
(1982) 02 MAD CK 0028

In the Madras High Court

Case No : Tax Case No"s. 707 to 709 and 711 to 713 of 1977 (Revision Case No"s. 174, 173, 172, 170, 169 and 168 of 1977)

Chesebrough Pond's Inc.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-02-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1983) 52 STC 164

Hon'ble Judges : S. Padmanabhan, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : V. Narayanamurthy, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyam, J.—These revisions relate to a group of assessments under the Central Sales Tax Act, 1956. The assessee is a well-

known manufacturer and dealer in face powder, having its head office and manufacturing unit at Madras and branches at Bombay and other

places. A common point arises in all these revisions, although they related to different assessment years. A department of the Government of India,

known as Canteen Stores Department, which is part of the Defence Ministry, placed orders for the purchase of the goods manufactured by the

assessee. The order were placed by them with the Bombay branch of the assessee. The orders, when received by the Bombay branch, were

forwarded by that branch to the head office at Madras. The head office then consigned these goods by lorry to the Bombay branch warehouse,

mentioning in the lorry way-bill, that the goods had been despatched against orders placed by the Canteen Stores Department. When the goods

reached Bombay, they were cleared by the Bombay branch and immediately supplied to the Canteen Stores Department, after raising invoices in

terms of the orders already placed. This course of transaction characterises all the amounts of turnover which are now in dispute in these revisions.

2. The assessee's case before the assessing authorities as well as before the Sales Tax Appellate Tribunal was that the transactions concerned

cannot be regarded as sales in the course of inter-State trade, chargeable to tax under the Central Sales Tax Act. The assessing authorities as well

as the Tribunal rejected the assessee's contention.

3. In these revisions, Mr. Narayanamurthy, the learned counsel for the assessee, submitted that while the goods certainly moved from the factory,

or head office, of the assessee at Madras to the Bombay branch warehouse, such movement cannot be regarded as having any connection with

any particular order or orders placed by the Canteen Stores Department. His endeavour was to urge that the goods moved from Madras to

Bombay on what were described as "stock transfers". Such stock transfers, it was submitted, cannot be brought within the charging provisions of

the Central Sales Tax Act, since they were not occasioned by the purchase orders of the Canteen Stores Department, and cannot be regarded as

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

4. There is no difficulty in accepting the proposition that a mere transfer of goods from a head office to a branch or an inter-branch transfer of

goods, which are broadly brought under the phrase "stock transfers", cannot be regarded as sales in the course of inter-State trade, for the simple

reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of these stock transfers. The

documents which evidenced the movement of goods in these cases were described by the assessee as "stock transfer notes", and they were very

much relied upon in argument. If all that the stock transfer notes evidence were displacements of goods from the head office to the Bombay

branch, then there would be no difficulty at all in accepting the contention that there was no inter-State sale for the simple reason that the transfers

of goods from Madras to Bombay involved no sale at all. But, the very "stock transfer notes" relied on by the learned counsel for the assessee

could hardly be regarded as evidence of mere routine inter-branch consignment

of goods from the head office to the branch office, unconnected

with any orders for purchase. On the contrary, as found by the Tribunal, the stock transfer notes themselves clearly referred to the particular order

placed by the Canteen Stores Department with the Bombay branch against which above goods were being sent in the particular consignment or

consignments, by lorry. It is, therefore, not quite accurate to described these movements of goods as inter-office, or non-sale, consignments from a

head office to a branch.

5. It was next contended by the learned counsel that the Canteen Stores Department placed their orders not with the head office at Madras direct,

but only with the Bombay branch. We do not understand the learned counsel's argument to be merely that a contract with the branch cannot be

regarded as a contract with the head office. The endeavour of the learned counsel, rather, was to show that there was nothing in the contract,

express or implied, which may be regarded as a specific covenant under which the Bombay branch or its head office was obliged to move the

goods from Madras, which was outside Bombay State, by way of executing the order placed by the Canteen Stores Department. The learned

counsel submitted that a sale can be regarded as having occurred in the course of inter-State trade if, and only if, the concerned contract of sale

itself includes a covenant, either express or implied, to the effect that the goods must move from one State to another for the purpose of

implementing the sale contract. This contention of the learned counsel was sought to be supported by reference to a passage from the judgment of

Sarkar, J., in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, . The passage relied on by the learned counsel is as follows :

The question then arises, when does a sale occasion the movement of goods sold ? It seems clear to us that a sale can occasion the movement of

the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of the goods

when the contract of sale so provides.

The learned Judge was there seeking to construe the provision which is in point in the present discussion, namely, section 3(a) of the Central Sales

Tax Act, which is as under :

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;

6. According to the pronouncement of Sarkar, J., on the construction of this provision, unless the movement is in terms of or pursuant to, a specific

term in the contract of sale, it cannot be regarded as a movement of goods from one State to another, occasioned by the sale.

7. It may be observed that while expressing his opinion, Sarkar, J., found himself in a minority. The majority judgment in that case did not

understand the expression "'occasions the movement of goods'" in the restricted sense in which Sarkar, J., understood it. On the contrary, Shah, J.,

speaking for the majority, laid down the meaning of the expression in the following terms :

..... 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".

8. It will be seen that the majority took the view that where the goods are moved from one State to another as a result of a covenant in the contract

of sale, that would be clearly a sale in the course of inter-State trade. But, the majority proceeded to hold further that even a movement of goods

from one State to another, which is merely incidental to, and which is not part of, the contract of sale, is also to be brought within the fold of

section 3(a) of the Central Sales Tax Act.

9. The subsequent trend of judicial opinion only makes further clear the view expressed by the majority in *Tata Iron and Steel Co., Limited,*

Bombay Vs. S.R. Sarkar and Others, . Perhaps the clearest latter-day exposition of the majority opinion is to be found in *Oil India Ltd. Vs. The*

Superintendent of Taxes and Others, . The crucial passage in the judgment in this case may be reproduced as under :

No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the

course of inter-State trade". The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of

the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such

movement. It is also not necessary for a sale to be deemed to have taken place

in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale.

10. This approach to the application of the statutory provision is further elaborated in *English Electric Co. of India Ltd. and Another Vs. The*

Deputy Commercial Tax Officer and Others, . On the facts, this particular decision of the Supreme Court is nearer to the facts of the present case

than the earlier citations. The Supreme Court held in this case as follows :

When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to

the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If there is a

conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only

to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable then the sale or purchase of the specific or

ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned

the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office,

who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State

and such person's activities prior to or after the implementation of the contract may not alter the position.

11. In the present case there is only one difference on the facts, which is not material to the application of the principle. The head office at Madras

did not despatch the goods direct to the canteen stores department which placed the orders, but it sent the goods to the Bombay branch from

where the goods ultimately found their way to the purchaser. We do not, however, think that this makes any difference to the application of section

3(a) of the Act. In our judgment, it does not matter how many stop-overs there are in the delivery State before the goods reach the purchaser's

hands. All that matters is that the movement of the goods is in pursuance of the contract of sale or as a necessary incident to the sale itself.

12. For all these reasons, we hold that that the impugned assessment was correctly made and both the assessing authorities and the Tribunal were

justified in dealing with these transactions as sales in the course of inter-State trade and in bringing them to charge under the Central Sales Tax Act.

Accordingly, all these revision petitions are dismissed. Since the assessee has failed in all these revisions, it will pay the costs to the State

Government. Counsel's fee Rs. 250; one set. (In T.C. No. 707 of 1977).