — Article 286, 286(2)
Madras General Sales Tax Act, 1939 — Section 12

Citation : AIR 1957 Mad 263 : (1957) 70 LW 166 : (1957) 8 STC 210

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant; The Asst. Govt. Pleader, for the Respondent

Judgement

Rajagopala Ayyangar, J.—The assessee, Ashok Leyland Ltd., is a firm with its factory at Ennore, within the State of Madras, where it

assembles motor cars, and with an elaborate organisation spread Over several States for the sale of those cars and their accessories. In the

assessment year 1952-53, the Deputy Commercial Tax Officer assessed the firm to sales-tax on a turn-over of about 30 Jackhs of rupees. He

was of the view that turnover of about 111 lakhs was not liable to be taxed under the Act.

The Commercial Tax Officer took up the matter "suo motu" in exercise of the revisional powers vested in him by Section 12 of the Madras

General Sales-tax Act. He overruled the objection of the assessee, that he had no jurisdiction to revise the assessment, and eventually he held that

a turnover of about 43 lakhs was also liable to be taxed.

2. The assessee appealed to the Appellate Tribunal. The Tribunal also negatived

the contention, of the assessee, that the Commercial Tax Officer had no jurisdiction to revise the assessment made by the Deputy Commercial Tax officer. Of the turnover, the liability to tax which was in dispute, the Tribunal held that about 121/2 lakhs alone fell within the scope of Article 286(2) of the Constitution.

The Tribunal held that the balance of the turnover was on sales completed by delivery within the State to the agents of the buyers, who were no doubt resident outside the State, and that these sales were not in the course of Inter-State trade, within the meaning of Article 286(2) of the Constitution. It was the correctness of that decision of the Tribunal that the assessee challenged by a petition presented u/s 12-B of the Act.

3. We are of opinion that the Tribunal was right in negating the claim of the assessee-petitioner, that the Commercial Tax Officer exceeded his jurisdiction in the proceedings he took against the assessee u/s 12 of the Act. The contention of the assessee both before the Tribunal and before us was, that the Commercial Tax Officer's revisional authority did not extend to an inspection of material not considered by the assessing authority, the Deputy Commercial Tax Officer.

It was on the basis of the accounts or the abstracts of the accounts that the petitioner furnished that the Deputy Commercial Tax Officer came to the conclusion, that a turnover of about 111 lakhs of rupees was not liable to be taxed under the Act. Whether that view was correct was what the Commercial Tax Officer had to examine. That he had the undoubted jurisdiction to do. What was the material that the Commercial Tax Officer could, examine when exercising his revisional powers was the question.

Learned counsel for the petitioner-assessee did not repeat before us the extreme contention he had apparently put forward before the Tribunal, that the Commercial Tax Officer could not look beyond the assessment order of the Deputy Commercial tax Officer. Learned counsel for the petitioner complained that in addition to the material placed before the Deputy Commercial Tax Officer, the Commercial Tax Officer called upon the petitioner-assessee to produce records in its possession. That, he contended, was beyond the jurisdiction of the Commercial Tax Officer.

4. What was the record a revisional authority could examine was indicated by a Full Bench of this court in *The State of Madras v. Louis Dreyfus*

and Co. Ltd., 1955 6 STC 318 ((S) AIR 1958 Mad 659 (A):

We are of the opinion that the expression "record" would include not merely the assessment order but the entire assessment file.....

If the assessee produced his accounts before the assessing authority and took them back, obviously it could not be said that the Commercial Tax

Officer as the revision authority, could not send for the books on the narrow ground, that the books themselves were no longer in the office of the

Deputy Commercial Tax Officer as part of his file. If abstracts of accounts had been filed, obviously the Commercial Tax Officer would be well

within his jurisdiction to call upon the assessee to produce the original books themselves.

If entries in the accounts were based upon Other records, e.g. vouchers, bills etc, then in the normal course they should have been examined by the

assessing authority, and the Commercial Tax Officer would be acting well within his jurisdiction to call upon the assessee to produce evidence to

support the entries in the account books, which were considered by the Deputy Commercial Tax Officer, the assessing authority.

It was not the case of the learned counsel for the petitioner that the Commercial Tax Officer took any irrelevant material, into consideration, even

from among the records in the assessee's possession, which it was called upon to produce. We are unable to hold that there was anything even

irregular in the exercise of the Jurisdiction vested in the Commercial Tax Officer by Section 12 of the Act.

5. An idea of the extra State organisation of the assessee in the sale of the cars and their accessories should help to decide the main question at

issue before us, the liability to tax of the items of turnover still in dispute. The assessee appointed a "dealer" for each territorial unit, and the contract

which the assessee entered into with that dealer, defined with precision the territorial area, within which the dealer had to carry on his selling

operations.

It should be convenient to adopt that nomenclature used by the assessee himself in the contracts, which he entered into, though it was, the assessee

that was the statutory dealer for the purpose of the General Sales-tax Act. The assessee sold its goods to the dealer, and the dealer in his turn sold

the goods to his customers within his territorial unit. The dealer, was subject to

specified contractual obligations if he sold his goods to anyone

resident outside his territorial unit. The Tribunal recorded in paragraph 5 of its judgment,

At the outset, it may be stated that it is not the contention of the appellant that it did not effect sales to these dealers or that these dealers acted

only as its agents in effecting sales to ultimate consumers.

8. Thus, despite the form of the contract between the assessee and the dealer, the jural relationship between them was that of seller and buyer.

There was, therefore, no real substance in the contention, that the learned counsel for the petitioner put forward before us at One stage, that the

dealer was only a distributor of the goods for and on behalf of the assessee, and that the real buyer was the ultimate consumer. The contract

between the assessee and the dealer provided for the consignment of the goods by the assessee to the dealer.

7. Except to a small extent, with which we shall deal later, we are not concerned now with the sales of goods, where those goods were consigned

by the assessee for delivery to the seller outside the State of Madras as an integral part of the transaction of sale under the terms of the contract

between them. Such goods were delivered by "entrustment to a common carrier for carriage by rail or sea. In addition there were cases where the

assessee arranged for the transport of cars by road.

The cars were put in charge of the drivers of the assessee, who drove them to the dealer's place of business and delivered them to him there. The

turnover of all such sales, completed by delivery out-side the State, was excluded from the assessable turnover of the assessee. As we stated wa

are not concerned with those sales now.

8. The contract between the assessee and his dealer did not bar the delivery of the goods sold to the dealer otherwise than by consignment for

which the contract provided. It is with such sales we are now concerned. In that class of sales the dealer sent his drivers to the assessee's factory

at Ennore, where those drivers took charge of the goods, cars and their accessories sold to their employer, the dealer. It was thus a case of

delivery of goods ex-factory, a delivery within the State of Madras.

No doubt, as pointed out by the learned counsel for the petitioner, all the goods sold by the assessee to the dealer were meant for transport of

those, goods outside the State for delivery to the dealers whose residence was outside the State. That did not, however, alter the fact, that the

delivery was effected to the dealer's representative within the State, and it was the dealer's representative, who ultimately delivered those goods to

his employer. Whether such sales fell within the purview of Article 286(2) of the Constitution is the question.

9. The turnover, the liability to tax which the assessee challenged, may for purposes of convenience be split up under four heads. (1) Rs. 1,43,072-

4-0 represented the value of motor cars which were de-livered ex-factory to the dealer's drivers. The cars were driven away by those drivers

after a temporary registration of those cars under the Motor Vehicles Act in the name of the dealer himself. (2) Rupees 28,01,357-6-9 was the

value of the cars delivered to the drivers of the dealers to be taken away to the place of business of the dealers outside the State of Madras.

The only respect in which these sales differed from those included in item 1 was that no registration of the vehicle was effected in this State, The

cars were driven away under the trade number plates issued to the dealers under the Motor Vehicles Act. (3) Rs. 7866-5-0 was the value of the

spare parts or other accessories delivered along with the cars.

Learned counsel for the petitioner agreed, that in the absence of any positive evidence on the point, it could be assumed that these accessories

were handed over by the assessee to the drivers of the dealers. (4) Rs. 15000 was the value of spare parts consigned to the dealers. These were

delivered to the dealers outside the State of Madras, and the consignments were effected by rail or steamer.

10. The last of these items is the easiest disposed of. Since in this case the delivery arranged by the assessee was an integral part of the transaction

of sale itself -- it would be a case of ""consignment"" for which the contract provided -- those sales would certainly fall within the scope of Inter-

State trade or commerce for which Article 286(2) of the Constitution provided. This aspect was noticed only after the several items of the turnover

were split up and the learned Government Pleader did not contest the claim of the assessee, that this item of Rs. 15,000, could not be taxed in

view of the ban Imposed by Article 286(2) of the Constitution.

11. There was little to distinguish between items 1 and 2. Whether the dealer

Wok out a temporary registration for the car in his name, or whether he was permitted to dispense with that and use his trade number plates did not alter the nature of the delivery of the goods sold to the dealer. The delivery was to the dealer's agent, and that delivery was within the State of Madras. The third item also covered goods so delivered to the dealer's agents within the State.

12. Learned counsel for the petitioner contended that, though the goods sold were delivered to the dealer as the buyer of those goods, and delivery was effected within the State of Madras, as Such delivery was for immediate transport of the goods sold Outside the State, the sale must be held to have been in the course of inter-State trade, within the meaning of Article 286(2) of the Constitution. We have no hesitation in rejecting that contention in view of Our decision in the Indian Coffee Board, Batlagundu v. State of Madras, 1956 7 STC 135: AIR 1956 Mad 449 (B).

As we understood the learned counsel for the petitioner, he did not challenge the correctness of that decision. His endeavour was to show that the case of the assessee fell outside the scope of the principle laid down in 1956 7 STC 135: AIR 1956 Mad 449 (B).

13. The question for determination in "1956 7 STC 135: AIR 1956 Mad 449 (B) was whether the sale by the petitioner-Board completed by delivery within the State of Madras to the purchaser or his agent came within the scope of Article 286(2) of the Constitution, because the purchaser bought the goods with the intention of transporting them out-side the State? Our answer was:

a sale for transport outside the State does not alter the fact that the sale itself was an intra-State sale, a sale within the State of Madras. The subsequent transport by the purchaser is not part of the transaction of sale.

The distinction between transport as part of the, contract of sale, and transport after the completion of sale was pointed out by Venkatarama Aiyar

J. in the The Bengal Immunity Company Limited Vs. The State of Bihar and Others, .

14. Learned counsel for the petitioner referred us to a passage in the judgment of the learned Chief Justice in the State of Madras Vs. K.H.

Chambers Ltd. and Others, .

I must confess that but for the authoritative pronouncement of the Supreme

Court in the State of Travancore-cochin and Others Vs. Shanmugha

Vilas Cashew Nut Factory and Others, , I would have felt considerable difficulty in the construction of Article 286(1)(b) in its application to sales

or purchases immediately preceding the actual export, which are related to the export factually. For instance, when a dealer in the State to perform

a contract of sale, entered into with a foreign buyer, purchases the goods which he subsequently exports, it may well be held that the purchase was

in the course of the export. Indeed one of the learned Judges of the Supreme Court, Das J. took that view, though the majority took a contrary

view. But the learned Chief Justice of India, who delivered the judgment on behalf of the majority, took up this very question and held that such a

purchase would not be covered by the exemption. This is conclusive on this question.

As the learned Chief Justice pointed out whether a purchase for export would come within the scope of Article 286(1)(b) of the Constitution is

concluded by authority and is no longer open for discussion before us.

15. We pointed out at p. 143 (of 7 STC): (at p. 451 of AIR), in 1956 7 STC 135: AIR 1956 Mad 449 (B).

Further the linking up of the transportation, that is the movement of the goods, with the sale itself in deciding whether a given transaction

constitutes inter State trade or commerce within the meaning of Article 286(2) of the Constitution is but an extension of the principle settled by the

Supreme Court, which marked off a sale for export from a sale in the course of export within the meaning of Article 286(1)(b)

At p. 144 (of 7 STC): (at p. 452 of AIR) we stated, with reference to the facts of the Indian Coffee Board case (B):

The sale was effected and the delivery was completed at Batlagundu, and the purchaser's agent took delivery of the goods within the State of

Madras". The sale was completed within the State before the goods were transported, and in the transport of the goods themselves, which was

subsequent, to the sale, there was no element of sale. Subsequent transport does not therefore entitle the purchaser to the benefit of Article 286(2)

of the Constitution." That should really conclude the question now at issue before us, the liability of items 1 to 3 we have listed above to be taxed

under the General Sales-tax Act.

16. Learned counsel for the petitioner referred to the observations of Bose J. in the *The State of Bombay and Another Vs. The United Motors*

(India) Ltd. and Others, . The learned Judge observed;

A, a Bombay dealer, sells goods to B, a dealer in Madras, for consumption in Madras. I will assume that delivery is made to B himself in Bombay

and that he carried the goods across in person. If that is the normal way in which trade and commerce in that particular line of goods flows across

the boundary, then that would, in my opinion, be a sale in the course of inter-State trade and Commerce despite the facts, including delivery,

mentioned above.

Ordinarily, goods of this nature are delivered to a carrier but that makes my point all the stronger. So long as the ban imposed by Clause (4)

remains the situs of the sale and the place of delivery are not material provided the sale is caught up in the vertex of inter-State trade, and

commerce.

The "obiter dicta" of a learned Judge of the Supreme Court, even in a dissenting judgment are entitled to high respect, especially if there is no

direct decision to conclude the question at issue. It is true that the passage in the judgment of Bose J. we have extracted above, was not brought to

our notice when we decided the Indian Coffee Board case (B). Our decision is a precedent we are bound to follow. The only alternative is to refer

the question to a Full Bench for reconsideration. On the basis of the "obiter dicta" of Bose J. which we have extracted above, we do not think we

would be justified in asking for reconsideration of the decision in the Indian Coffee Board case (B).

It is not necessary for us to decide in this case, whether the example given by Bose J. enunciates a well settled or otherwise sound principle of law.

The test postulated by the learned Judge was "the normal way in which trade and commerce in the particular line of goods flows across the

boundary". We have no evidence in this case of any normal way in which trade in motor cars and their accessories flowed over the borders of the

State of Madras, We have no evidence either that delivery to the buyer ex-factory for transport across the borders was the normal business

practice even of the assessee and the dealer who bought the goods from the assessee.

The contracts between the assessee and his dealers, it should be remembered, provided for consignment of the goods sold by the assessee to the purchasers, and that course was adopted in a large number of cases. That due to exigencies of transport difficulties the dealer as purchaser and the assessee as seller agreed to substitute a different method of delivery would not be enough to establish that, that was the normal course of business, even if such deliveries within the State to the buyer were effected in a numerically large number of sales within the given period of time.

17. We would like to guard Ourselves against being understood to imply that the practice adopted by a given seller would specify the test postulated by Bose J. the normal way in which trade and commerce in that particular line of goods flows across the boundary. We only wanted to show that in the case of the assessee himself different methods of delivery were adopted even within a given period to meet situations as they, arose from time to time, due to inadequacy, of transport facilities by rail or sea, which could be expected of public carriers.

We are of opinion, that the practice, even if it was a uniform one, adopted by one firm of sellers of motor cars and their accessories may not be enough to satisfy even the test adumbrated by Bose, J. We shall permit ourselves the luxury of illustrative examples to explain our view point.

18. Suppose one dealer in a line of marketable goods, say, motor cars, takes up the position,

I know the association of my name with the goods I sell is of considerable importance in the . market. I can offer to dictate the terms under which

I shall sell my goods. I shall sell my goods only to a person who comes to my premises, pays the purchase price, takes delivery of the goods and

engages himself for taking away the goods.

Would that be sufficient to establish that that is the normal trade practice in that line of business? Similarly if a .purchaser were to say,

I know I can avail myself of the facilities of transport, which the seller is prepared to offer. Nonetheless it suits me to go to the seller, purchase the goods and take delivery of the same"".

Would that practice of a single buyer or even of a number of buyers from the same seller conclude the question, what was the normal trade

practice in that line of goods. We have no hesitation in rejecting the plea, that

the practice adopted by one set of buyers and sellers alone would determine the practice of the trade in the line of goods they handle.

19. Reverting to the observations of Bose J. which we have extratced above, we shall content ourselves for the present with pointing out that the facts of the case before us preclude any application of the principle laid down by Bose J. even if it were sound in law.

20. We shall next refer to the American authorities cited by the learned counsel for the petitioner. Dhanke Walker, Milling Co. v. Bondurant,

(1921) 66 Law Ed. 239 (G}, which was followed in Lemnke v. Farmers" Grain Co., (1921) 66 Law Ed. 458 (H), may be taken together. In

(1921) 66 Law Ed. 239 (G), Van Deveuter J. observed at page 244, ""Where goods in one State are transported into another for purposes of

sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination, and while

they are in the original packages.....

On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as

it does the transportation.""

The Supreme Court of India declined to adopt the original package doctrine, On which a number of decisions were based V America to define the

scope of inter-State trade and commerce. Further we have pointed Out earlier, we are governed by the authority of the Supreme Court in the

Second Travancore Case (E), which held that a purchase for export is outside the stream of the export trade of the country for which Article

386(1)(b) of our Constitution provides.

21. In Eureka Pipe Line Co. v. Hallanan, (1921) 66 Law Ed. 227 (I), Holmes J. observed.

As has been repeated many times,. inter-State commerce is a practical conception and a tax to be valid, "must not in its practical effect

and operation, burden inter-State commerce." It appears to us a practical matter that the transmission of this stream of oil was inter-State

commerce from the beginning of the flow, and that it was nonetheless so that if different Orders had been received by the pipe-line it would have

changed the destination upon which the oil was started and at which it in fact arrived;

We repeat that the pipe line company, not the producer, was the master of the destination of any specific oil. Therefore its intent and action

determined the character of the movement from its beginning and neither the intent nor the direction of the movement changed.

In *Inter-State Natural Gas Co. v. Federal Power Commission*, (1947) 91 Law Ed 1742 (J), it was held that sales made by a natural gas producing

company in the field to pipe line companies which transported the purchased gas to markets in other states were, though made before the gas left

the State were sales in the course of inter-State commerce. At page 1747 the learned Judge observed,

Nor are we impressed with the suggestion that the Inter-State movement of the gas should be regarded as beginning when the gas, theretofore

moving -through petitioner's pipe line system at well pressure, is subjected to increased pressure, in that the gas may be moved to the distant

markets. Long before the gas reaches the compressor pumps it has been committed to its inter-state journey which follows without interruption or

deviation. Under such circumstances; the increase of pressure in the compressor stations must be regarded as merely an incident in the interest of

commerce rather than as its origin.

There is no scope for applying the principles laid down in those two cases to the facts of the present case. We have pointed out that the transport

of the goods purchased across the borders of the Madras State was not the concern of the seller. The sale was completed and delivery was

effected within the State of Madras. The transport of the goods was thereafter the sole concern of the buyer.

Whether with reference to the dealer-buyer and the subsequent sales he effected, such transport was in the course of inter-State trade does not

arise for determination now. To use the familiar expression, the stream of inter-State trade or commerce commenced only after the dealer as buyer

took delivery of the goods, and the antecedent sale to him by the assessee was a distinct and closed transaction before that stream commenced,

22. As we pointed out earlier the nature of the sale effected, by the assessee in this case to his dealers is really indistinguishable from that of the

sales we had to consider in 1956 7 STC 135: AIR 1956 Mad 449 (B). The same principle should decide the question at issue before us.

23. We agree with the Tribunal that these sales, that is the three items of the turnover mentioned above, fell outside the purview of the ban imposed by Article 286(2) of the Constitution.

24. One other contention of the learned counsel for the petitioner can only be viewed by us as an appeal "ad miseri caridum". Learned counsel for

the petitioner urged that the manufacture of motor cars was an infant industry, and the imposition of Sales tax with reference to one class of " sales

alone would hamper the development of that industry. He urged that if for reasons beyond their control, the Assessee and the dealer arranged that

deliveries of motor cars should be effected to the dealer or his agent ex-factory, the assessee should not be penalised by the levy of sales tax, when

he could have avoided the levy by arranging for the transport of the goods himself under the terms of the contract.

That would only hamper the sales of the manufactured goods and would do no good to the industry as a whole. It is not, however, on the basis

that we can determine the legal liability to tax under the Act. Whether these are considerations that should weigh with the Government, and

whether the Government should grant a remission of the tax in such cases are questions not germane to the determination of the limited question

before us, whether the sales in question came within the scope of Article 286(2) of the Constitution, They did not, is our view.

25. The order of the Tribunal will be modified only to the extent indicated above. The turnover of Rs. 15,000 representing the value of spare parts

delivered by the seller to the dealers outside the State, will be excluded from the assessable turnover of the dealer. In other respects the order of

the Tribunal will stand confirmed.

26. As the petitioner-assessee has substantially failed in his contention, we direct the petitioner to pay the costs of the respondent Counsel's fee,

Rs. 100A.