(1981) 02 KAR CK 0027

In the Karnataka High Court

Case No : Sales Tax Appeal No. 37 of 1977

Bhoruka Steel Limited, Bangalore APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 04-02-1981

Acts Referred:

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

Citation : (2002) 52 KarLJ 156

Hon'ble Judges : M. Rama Jois, J;M. K. Srinivasa Iyengar, J

Judgement

M. Rama Jois, J.-This appeal is presented by a dealer registered under the Central Sales Tax Act, 1956 (hereinafter referred to as ''the Central Act'') under Section 24(1) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as ''the State Act'') against the order of the suo motu revision made by the Commissioner under Section 22-A of the State Act read with Section 9(2) of the Central Act.

2. The brief facts of the case are as follows.-The assessee is an industrial undertaking having its manufacturing unit at Bangalore. It is engaged in the manufacture of mild steel ingots. For the assessment year commencing from 1-4-1972 ended 31-3-1973, assessment was completed under the Central Act on 13-3-1975. The inter-State sales effected by the assessee was computed at Rs. 1,46,542.50. Thereafter, the Commissioner being of the view that the order of the Assessing Authority was erroneous and prejudicial to the revenue initiated action under Section 22-A of the State Act read with Section 9(2) of the Central Act. Accordingly, he issued a notice to the appellant. In the notice the Commissioner stated that the following turnovers were pertaining to the inter-State sales which had gone unassessed, in the order made by the Assessing Authority: Item 1.-A sum of Rs. 6,06,565.00 the particulars of which were given as follows.-

1. Madurai Steel Rolling Mills, Madurai Rs. 45,437.50

2. Premier Steels Private Limited, Calicut Rs. 48,114.00

3. Trichi Rolling Mills, Trichi Rs. 3,23,878.50

4. West India Steel Company Limited, Feroki Rs. 1,89,135.00

Total --------------------Rs. 6,06,565.00-------------------

Item 2.-A turnover of Rs. 10,77,940.55 relating to the alleged inter-State sales effected by the appellant to South India Steel and Starch Industries, Salem (Tamil Nadu) and to certain dealers of Trichi (Kerala State).

3. To the said notice the appellant furnished reply dated 1-3-1979. In the reply, as regards the first item, the assessee took the stand that the turnover did not relate to the inter-State sale and there was no material on record to show that the goods moved under a contract of sale from the State of Karnataka to the State of Kerala or Tamil Nadu.

4. As regards the second item, the stand taken by the appellant was that the appellant had its branches at Trichi, Salem and Coimbatore in the State of Tamil Nadu and the sales were effected by the branches and the said turnover had been assessed to tax under the Tamil Nadu General Sales Tax Act as local sales in Tamil Nadu. It was also pointed out that the goods did not move from this State of Tamil Nadu pursuant to any earlier order from the intending purchasers and it was only a case of transfer of stock by the head office of the appellant to its branches at those places in Tamil Nadu.

5. The Commissioner considered the pleas of the appellant as regards both the items and was of the opinion that the pleas put forth by the appellant were untenable. As regards the first item, the Commissioner while rejecting the plea of the appellant stated as follows.-

"As regards the sales turnover of Rs. 6,06,565/- it was seen from the invoices and delivery notes and the records that invoices were prepared in the name of the purchasing dealers indicating their addresses, that delivery notes in Form 39 were issued by the assessee in respect of the transport of the very goods sold in which the assessees were shown as the consignor and the outside buyers as consignees which fact was revealed on random check of some of the delivery notes bearing Nos. 22618, 22619, 22620, 22621, 23310 to 23344 etc. In respect of the sales made to Premier Steels (Private) Limited, Calicut, all the sales effected from 22-11-1972 were shown as inter-State sales and Central Sales Tax was collected on them but similar transactions effected prior to that date were claimed as local sales on the ground that delivery of the goods was given at ex-factory premises. There is nothing in the records to show that the goods were delivered to the buyers or their representatives ex-factory. On the other hand, the issue of delivery notes in Form 39 clearly indicates that the goods were despatched by the assessees and delivered to the common carriers for being moved outside the State. These sales have clear inter-State characteristics. The suggestion that these transaction relating to the turnover of Rs. 6,06,565/- were local sales is therefore unacceptable to me".

The Commissioner then referred to the delivery notes in Form 39 and pointed out that the sales took place between the customer and the assessee at Bangalore and pursuant to such agreement of sale, the goods moved in the lorries from this State to places in Tamil Nadu and Kerala and in the waybills appellant was described as consignor and the purchasers as consignees. In particular, in the case of sales effected in favour of Premier Steels (Private) Limited, Calicut into the State of Kerala the appellant had even collected Central Sales Tax. The explanation of the assessee that they were local sales was rejected on the basis of the material on record which indicate that the sales were in the course of inter-State trade.

6. As regards the second item, the Commissioner gave more than one reason to come to the conclusion that the sales were inter-State sales. Relevant portion of his order reads.-

"Regarding the sales turnover of Rs. 10,77,940.55 which was claimed to be stock transfers to the assessee''s branches in Trichi, Salem etc., no proof to show such stock transfers was furnished. On the relevant dates, the assessee had no such branches at these places. It was ascertained that the payments of the bills covering these sales were received directly by the head office (assessee''s) in Bangalore from the buyers, that the branches did not render any accounts to the head office with regard to these sales as no such branches existed at the relevant time and that freight had been paid to the common carriers by the buyers on the sales under consideration. In these circumstances, it is clear the branches did not take delivery of the goods and then sell the same to the buyers of outside State as the goods were directly delivered to the buyers by the common carriers. The weighment slips maintained by the assessees also suggest that the consignees were all outside State buyers".

The reasons given by the Commissioner were as follows.-

(1) There were no branches of the appellant at the places in the State of Tamil Nadu as stated by the appellant and the registration certificates issued to these branches by the authorities functioning under the provisions of the Tamil Nadu Sales Tax Act was not sufficient to prove the existence of the branches.

(2) The payments from the purchasers in Tamil Nadu were directly received by the head office of the appellant at Bangalore.

(3) The freight charges were paid by the parties to whom delivery was given in Tamil Nadu.

(4) The goods were transferred to the purchasers by endorsement of the waybills of lorries in which the goods were despatched.

(5) There was no break of journey of the goods before delivery was effected to the purchasers in the State of Tamil Nadu.

(6) The assessment of the same turnover under the provisions of the Tamil Nadu

General Sales Tax Act was not relevant and that the assessment made by the Tamil Nadu authorities itself could be wrong.

7. At the outset Sri K. Srinivasan, learned Counsel for the appellant contended that the Commissioner had no jurisdiction to invoke the powers under Section 22-A of the State Act as the turnover intended to be treated as inter-State sales turnover was not at all the subject-matter of the assessment order dated 13-3-1975, and if at all any action was possible it could have been only under Section 12-A of the State Act for escapement of assessment. The submission made was that as the turnover, Rs. 52,17,123-09 ps. was considered under the provisions of the State Act and was exempted from tax under the State Act, it could not also be considered as a turnover which was considered by the Assessing Authority for the purpose of Central Act.

8. We are unable to agree. The assessment of the sales turnover of the assessee under the provisions of the State Act and the Central Act were considered together and separate assessment orders were made. There is no specific reference in the assessment order made under the Central Act itself to the effect that the turnover had been considered and it was exempted under the provisions of the State Act. While computing the inter-State sales turnover effected by the appellant the entire turnover of the assessee had been considered by the authority and while passing the orders it bifurcated the turnover for the purpose of levy of tax under the Central Act and the State Act. Therefore, if the Commissioner was of the view that in the assessment order certain turnover which was actually inter-State turnover had not been brought to tax under the Central Act, he had the necessary power to invoke the powers under Section 22-A of the Act, as such an assessment order would be both erroneous and prejudicial to the revenue.

9. On the merits of the case, the learned Counsel for the appellant contended that the finding recorded by the Commissioner regarding the first item of turnover of Rs. 6,06,565.00 to the effect that they were inter-State sales was not tenable. He argued that though they were all purchases made by dealers outside the State, they were only local purchases. In our view, the contention is not tenable. As pointed out by the Commissioner it was only as a result of contract of sale between the appellant and the purchasers the goods were moved from this State through common carriers to those places in the States of Tamil Nadu and Kerala and in the delivery notes the appellant was described as consignor and those purchasers as consignees. If they were local purchases by outsiders, the title to the goods would have passed to the purchasers in the State itself and appellant would not become the consignor. The explanation that it was so described as the purchaser wanted delivery outside octroi limits is unconvincing. The collection of Central Sales Tax in the case of goods despatched to Premier Steels also repudiates the stand of the appellant. As a question of fact, the Commissioner has found that there were orders by the parties from outside the State and the goods despatched through lorries were pursuant to such orders

and was intended to these parties. Therefore, the finding recorded by the Commissioner on the first item that it constituted the inter-State sales turnover, and therefore exigible to tax under the Central Act in this State is correct and beyond reproach and therefore has to be upheld.

10. As regards the second item the learned Counsel pointed out that there was no finding recorded by the Commissioner on the basis of any material to the effect that the goods moved from this State to State of Tamil Nadu pursuant to any contract entered into between the appellant and the intending purchasers in the State of Tamil Nadu and therefore the sales could not be described as inter-State sales within the meaning of Section 3(a) of the Central Act. He also contended that there was no finding by the Commissioner also to the effect that sale was effected by transfer of documents while the goods were still in transit from the State of Karnataka to State of Tamil Nadu and therefore the provisions of Section 3(b) of the Central Act was also not attracted.

11. Smt. Vanaja, the learned Counsel for the State on the contrary contended as follows.-

(1) The finding recorded by the Commissioner to the effect that the second item constituted inter-State sale turnover was correct.

(2) In any event, as the Commissioner has only remanded the case to the Commercial Tax Officer directing him to reconsider the whole question, there is no justification to interfere with the order of the Commissioner, in this appeal.

Elaborating the first contention, the learned Counsel pointed out that even a sale transaction effected through the agency of a branch office situated in another State constitutes inter-State sale and in the present case as the sales were effected by the appellant through its branch offices in the State of Tamil Nadu, the sales in question is rightly characterised inter-State sales by the Commissioner. In support of the above contention the learned Counsel relied on the following decisions.-

(1) Decision of the Madras High Court in Rukmini Mills Limited v Government of Tamil Nadu, (1975)36 STC 425 (Mad.);

(2) Decision of the Supreme Court in the case of English Electric Company of India Limited v The Deputy Commercial Tax Officer and Others, AIR 1977 SC 19;

(3) Decision of the Supreme Court in the case of Union of India and Another v M/ s. K.G. Khosla and Company Limited and Others, AIR 1979 SC 1160.

12. The common ratio of the above three decisions is that if the goods are despatched by a branch office or head office, as the case may be, of a dealer located in one State to another State pursuant to firm orders received from customers situated in another State through a head office or branch office as the case may be, of the dealer located in that State for delivery to such customers it would constitute inter-State sales as defined under Section 3(a) of the Central

Act.

(i) In the case of Rukmini Mills, supra, the head office was situated at Madras and its branch office was situated at Bombay. The branch office collected firm orders for the purchase of the goods and these orders were transmitted to the head office at Madras. Pursuant to such firm orders goods were despatched from the head office to the branch office and it was intended that it should be delivered to the purchasers who had placed orders. On the facts of the case it was held that the goods moved from the State of Madras to the State of Bombay in the course of inter-State Trade and Commerce. The fact that the goods were despatched to the branch office in the name of ''self'' was not considered sufficient to take the transaction outside the category of inter-State sales, as the goods had been despatched pursuant to the earlier order received from the purchasers which had been transmitted by the branch office to the head office.

(ii) In the case of English Electric Company of India, supra, the registered office of the company was at Calcutta and it had its branches at Bombay, Delhi, Madras and Lucknow and its main factory was at Madras. In that case also, the Bombay buyer had written to the Bombay branch of the said company asking for quotation of the goods and the Bombay branch in turn wrote to the Madras branch giving all the specifications and further stating that the goods were for the Bombay buyer. Pursuant to the said order the Madras branch gave the required particulars and also quoted the price free on rail Madras. Thereafter the Madras office received orders from the Bombay branch reproducing all the particulars and conditions of sale subject to which the Bombay buyer was willing to purchase the goods and after receipt of the said letter and receipt of the order from the Bombay buyer, the goods were despatched to the Bombay buyer through clearing agents at Bombay. The contention of the appellant that there was no inter-State sale was rejected on the ground that it was only pursuant to the order placed by the Bombay buyer the Madras factory caused the movement of the goods from State of Madras to State of Bombay.

(iii) In the case of Union of India, supra, the company had its head office at Delhi, while its factory was located at Faridabad in the Haryana State. Orders were received by the head office for manufacturing air compressors and garage equipment in its factory at Faridabad. The head office received orders for the supply of goods and pursuant to the production programme prepared by the head office and according to its advise the factory proceeded to manufacture the goods and after the goods were so manufactured they were brought to the head office in Delhi and despatched from the head office to various customers either in the city of Delhi or outside. In this case interpreting the provisions of Section 3(a) of the Central Act the Supreme Court held that Section 3(a) would be attracted if the movement of goods from one State to another was the result of a covenant in the contract of sale or was an incident of that contract and it was not necessary that there should be any clause in the contract of sale itself providing for the movement of the goods. On the facts of the case, the Supreme Court held that as the contract had been entered into between the head office and the customers for the manufacture and supply of the specified items of goods, the said contract of sale could be performed by the company only by causing the movement of the goods from Faridabad to Delhi and other places with the intention of delivery of such goods to the purchasers.

13. In the present case, as rightly pointed out by the learned Counsel for the appellant there is no finding recorded by the Commissioner to the effect that the goods manufactured by the appellants at Bangalore were despatched to its branches situated in the State of Tamil Nadu pursuant to any earlier orders received for the supply of those goods by the head office directly or such orders were collected and transmitted to the head office of the appellant by its branch office situated in Tamil Nadu. There is also no finding recorded by the Commissioner even to the effect that as the goods despatched by the appellant to the branches were in the course of transit from this State to State of Tamil Nadu, the sale of goods took place by way of transfer of documents, in favour of the intending purchasers situated in the State of Tamil Nadu. In the absence of these findings, in our opinion, neither Section 3(a) nor Section 3(b) of the Central Act, is attracted.

14. Having due regard to the facts and circumstances and in particular that the very turnover comprised in the second item has been treated as sales in the State of Tamil Nadu, we are of the view, the reasons given by the Commissioner to adjudge these sales as inter-State sales cannot be sustained.

(i) The reason given to the effect that there were no branch offices at all at the relevant point of time is contrary to facts. The registration certificate issued by the Tamil Nadu authorities were produced before the Commissioner. The certificates which have also been produced as Annexures to this appeal indicate that the branch office at Salem was registered on 29-11-1972 and the branch office at Tiruchinapally was registered on 14-12-1972. The statement of particulars regarding the sales effected by these branches also indicate that all the transactions of sale effected by these branches were subsequent to the dates of registration. There was nothing to doubt the registration certificates. As far as the branches situated at Coimbatore and Madras were concerned, the Commissioner has no where in his order stated that the branches did not exist.

(ii) The reason that the payments were received directly by the head office is not sufficient to hold that the sale which is not otherwise inter-State sale would become inter-State sale on that account. If after the sale was effected by the branch office it asked the purchasers to remit the amount directly to the head office and accordingly purchaser made direct remittances, such mode of collection of price is only a matter of convenience of the parties and that circumstance by itself does not convert an intra-State sale into an inter-State sale.

(iii) The payment of freight charges by the purchasers is also not indicative of the fact that the transaction was inter-State sale. Even in the case of local sales, it is open to the seller to collect and the purchaser to pay the freight charges.

(iv) The reason that the sale was effected by endorsing the waybills and thereafter the goods were carried in the same vehicle and delivered to the purchasers in the State of Tamil Nadu also does not prove that the sales were inter-State sales. As pointed out earlier, there is no finding to the effect that the transfer of documents took place while the goods were yet in transit. As on each occasion the goods were despatched by the appellant to its branch office in a lorry, the movement came to an end when the lorry reached the branch office. Thereafter it was open for the branch office situated in the State of Tamil Nadu, after receiving the goods in the lorries, to sell the goods to the customer without unloading the goods if any one intended to purchase the goods when the lorries were stationed at the premises of the branch office. An endorsement on the waybills thereafter authorising the carrier to deliver the goods to the person or persons who had purchased those goods in the State of Tamil Nadu, would only be an intra-State sale and the movement of the lorries pursuant to such a sale would not alter the nature of the transaction. Therefore, such sales after the lorries had reached the destination i.e., branch office in the State of Tamil Nadu could not be treated as inter-State sales, in the absence of essential ingredients to constitute inter-State sale i.e., either the existence of prior contract between the intending purchasers situated in another State prior to the movement of the goods or sale by way of transfer of documents while the goods were still in transit i.e., before they reached the branch office. As in the present case, the goods were sold to the customers in the State of Tamil Nadu by the branch office after the journey came to an end and the goods reached the branch office, by the mere fact that sales were effected in that State without unloading the goods and directing the carrier to deliver the goods to those who had purchased the goods in the State of Tamil Nadu, the sales cannot be termed as inter-State sales.

15. A positive circumstance in favour of the appellant''s contention which had been lightly brushed aside by the Commissioner was the order of assessment made by Joint Commercial Tax Officer, Coimbatore of Tamil Nadu, dated 27-2-1974 which is also produced as Annexure along with this appeal. The said order indicates that there was an assessment against the appellant''s branch situated at Coimbatore in the State of Tamil Nadu on a taxable turnover of Rs. 17,92,049/-. This amount includes the amounts of Rs. 10,77,940/- which constitutes, the second item, as also the sale of goods effected by the Madras branch amounting to Rs. 6,97,227-97 ps. As far as the sales effected by Madras branch is concerned, the Commissioner has not questioned the claim of the appellant that they were not inter-State sales. It is clear that the very sale turnover has been treated as sale turnover effected within the State of Tamil Nadu and have been brought to tax under the provisions of the Tamil Nadu Sales Tax Act, and therefore it cannot also be stated that the same turnover constituted inter-State sales turnover effected by the head office situated at Bangalore. When the appellant relied on that material document the

Commissioner stated as follows:

"Copies of the assessment orders passed under the Tamil Nadu General Sales Tax Act by the Assessing Officers of that State have no relevance to my views. They might have made the assessments on the basis of submissions made by the assessees, but when it can be demonstrated, as it has been done now that the transactions are really inter-State sales, wrong orders passed by Tamil Nadu authorities do not debar this State from recovering the tax lawfully due to it".

It is true that by the mere fact that the Madras authorities had brought the particular turnover to tax under the Madras Act was not conclusive of the fact that they were not inter-State sales. If there was evidence to the effect that the goods had been moved from this State to the State of Tamil Nadu pursuant to the earlier contract entered into by the appellant with the purchasers situated in the said State or that the sale had been effected by transfer of documents when the goods were still in the course of transit, the Commissioner could have held that the said turnover constituted inter-State turnover of the appellant. As pointed out earlier, there is no such basic finding recorded by the Commissioner necessary to attract provisions of Section 3(a) or 3(b) of the Central Act.

16. One other contention urged for the respondent remains for consideration. It was contended on behalf of the respondent that the order in question was an order of remand and therefore this Court should not interfere in appeal as the liability of the appellant is yet to be determined by the Assessing Authority. In order to appreciate the contention it is necessary to set out the last para of the order which reads:

"For the reasons indicated above, the two turnovers of Rs. 6,06,565/- and Rs. 10,77,940.55 which were claimed and allowed by the Assessing Officer as relating to local sales and stock transfers though they were not really so but were per inter-State sales are held by me as exigible to tax under the Central Sales Tax Act, 1956. However, as the Assessing Officer concerned is required to examine the whole matter with reference to the material gathered on enquiry and other evidence produced by the assessee, I consider it fair and reasonable to set aside the assessment for 1972-73 and remand the case to the Assessing Officer according to law keeping in view all the aspects of the case as indicated above by me. Accordingly, the assessment order under the Central Sales Tax Act, 1956 for the year 1972-73 is set aside and the matter is remitted back for doing fresh assessment as per law".

(emphasis supplied)

As can be seen from the above portion of order in the first sentence the Commissioner has clearly held that both the items of turnover in respect of which he had initiated proceedings under Section 22-A of the State Act did constitute inter-State sales and that the said turnovers were exigible to tax under the Central Act. The Commissioner having recorded such a clear finding there was nothing for the Assessing Authority to consider pursuant to the remand order of the Commissioner, and therefore he need not have remanded the matter to the Assessing Authority. However, it appears that remand order was made, as the Commissioner had, with reference to certain items of deductions claimed by the appellant even in the event of holding against it on the second item, observed as follows.-

"Lastly, it is stated that the certain amounts in respect of three items have to be deducted from Rs. 10,77,940.55 and they are Rs. 4,465.99 representing short supplies to sales branch, Rs. 18,611.07 representing sales tax collected on sales of Trichi branch and Rs. 12,857.40 being the freight charges reimbursed to Trichi Steel Rolling Mills ex gratia. As I am setting aside the assessment and remanding the case for redoing fresh assessment as per law, it is open to the assessees to urge these grounds before the Assessing Officer who will examine them and take appropriate action".

17. Therefore, it is not reasonable to interpret the order of the Commissioner to the effect that he had remanded the entire matter to the Assessing Authority and directed him to record evidence once again and to come to his own conclusions on the question as to whether both the items constituted the inter-State sales turnover of the appellant or not which would mean authorising the Assessing Authority to record a finding contrary to the finding recorded by the Commissioner. Therefore, there can be no doubt that the remand was only limited to the decision on the validity of the claim for deduction of the three amounts referred to in the aforesaid portion of the order of the Commissioner. However, as we have taken the view that the finding recorded by the Commissioner as regards the second item is unsustainable, the question of considering the claim of the appellant for deductions referred to above does not survive.

18. For the reasons aforesaid we make the following:

ORDER (i) The appeal is allowed in part.

(ii) The order of the Commissioner insofar as it relates to the finding that the transaction of sale effected by the assessee to the extent of Rs. 6,06,565/- was in the nature of inter-State sale is confirmed.

(iii) The finding of the Commissioner that the sale effected by the branches of the appellant situated in the State of Tamil Nadu, during the relevant assessment year amounting to Rs. 10,77,940.55 were inter-State sales is set aside.

(iv) The Assessing Authority shall proceed to make reassessment in the light of this order.

(v) If any order has been made by the Commissioner under Section 22-A of the State Act in relation to the assessment under the Karnataka Sales Tax Act, it shall be given effect to in the light of this order.

(vi) No costs.

