

(2000) 02 KAR CK 0089

In the Karnataka High Court

Case No : S.T.R.P. No. 4 of 1997 connected with 5 of 1998

Azad Coach Builders Pvt. Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 5 (3)

Citation : (2001) 123 STC 473

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : King and Patridge and S. Narayana, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—Both these petitions are disposed of by this common judgment since the question involved is common.

2. In S.T.R.P. No. 4 of 1997 following questions are raised :

(1) Whether, on the facts and circumstances of the case, the Tribunal is justified in law in holding the transactions in question as one of inter-State sale when the completed bus are directly exported by the petitioner to Sri Lanka party without giving delivery of the same to Ashok Leyland ?

(2) Whether, on the facts and circumstances of the case, the Tribunal is justified in law in holding the disputed transaction as one of inter-State sale when there is no movement of goods from one State to another pursuant to a contract of sale ?

(3) Whether, on the facts and circumstances of the case, the Tribunal is justified in subjecting the petitioner (sic) when the petitioner has acted as an agent of Ashok Leyland and has effected direct export sales without invoking the provisions of the Act ?

(4) Whether, on the facts and in the circumstances of the case, the order passed

by the Tribunal is valid and sustainable in law ?

3. The assessee is a private limited company and is a manufacturer and seller of bus bodies. The bus bodies are mounted on the chassis supplied by the customers according to their specifications. When the foreign buyers place orders on the petitioner's customers for "bus body" and "chassis" the petitioner's customers in turn place order on the petitioner for bus bodies and supply chassis on which the bus bodies are mounted. The petitioner's customers then export the "bus bodies" and "chassis" to their foreign customers.

4. At the time of assessment, it was found by the assessing authority that the customers have the export order for buses and not its bodies and accordingly buses had been exported. The claim of the petitioner for exemption on the penultimate sale of bus bodies in the course of exports which was duly supported by form H was rejected treating these transactions as inter-State sales. According to the assessing authority "bus body" and "chassis" were two different commodities and the exemption could not be allowed. The order of the assessing authority was upheld by the first appellate authority considering that the goods exported were different from the goods purchased by the customer. The petitioner was however permitted to file C forms to be obtained from the customers. When the matter was taken up before the Tribunal it was submitted that bus bodies manufactured by the petitioner and mounted on the chassis supplied by the customer could be dismantled by the customer by removing few nuts and bolts. It was also submitted that foreign buyers specifically mentioned separately the type of "bus bodies" and "chassis" required to be exported. The identity of the bus body is not lost after mounting over the chassis and therefore the conditions required u/s 5(3) of the Central Sales Tax Act, 1956 stands fulfilled. The Tribunal was of the view that chassis and bus bodies are different commodities in the Schedule and the intention of the foreign buyer was to purchase a complete bus. The purchase was of bus bodies fitted on chassis but the export was of the bus and therefore the order of the assessing authority was upheld.

5. In S.T.R.P. No. 5 of 1998, initially the claim of the assessee was allowed when the transactions were considered as covered by Section 5(3) of the Central Sales Tax Act, 1956. Revisional powers u/s 21 read with Section 9(2) of the Central Sales Tax Act were exercised. Tribunal took the view that "bus bodies" and "complete bus" are different and separate specified goods. Bodies built on motor chassis are specified in serial number 14(iii) and motor vehicles are specified in serial number 13 of Part M of the Second Schedule of the Karnataka Sales Tax Act, 1957. The delivery of the "complete bus" was given by the assessee at sea port and therefore the transactions were considered as inter-State sale and the exemption u/s 5(3) of the Central Sales Tax Act was held not available.

6. Argument of both the learned counsel for the parties heard.

7. Section 5(3) of the Central Sales Tax Act is as under :

"Notwithstanding anything contained in Sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

8. The Statement of Objects and Reasons is stated in the Bill are as under :

"According to Section 5(1) of the Central Sales Tax Act, a sale or purchase of goods can qualify as a sale in the course of export of the goods out of the territory of India only if the sale or purchase has either occasioned such export or is by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. The Supreme Court has held (vide *Serajuddin and Others Vs. The State of Orissa*, that the sale by an Indian exporter from India to the foreign importer alone qualifies as a sale which has occasioned the export of the goods. According to the Export Control Orders, exports of certain goods can be made only by specified agencies such as the State Trading Corporation. In other cases also, manufacturers of goods, particularly in the small-scale and medium sectors, have to depend upon some experienced export house for exporting the goods because special expertise is needed for carrying on export trade. A sale of goods made to an export canalising agency such as the State Trading Corporation or to an export house to enable such agency or export house to export those goods in compliance with an existing contract or order is inextricably connected with the export of the goods. Further, if such sales do not qualify as sales in the course of export, they would be liable to State sales tax and there would be a corresponding increase in the price of the goods. This would make our exports uncompetitive in the fiercely competitive international markets. It is, therefore, proposed to amend, with effect from the beginning of the current financial year, Section 5 of the Central Sales Tax Act to provide that the last sale or purchase of any goods preceding the sale or purchase occasioning export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for, or in relation to such export."

9. Petitioner has effected sales to various manufacturers like Telco, Bombay, Ashok Leyland, Madras and DCM Toyota, New Delhi, etc. The assessing authority observed that for the purpose of applicability of the provisions of Section 5(3) of the Act there must be export order of the same goods which are exported out of India.

10. Section 5(3) contemplated that it should be a last sale or purchase of any goods preceding sale or purchase occasioning the export of those goods out of the territory of India for which exemption could be claimed. It means that it is not only the exporter who has an order to export the goods to foreign country is entitled for exemption but even transaction prior to the actual export is also

exempt subject to the condition that the last of such sale or purchase should take place after and was for the purpose of complying with the agreement or order for or in relation to such export. The latter part of Section 5(3) has contemplated that :

(a) there must be a pending order on the date on which such last sale or purchase has taken place ;

(b) the seller has also to satisfy that; it was for the purpose of complying with such export order ;

(c) there must be actual export of such goods ;

(d) it is also provided that the order with the actual exporter must be to comply with the agreement or order for or in relation to such export ;

(e) the word "those goods" in the section also contemplates that the last sale or purchase of any goods must be one which occasions the export of those goods. The word "those goods" therefore refers to actual export of those goods for which the order was placed. If the order placed is for different goods, than the goods exported, the exemption granted u/s 5(3) would not be available ;

(f) Section 5(3) also contemplates that the agreement or order must be for or in relation to such export. The word "in relation to" has created an in extricate link between the purchase and export of the goods.

11. The entire controversy has arisen because of the decision of the apex Court in *Mod. Serajuddin v. State of Orissa* [1975] 36 STC 136, where on the interpretation of Section 5(1) it was held that it is only the actual exporter who is entitled for the exemption.

12. It was to mitigate the difficulties of the manufacturers and traders who are selling their goods to the exporters, that Section 5(3) had come into existence.

13. The controversy in the present matter therefore has to be examined with reference to interpretation of the word "those goods" used in Section 5(3) as well as whether there was an agreement or order for or in relation to the "bodies" built over the chassis.

14. In *Chettiar Industrial Corporation v. State of Tamil Nadu* [1999] 113 STC 334 (Mad.) sale of cartons to exporter which were claimed u/s 5(3) was exempted. It was found that packing material are essential for the export of sea foods, and Section 5(3) of the Act does not indicate that the exemption claimed should be confined to the goods contracted for export. The expression, "for the purpose of complying with the agreement or order for or in relation to such export" was held to include the sale or purchase of packing materials which were necessary to comply with export order or in relation to such export.

15. It was observed that identity of the goods is not lost because of packing of the goods in the containers and the title to the packing material would pass on

the sale of the goods. Penultimate sale of the packing material by assessee was held exempt u/s 5(3) of the Act.

16. In this case the decision given in *Packwell Industries (P.) Ltd. v. State of Tamil Nadu* [1982] 51 STC 329 (Mad.) was distinguished on the ground that the finding of the Tribunal was that the packing materials were not sold for the purpose of complying with the agreement or order or in relation to export.

17. The decision given in the case of *State of Tamil Nadu v. Catherine Traders* [1991] 81 STC 228 (Mad.), *Kusum Laminating & Packaging Industries v. State of Tamil Nadu* [1996] 101 STC 476 (Mad.), *State of Andhra Pradesh Vs. Standard Packings*, , were also relied.

18. In *Catherine Traders* [1991] 81 STC 228 (Mad.) polythene bags which were used for packing banians (vests) for export were held entitled for benefit u/s 5(3). It was observed that polythene bags were sold separately but banians were sold in polythene bags and transfer of title in bags along with transfer of title in banians is not in dispute.

19. In *State of Andhra Pradesh Vs. Standard Packings*, , the gunny bags were sold to the exporter to be used as container for export and it was observed that the assessee is entitled for exemption.

20. In *T.V. Sundram Iyengar and Sons Vs. The State of Madras*, , it was observed that property in the material used by the assessees in constructing the bus bodies never passed to their customer during the course of construction. It was only when the complete bus with body fitted to the chassis was delivered to the customer the property in the bus body passed to the customer. It was considered to be a sale.

21. Principles laid out in *Patnaik and Company Vs. State of Orissa*, were followed in *Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore*, , wherein it was observed that :

".....Sub-section (3) of Section 5 formulates a principle inasmuch as it lays down a general guiding rule applicable to all penultimate sales that satisfy the two conditions specified therein and not any specific direction governing any particular or specific transaction of a penultimate sale. In other words the content of the provision shows that it lays down a principle. In fact, while addressing arguments on proper construction of Section 5(3), the counsel for the three States strenuously contended that the said provision should not be construed as being applicable only to the export auctions conducted by the Coffee Board and the terms and conditions governing them because it applies to variety of parties including the small manufacturers who seek a foreign market of their goods through private export houses or canalised agencies like the State Trading Corporation. It is thus clear to us that Section 5(3) formulates a principle of general applicability in regard to all penultimate sales provided they satisfy the specified conditions mentioned therein and there is no question of the said

provision creating a legal fiction as has been contended for by the counsel. The contention, therefore, that Section 5(3) is beyond the power or authority of Article 286(2) and, therefore, ultra vires, must be rejected."

It was further observed

"that Section 5(3) has been enacted to extend the exemption from tax liability under the Act not to any kind of penultimate sale but only to such penultimate sale as satisfies the two conditions specified therein, namely, (a) that such penultimate sale must take place (i.e., become complete) after the agreement or order under which the goods are to be exported and (b) it must be for the purpose of complying with such agreement or order and it is only then that such penultimate sale is deemed to be a sale in the course of export.....the phrase "the agreement for or in relation to such export" is wide enough to include any binding or enforceable agreement to export even with a local party to implement which the penultimate sale should have taken place.

....."the agreement" occurring in the phrase must mean the agreement with a foreign buyer and not the agreement with a local party containing a covenant to export. Secondly, and more importantly, the user of the definite article "the" before the word "agreement" is, in our view, very significant. Parliament has not said "an agreement" or "any agreement" for or in relation to such export and in the context the expression "the agreement" would refer to that agreement which is implicit in the sale occasioning the export. Between the two sales (the penultimate and the final) spoken of in the earlier part of the sub-section ordinarily it is the final sale that would be connected with the export, and, therefore, the expression "the agreement" for export must refer to that agreement which is implicit in the sale that occasions the export. The user of the definite article "the", therefore, clearly suggests that the agreement spoken of must be the agreement with the foreign buyer. As a matter of pure construction it appears to us clear, therefore, that by necessary implication the expression "the agreement" occurring in the relevant phrase means or refers to the agreement with a foreign buyer and not an agreement or any agreement with a local party containing the covenant to export."

22. In *Commissioner, Sales Tax v. Girdhari Lal Football Maker* [1987] 65 STC 287 (All.) orders were placed for football and volleyball. The assessee was not manufacturing bladders. The word "bladders" was not specifically mentioned in the order placed. There were certain orders for the supply of football and volleyball with bladders having trade mark of bladders. It was found that the orders were for export of football and volleyball including bladders and the order placed by the exporter to the assessee were for the purpose of complying with the agreement or order. The benefit of Section 5(3) was given. Similarly in *Munjal Rubber Industries v. Commissioner of Trade Tax* [1999] 115 STC 116 (All.) and [1999] 115 STC 118 (All.) exemption was given to rubber bladder used in football. The export order was of football.

23. Madras High Court in the case of Ram Bhadur Takkur Takkur (P) Ltd. v. Coffee Board [1991] 80 STC 199 has interpreted that the word "those goods" in Section 5(3) does not mean "such goods". If the identity of the goods is not lost, the exemption u/s 5(3) could be claimed. Purchase of coffee beans which were roasted and ground and converted into coffee powder, it was considered that no new commodity is formed.

24. In Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, , purchase of shrimps, prawns and lobsters which were exported after processing them by cutting heads and tails, peeling, deveining and cleaning and freezing before export was considered as same goods entitled for benefit u/s 5(3) of the Act.

25. In State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., the process of manufacture was interpreted. The definition of "manufacture" was given u/s 2(17) of the Maharashtra Sales Tax Act, Section 2(26) contemplated resale of the goods purchased in the same form in which they were purchased without doing anything to them. Recharging of batteries was considered not a process of manufacture.

26. Much reliance is placed on the decision given in the case of Tata Engineering and Locomotive Company Ltd. v. State of Maharashtra [1995] 98 STC 330 (Bom) where it was contended that there is no resale of the bus bodies which have been purchased against declaration form No. 14. It was held that the commodity sold is different and therefore there is a non-compliance of conditions of form No. 14, This view was taken because the purchase against form No. 14 was of the bus bodies but what was sold was "the complete bus".

27. First, this decision is not an authority on the provisions of Section 5(3) of the Act. Secondly, in that case, the limited controversy was of applicability of form No. 14. It was held that the sale was of "the complete bus", there is no sale of "bus bodies". If the decision given by the Bombay High Court is considered in the context of resale as defined u/s 2(26) of the Maharashtra Sales Tax Act, 1959, the sale should be of the goods purchased in the same form in which they were purchased without doing anything to them. It does not appear that after purchasing the "bus bodies" anything was done by the assessee to the goods so purchased.

28. Learned counsel for the assessee has drawn our attention towards chapter 87 of the Central Excise Tariff in which it is mentioned that building a body or fabrication or mounting or fitting of structures or equipment on the chassis shall amount to "manufacture" of a motor vehicle. Different rate of duty has been given for the bodies.

29. In respect of Azad Coach Builders Pvt. Ltd., orders from the foreign buyer to the exporter were for complete bus giving the specification of the chassis and the body. In the case of S.M. Kannappa Automobile Pvt. Ltd., even in the orders of the foreign buyers the source from which "bus body" is to be constructed as

mentioned in the order of the foreign buyer. The manner in which the order is placed by the foreign buyer makes hardly any difference. The fact remains that the complete bus has been exported by the exporter on the basis of the order of the foreign buyer. "Complete bus" has two components immediately, "chassis" and the "body". The exporters being the manufacturer of "chassis" have considered it proper to get the "body" constructed from the body builders like the petitioners.

30. For the purpose of accounting the exporter could have raised bill of chassis made by the exporter in favour of the body builder and bill of complete bus could have been taken from the body builder. Instead of making unnecessary entries in the accounts, i.e., first debiting the value of the "chassis" to the body builder and then deducting the amount of "chassis" from the bill of "complete bus", the bill of body alone was taken. It is not disputed that after the body was constructed by the petitioners nothing was done by the exporter which may change the shape of the commodity or may even amount to manufacture or otherwise disentitling the assessee. The export of the complete bus was on the basis of the order pending with the exporter and when such orders were pending with the exporter the petitioners were required to build the body over the chassis which was manufactured and supplied by the exporter. It is true that it cannot be considered that the petitioners were exporters. The sales which have been effected by the petitioners to the exporters have only to be examined in the context of Section 5(3) of the Central Sales Tax Act. It is pointed out by the learned Government Advocate that form H furnished by the petitioner have the description of "bus body" whereas the export order is for a "complete bus" and therefore the two being different items the exemption cannot be availed. In this regard it may be observed that building/constructing the body on the chassis is nothing but manufacturing or making of a "bus". The process of constructing the body has been considered as manufacturing of the vehicle under the Central Excise Act. The petitioners have manufactured the body over the chassis supplied and after body is constructed thereof the identity of the "chassis" is lost and by manufacturing the "body" the new commodity emerges which is known as "bus". The exporter has exported such "bus" which is manufactured by the petitioner but he has built only the "body" because the "chassis" was supplied by the exporter and the goods were sent in the same form in which they were manufactured by the petitioner. Regarding the contention that the "body" and "bus" are different articles as specified separately in the Schedule of KST Act it may be observed that "body" per se is a saleable commodity and is different than the "chassis" or the "complete bus". The act of the petitioner is only to add another article over the article supplied by the exporter. With addition of "body" over the "chassis" supplied by the exporter it has resulted in a different article mainly the "bus" in the hands of the petitioners themselves. The petitioners are the manufacturers of the "bus" as per chapter note 3 in Chapter 87 of Central Excise Tariff. According to the said Chapter, building body or fabrication or mounting or fitting of structures or equipment on the chassis amounts to

"manufacture" of a motor vehicle falling under the head 87.01 to 87.05.

31. The manner in which the orders have been placed by the foreign buyer hardly makes any difference because, the object of the foreign buyer is to purchase the "complete bus". "Complete bus" consists of the "chassis" and the "body". The chassis is manufactured and supplied by the exporter. The foreign buyer could have placed two separate orders one for the supply of chassis and the other for the body. But he thought it proper to place the composite order of the "bus" giving specification of the "chassis" as well as the "body" to be constructed thereon. After the order was placed by the exporter on the petitioner and body was constructed over the chassis supplied, "complete bus" has come into existence which has been exported by the exporter directly to the foreign buyer as it was given to him by the bus maker who is the penultimate seller. The chassis has become bus in the hand of the body builder, i.e.; petitioners only.

32. From the orders placed by the foreign buyer, it is submitted that the description of chassis and bus body have separately been given. The orders themselves have contemplated a stipulation that the bus bodies be built of particular specification. There is no direct order of the foreign buyer with the petitioners and therefore the only interpretation which has to be taken is the bus which consists of "chassis" and "body" for which separate specifications are in the order could be construed as giving the exemption to the two items separately. It may happen for number of the items like football, volleyball, etc., where the cover is manufactured by one and the bladders by the other, a suit where the coat is manufactured by one and the trouser by the another, similarly in spectacles, frame may be purchased from one source and glass from another. Can it be considered that Section 5(3) had not contemplated the benefit to such exporters. Provisions of Section 5(3) are for the purpose of boosting export to foreign countries and with regard to the technicalities in the manufacture of items one may be specialised in one item and the other may be in another. The penultimate seller of one item which goes as it is has to be considered exempt u/s 5(3) of the Central Sales Tax Act.

33. For the purpose of interpretation of Section 5(3) a reasonable view has to be taken by which the intended benefit is not denied to the sales covered by the section as observed in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, .

".....it is clear to us that two public interests are involved ; promotion of the exports of the country is one public interest while augmentation of the States" revenues through sales tax is the other and it is obvious that if the liberal construction, as suggested by the counsel for the petitioners, is accepted the former public interest will undoubtedly be served while the latter will greatly suffer and if the narrow construction is accepted the latter public interest will be served and the former will suffer. It is difficult to say that the Parliament intended to prefer one and sacrifice the other. In fact the granting of exemption to penultimate sales was obviously with a view to promote the exports but

limiting the exemption to certain types of penultimate sales that satisfy the two specified conditions displays an anxiety not to diminish the States' revenues beyond a certain limit. The section in any case gives no indication that one public interest is to be preferred to the other and, therefore, in our view, the matter must again depend upon the proper construction of the language employed. On construction we are of the view that by implication the expression "the agreement" occurring in Section 5(3) refers to the agreement with a foreign buyer."

34. The object of Section 5(3) is to encourage exports and for that purpose penultimate sales have been exempted. On proper construction of provisions of Section 5(3) it has to be seen whether all the conditions as contemplated are fulfilled or not. It can never be contemplated that Legislature have excluded those goods where two articles constitute another article without any manufacture or processing. While interpreting the exemption clause reasonable interpretation has to be taken and not to deny the exemption which is not contemplated by the section. The interpretation should neither be narrow nor should promote fraud.

35. According to the language of the section it has to be seen as to whether the sale is for complying with an order for export in respect of those very goods. After effecting the sale by the assessee exporter has done nothing and the sale is of those very goods which were purchased. It has been considered in number of cases even by the apex Court that there could be an implied sale. It may be an implied contract also in the sense that the contract has stipulated the two items to be sent together. A bill is not a mode to determine the nature of sale as held in *Arun Electrics v. Commissioner of Sales Tax* [1966] 17 STC 576 (SC). It was observed that the question of exigibility of tax has to be determined on the terms of the contract and not from the invoice issued by the person entitled to receive the money under the contract.

36. In *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* [1966] 17 STC 624 (SC), the dispute was with regard to containers and packing materials, consisting of cardboard and wooden boxes which were sold along with cigarette. There was no express contract for the sale of packing material. It was observed that an absolute proposition of law cannot be laid down that whenever particular goods were sold in a container, parties do not intend to sell and buy container also.

37. In the present matter it is not even the case of implied contract but of the specific contract which has been entered into by the exporter with the foreign buyer to export the "bus" having the "chassis" and "body" of definite specification and thus all the conditions of Section 5(3) of the Central Sales Tax Act has been fulfilled. It is not in dispute that at the time when the orders were placed to the petitioner by the exporter, the exporter had the pending orders with him and that the purchase from the petitioner was for the purpose of complying with the agreement or order for or in relation to such export. The

"agreement" or "order" has reference to those goods which are actually exported out of the country. The words "in relation to such export" extend the scope of the exemption to the extent that even if there is no agreement or order but they are in relation to such export, the exemption can still be claimed. This would cover not only the packing material, but all other such sale which are made to the exporter for which by implication it could be considered that there was an agreement or order in respect thereof.

38. According to our considered view, so long as there is sale of both the items to constitute them as a complete item, the benefit cannot be denied.

39. In these circumstances, the Tribunal was not justified in coming to the conclusion that the "bus bodies" supplied by the petitioner to the exporter are not eligible for the benefit of Section 5(3) of the Central Sales Tax Act.

40. Petitions are accordingly allowed.