

(1976) 07 MAD CK 0019

In the Madras High Court

Case No : Tax Case No. 344 of 1971 (Revision No. 243 of 1971)

Bharathi Pulvarising Mills Private Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 4, 6, 9
Sales of Goods Act, 1930 — Section 18, 23, 26, 33, 39
Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1977) 40 STC 15

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : S. Rajagopalan, for the Appellant; K.S. Bakthavathsalam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—This is a petition u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Sales Tax Appellate Tribunal,

Madras Bench, dated 22nd January, 1971, passed in T.A. No. 666 of 1968. The petitioner is a limited company manufacturing pesticides and

carrying on business at No. 1074, Thiruvethiyur High Road, Tondiarpet, Madras. On 21st July, 1964, the petitioner entered into an agreement

with the Government of Andhra Pradesh for supply of pesticides required by the Director of Agriculture, Hyderabad, or the officers authorised by

him, namely, District Agricultural Assistants, etc., as well as by the Panchayat Samithis in Andhra Pradesh. Under this agreement, the petitioner had

to supply pesticides against indents to be placed by the officers in question and the rates agreed to under the contract were f. o. r. any railway

station, Andhra Pradesh, by goods train including out agencies. Two conditions of

the contract in question require to be mentioned. One condition is that supplies were subject to inspection and acceptance by the consignee. The second condition is that the supplies were to be effected promptly and satisfactorily from the stocks held at the petitioner's Madras factory and also from the petitioner's depot at Vijayawada. In this case for the year relevant to the assessment year 1965-66, the petitioner had supplied pesticides to the officers of the Andhra Pradesh Government pursuant to the agreement referred to above, whose turnover is Rs. 1,54,838.49. The petitioner contended that this turnover represented local sales effected in Andhra Pradesh and that, therefore, it was not liable to be taxed. However, the Deputy Commercial Tax Officer treated the turnover as turnover of sales effected in the course of inter-State trade and, therefore, assessed the same u/s 6 of the Central Sales Tax Act, 1956. The appeals preferred by the petitioner to the Appellate Assistant Commissioner of Commercial Taxes and the Sales Tax Appellate Tribunal, Madras Bench, failed. It is thereafter that the petitioner has approached this court by way of revision against the order of the Sales Tax Appellate Tribunal.

2. The following facts are admitted or are established : (1) The turnover represented the goods sent by the petitioner from its Madras factory to various places in Andhra Pradesh. (2) The said goods were despatched with reference to the indents placed by the officers of the Department of Agriculture of the Andhra Pradesh Government as well as others designated as indenting officers under the agreement referred to above. (3) While consigning the goods, the petitioner took the way-bills or railway receipts in its own name. (4) The invoices were prepared in the name of the petitioner's office at Guntur. (5) The quantities despatched by the petitioner from time to time were the identical quantities indented for by the various officers. (6) There was no evidence to show that the staff of the petitioner at Guntur took delivery of the goods from the carriers and thereafter sold the goods or delivered the same to the various officers of the Government of Andhra Pradesh mentioned in the agreement referred to already. It is against the background of these facts that the question has to be considered as to whether the disputed turnover represented sales that took place in Andhra Pradesh in the course of inter-State trade as defined in Section 3 of the Central Sales Tax Act, 1956, or not.

3. Mr. Rajagopalan, the learned counsel for the petitioner, vehemently contended that the property in the goods passed only in Andhra Pradesh

because one of the stipulations contained in the agreement was that the supplies were subject to inspection and acceptance by the officers of the

Agriculture Department of Andhra Pradesh, that till the goods were inspected and accepted by them at the respective offices, the property in the

goods did not pass and that, therefore, in the present case, the property in the goods passed only in the State of Andhra Pradesh and hence they

were local sales. We are of the opinion that this argument is really misconceived. We are not concerned in the present case with the question

whether the property in the goods passed in Andhra Pradesh or Tamil Nadu. On the other hand, we are concerned with the question as to whether

the sales in the present case represented inter-State sales as defined in Section 3 of the Central Sales Tax Act, 1956, or not. Section 3 of the

Central Sales Tax Act, 1956, so far as is relevant for the purpose of this case, is as follows :

3. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(a) occasions the movement of goods from one State to another.

4. Consequently, the movement of goods from one State to another having been admitted in the present case, the question for consideration is

whether that movement was occasioned by the sales in question or not. The learned counsel for the petitioner drew our attention to certain

decisions in this behalf.

5. The first decision which the learned counsel relied on is a decision of the Supreme Court in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R.*

Sarkar and Others, . In that case, the Supreme Court was concerned with the question as to whether the sales involved therein were sales coming

within the scope of Clause (a) of Section 3 of the Central Sales Tax Act, 1956, or not. Dealing with that question, the Supreme Court stated :

By Section 3, a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a)

occasions the movement of goods from one State to another, or (b) is effected by transfer of documents of title to the goods during their movement

from one State to another. A transaction of sale is subject to tax under the

Central Sales Tax Act on the completion of the sale and a mere contract of sale is not a sale within the definition of sale in Section 2(g)....

In our view, therefore, within Clause (b) of Section 3 are included sales in which property in the goods passes during the movement of the goods

from one State to another by transfer of documents of title thereto : Clause (a) of Section 3 covers sales, other than those included in Clause (b), in

which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale and property in the goods

passes in either State.

6. The argument of the learned counsel for the petitioner is that this decision established that the movement of goods from one State to another

must be the result of a covenant or incident of the contract of sale and that as, in the present case, there was no covenant whatever to compel it to

move the goods from the State of Tamil Nadu to Andhra Pradesh, the sales cannot come within the scope of Clause (a) of Section 3. The learned

counsel for the petitioner went to the extent of stating that it was open to the petitioner to sell the goods, after having moved them from Tamil Nadu

to Andhra Pradesh pursuant to the indents placed by the various indenting officers, to any person it liked and that by doing so it would have only

committed breach of contract with the Government of Andhra Pradesh and that that would not have made the sales in question as sales in the

course of inter-State trade. We are unable to accept this argument. The Supreme Court has clearly laid down in the passage extracted above that

it is immaterial where the property in the goods passes, whether it is in Tamil Nadu or in Andhra Pradesh, in the present case and what is material

is that the movement of the goods must be the result of a covenant or incident of the contract of sale. In the particular case, we have already

referred to one of the conditions contained in the contract, namely, that the goods have to be supplied by the petitioner from its Madras factory

and also from its depot at Vijayawada. The turnover in question represented the sales of pesticides supplied from Madras factory and did not

involve any sale of pesticides from the petitioner's depot at Vijayawada. Consequently, it can be certainly stated that the contract entered into by

the petitioner with the Government of Andhra Pradesh contained a covenant that the goods must be supplied from the petitioner's Madras factory

and the argument of the learned counsel for the petitioner overlooks this specific provision contained in the agreement. Even if such a stipulation

had not been present in the agreement, once the petitioner moved the goods from its Madras factory by virtue of the indents placed by the officers

of the Agriculture Department of Andhra Pradesh, certainly the movement would have been the result of an incident of the contract of sale.

Therefore, the decision of the Supreme Court relied on by the learned counsel for the petitioner is not of any assistance whatever to support his

case, but, on the other hand, is against this contention.

7. The learned counsel for the petitioner then relied on another decision of the Supreme Court in *Balabhagas Hulaschand Vs. State of Orissa*, ,

wherein 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.-B, a purchaser in State Y, comes to State X and purchases the goods and pays the price thereof. After having purchased the goods

he then books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in

State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

8. The learned counsel for the petitioner relies on case No. II mentioned above and states that that illustration applies to the present case and that if

it so applies, the sales in question would be local sales in the State of Andhra Pradesh and, therefore, not sales in the course of inter-State trade.

We are unable to accept this argument. Case No. II, as pointed out by the Supreme Court, deals with a case where goods are taken delivery of in

the other State by the seller himself and thereafter he sells the goods to the buyers there. But, in this case, apart from the fact that the petitioner

herein booked the goods to ""self"", as we have pointed out already, there is no evidence to show that the goods were taken delivery of by the staff

or agent of the petitioner at Guntur and thereafter the said agent or staff of the petitioner sold the goods to the various officers of the Andhra

Pradesh Government. We may also point out one fact which is relevant, namely, that the goods were consigned to a place in Andhra Pradesh

nearest to the place where the offices of the indenting officers are situate and that is the reason why the Appellate Assistant Commissioner of

Commercial Taxes as well as the Sales Tax Appellate Tribunal pointed out that the goods were consigned to the officers who indented for the

same. Consequently, the decision referred to above is not of any assistance whatever to the case of the petitioner. As a matter of fact, the Supreme

Court in the very same judgment laid down the following proposition of law as containing the tests to find out whether a sale takes place in the

course of an inter-State trade or commerce or not.

9. The Supreme Court observed :

That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce :

(i) that there is an agreement to sell which contains a stipulation express or

implied regarding the movement of the goods from one State to another;

(ii) that in pursuance of the said contract the goods in fact moved from one State to another ; and

(iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move.

If these conditions are satisfied then by virtue of Section 9 of the Central Sales Tax Act it is the State from which the goods move which will be

competent to levy the tax under the provisions of the Central Sales Tax Act.

10. In the present case, all the three conditions are satisfied and, therefore, there can be no doubt whatever that the sales in question constituted

sales in the course of inter-State trade or commerce.

11. The above decision of the Supreme Court was followed by the same court in a subsequent decision in *Manganese Ore (India) Ltd. Vs. The*

Regional Assistant Commissioner of Sales Tax, Jabalpur, . That Report contains the judgment of the High Court of Madhya Pradesh as well as the

appellate judgment of the Supreme Court. At page 505, in paragraph 25 of the judgment of the High Court, the High Court had to say this :

Section 3(a) of the Central Sales Tax Act provides that a sale or purchase of goods shall be deemed to take place in the course of inter-State

trade or commerce if the sale or purchase occasions the movement of goods from one State to another. As construed by the Supreme Court, a

sale falls under this section "if the movement of goods from one State to another is under a covenant or incident of the contract of sale": see *Tata*

Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, , *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner*

of Commercial Taxes and Another, and The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., Property in the goods

may have passed at the destination, but passing of property is not the test u/s 3(1). As the movement of the goods was under a covenant or an

incident of the contract of sale, all these sales fell within Section 3(1) and were sales in the course of inter-State trade or commerce.

12. The High Court also pointed out that it was immaterial that the buyers could reject the goods at the place of destination or at the port if the

petitioner-company in that case did not despatch the component ores in such

proportion as to make up the mixture of contracted grade, for

Section 4(1) did not refer to unconditional appropriation or passing of property. The Supreme Court, after referring to its earlier decision in

Balabhagas Hulaschand Vs. State of Orissa, , referred to already, affirmed this judgment of the High Court of Madhya Pradesh. It would appear

that, before the Supreme Court in that case, a contention was advanced as was advanced before us that till the goods were inspected and

accepted by the indenting officers, the property in the goods did not pass, that till that stage they continued to remain as unascertained goods and

that, therefore, the sales could not be said to be sales in the course of inter-State trade or commerce. With reference to such argument, the

Supreme Court observed :

Lastly it was contended by counsel for the appellant that as the manganese ores despatched by the appellant were unascertained or future goods,

which would come into existence only after the manganese ores extracted in various mines in Madhya Pradesh and Maharashtra were stocked and

piled up one after the other the provisions of Section 3(a) of the Central Sales Tax Act would not apply. This contention is completely without

substance in view of the decision of this court in Balabhagas Hulaschand Vs. State of Orissa, , where it was pointed out that so far as Section 3(a)

of the Central Sales Tax Act is concerned there is no distinction between unascertained and future goods and goods which are already in

existence, if at the time when the sale takes place these goods have come into actual physical existence. In the instant case also, it was never

disputed before the High Court or before us that the manganese ore was loaded into the wagons after being extracted from the mines and that the

sales of these manganese ores despatched from Madhya Pradesh to various States actually took place and the goods were ultimately accepted by

the buyers in other States. In these circumstances, therefore, it is quite clear in this case that the movement of the goods took place in pursuance of

the contracts of sale which ultimately merged into actual sales and it was only thereafter that the tax was sought to be levied by the State of

Madhya Pradesh.

13. In the present case also, there is no dispute that after inspection the goods were accepted by the indenting officers and, therefore, the sales did

take place and it was after those sales, assessment to tax was made in respect of such sales.

14. Therefore, the above decisions make it absolutely clear that, on the facts of the present case, the sales in question would constitute sales in the course of inter-State trade or commerce.

15. In view of this conclusion of ours, it is unnecessary to refer to the arguments of the learned counsel for the petitioner based on Sections 23, 26

and 41 of the Sale of Goods Act, because all of them deal with the question as to the time when and the place where the property in the goods

passes. For the same reason the decision of the Supreme Court in *The Commissioner of Sales-Tax, Eastern Division, Nagpur Vs. Husenali Adamji*

and Co., has no relevancy to the facts of the present case. That case did not deal with any sales in the course of inter-State trade or commerce and

it was concerned with the question as to where the property in the goods really passed and, in that context, a reference was made to Sections 18,

23, 33 and 39 of the Sale of Goods Act. In that case also, there was a stipulation in the contract that the buyer had a right to inspect the goods and

reject the same. With reference to that provision, the Supreme Court pointed out that the property in the goods did not pass from the seller to the

buyer until the buyer had inspected the goods and accepted the same. As we have pointed out already, that will have no relevancy to the

determination of the question as to whether the sales in the present case constituted sales in the course of inter-State trade or commerce or not, as

defined in Clause (a) of Section 3 of the Central Sales Tax Act, 1956.

16. So also the decision of the Supreme Court in *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial*

Taxes and Another, is of no assistance to the case of the petitioner in the present case. In that case what happened was that trucks and buses

manufactured by the company were moved from its work place at Jamshedpur to the stock-yards in different States, but the movement of the

goods from Jamshedpur to the stock-yards in different States did not take place as a result of any contract entered into between the seller and the

buyer for the purchase of the vehicles in question. In that context, the Supreme Court held that the sales in that case did not constitute sales in the

course of inter-State trade or commerce. However, in the present case, as we

have pointed out already, the movement of the goods from the factory of the petitioner at Madras to Andhra Pradesh took place by virtue of the indents placed by the indenting officers in Andhra Pradesh and, therefore, that decision does not apply to the facts of the present case.

17. For these reasons, we are of the opinion that the Tribunal was right in holding that the turnover in question was liable to be taxed under the

Central Sales Tax Act, 1956, representing sales which were deemed to have taken place in the course of inter-State trade or commerce, as

provided in Section 3 of the Central Sales Tax Act, 1956. Accordingly, the petition fails and is dismissed with costs. Counsel's fee Rs. 250

(Rupees two hundred and fifty only).