

(1997) 09 MAD CK 0079

In the Madras High Court

Case No : Tax Case No"s. 1100 and 1101 of 1991 (Revision No"s. 513 and 514 of 1991)

DCW Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1998) 3 CTC 566

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Advocate : Mr. C. Natarajan, for Mr. N. Inbarajan, for the Appellant; Mr. K. Ravi Rajapandian, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

Judgment pronounced by R. Jayasimha Babu, J.—The assessee is a manufacturer of soda ash. It is a registered dealer under the Central

Sales Tax Act 1956. For the assessment years 1984-1985 and 1985-1986 the Tribunal by the impugned order has held that the assessee is liable

for tax on the sale of goods despatched by it to its godowns at Thane and Bombay, apart from the tax on the turnover declared by the assessee as

inter-State sales. The assessee being aggrieved by the levy of tax on the goods, moved by it to its godown at Thane and Bombay as also

imposition of penalty thereon, has come up with this revision.

2. The godown of the assessee at Thane is at No. 23/31, Love lane. opp. ACC Cated Centhi, near Ragada Police Station, Thane, Bolapur Road,

Village Ragada, District-Thane Ragada. The goods were despatched to this godown by the assessee through its transport contractors South

Freight Carriers Private Limited. The lorry receipt obtained from that transporter by the authorities showed that the goods were despatched from

Sahupuram in this State to Bombay. It showed that the assessee as the consignor, and the consignee was described as the assessee at the godown

referred earlier. The instruction regarding delivery was stated on the lorry receipt as follows: ""Delivery at Bombay as per our Thane office

instruction unloading by consignee parties"". The billing was to be at Bombay.

3. In the delivery receipt obtained from the transporter in respect of some of the goods delivered at Bombay for the assessee, it is mentioned that

the goods were despatched from Sahupuram in this State to Berlia Chemicals at Bombay. That receipt also shows the payment of octroi charges

for those consignments.

4. The assessee had contended before the authorities that the despatches made to its godowns at Thane and Bombay were made to itself, and not

by way of inter-State sales, and that the instruction regarding delivery on the the lorry receipt was only to indicate that the officer in-charge of the

godowns at Thane would be competent to give instructions as to which of the two godowns at Thane or at Bombay in the presence of Berlia

Chemicals, the delivery should be effected. The unloading charge was to be paid by the consignee which according to the petitioner was the

assessee. In so far as the consignments sent to Berlia Chemicals are concerned, the assessee's case was that the assessee had obtained a lease

agreement for a portion of the premises of Berlia Chemicals which was also one of its customers arid where the assessee was storing its goods and

effecting sales therefrom.

5. The assessee produced a number of documents in support of its case including the orders received by it from its customers at Bombay, the

dates on which goods were despatched from this State to his godown at Bombay and the details of the amount of the bill, the assessment orders

made by the sales tax authorities at Bombay were filed to show that local sales tax had been paid on the sale of these goods at Bombay. Some of

the bills and orders were placed before us at the time of hearing. They show that the order are subsequent to the date of arrival of the goods at

Bombay. Numerous details regarding these goods from the time of the despatch to the ultimate sale and the assessment to these transaction at

Bombay had been filed before the authorities. The documents filed by the counsel for the assessee before us run to over 200 pages, and is said to be only a small fraction of the records filed before the assessing authority.

6. The Tribunal has confirmed the orders of the assessing officer and the appellate authority holding that the goods moved to the petitioner's

godown at Thane under these lorry receipts and the goods sent to Berlia Chemicals, Bombay, are inter-State sales. The Tribunal while rejecting

the case of the assessee, held as under:

We are of the view that the assessee himself has claimed them to be a pattern of these transactions and the claim of pattern has been disproved by

recovery of some records and we are of the view that the assessing authority is justified in rejecting the claim with regard to the other transactions

as the other transactions being to the same pattern as claimed by the assessee... We are of the view when the pattern itself has been rejected by

producing some records which have given unambiguous conclusions that the claim of consignment sales and depot transfers are not acceptable,

there is every justification to reject the entire claim of exemptions We are of the view that the recovered records do clearly throw light and

expose the true nature of transactions. According to our considered opinion these factors clearly revealed that the buyers are known to the

assessee even at the time when the goods are loaded into the lorry at Sahapuram in Tamil Nadu. We consider that the foot note is a conclusion of

such prior determination of the buyer at Bombay. We are convinced that these records revealed definite evidence to conclude that there were

inter-State element and link between the assessee and buyer at Bombay.

The reference to the consignment sale was in the context of the fact that some of the consignments has been sent to an agent on the agent's

instruction and those ""consignments"" had been treated by the assessing authorities as inter State sales. In relation to those consignments, there was

no dispute about the fact that the agent had several lines of business at different locations and that despatches were made to the agent.

7. The Tribunal has used strong terms to assert its conclusion that the transactions cannot but be inter-State sales. As to whether transaction is an

inter-State sale or not, cannot depend upon the mere expression of conviction or reiteration of such conviction, unless that conviction is well-

founded on facts properly established before the authority.

8. As already mentioned, the document which according to the Tribunal warranted its conviction that the goods despatched were in fact pursuant

to inter-State sales were the instructions recorded on the lorry receipts. The agreement with the consignment agent though produced before the

Tribunal has not been properly examined by the Tribunal. The Tribunal has nowhere referred to the orders placed by the buyers at Bombay,

thought those orders had also been produced, and those showed that they were placed on dates subsequent to the arrival of the goods at Bombay.

9. Though the Tribunal is normally the final fact- finding forum and this Court would not ordinarily interfere with the findings of the fact recorded by

the Tribunal, if the findings recorded by the tribunal are not findings which can be regarded as based on reasonable inference from the facts

established, such findings cannot be treated as final. In case where the finding is merely an assertion made on the basis of the documents not

maintained by the assessee in the normal course of its business, but is based on the document obtained from a third party for preparing which the

assessee is not shown to be the person responsible, and the documents maintained by the assessee in the normal course of its business and

produced before the Tribunal have not been considered by the Tribunal, then such a finding will have to be examined with a great deal of caution.

If the materials available on record do not support the assertion of the Tribunal its ""finding"" has only to be regarded as perverse; especially when

the assessment orders produced by the assessee show that local sales tax had been paid on these sales in the other State.

10. The only document which the authorities relied on to hold that the goods consigned to the godowns of the assessee at Bombay were in fact

goods moved pursuant to inter-State sales is the lorry receipt. That lorry receipt was not prepared by the assessee. It was prepared by the

transporter. That receipt clearly mentions that the consignee is the assessee itself. According to the assessee it has godown at two places, one

outside the municipal limits of Bombay Corporation, and the Other within those limits, as mentioned in the column relating to consignee. Though the

municipal limits are not mentioned therein, the address given therein shows that one of the godowns was outside the municipal limits, that godown

being the one in Thane. The lorry receipts showed that the consignor is also the consignee and that the billing was to be done at Bombay. From

that it cannot be reasonably inferred that an inter-State sale had taken place. The Tribunal appears to have regarded the instruction regarding

delivery as the determinative factor for holding that the transaction was inter-State sale. That instruction for delivery does not mention the premises

of any one other than the consignee. It does not state that the goods were required to be delivered at the premises of the buyer who had to pay the

price and who had undertaken to pay the price. The delivery was to be effected at Bombay as per the instructions given by the Thane office.

Thane office - it is not in dispute is situated outside the municipal limits. This instruction implies that the delivery could be at the Thane office itself or

could be at a point other than the Thane godown depending upon the instruction given by the officer. This instruction does not indicate that an

inter-State sale had taken place. The further instruction that unloading was to be by the consignee also does not by itself indicate that the goods

had been sold by way of inter-State sales. The only consignee party mentioned in the lorry receipt is the godown of the assessee.

11. The Tribunal has chosen to read this instruction regarding delivery as indicating knowledge on the part of the assessee about the ultimate buyer

at Bombay, even before the goods were despatched, for Sahupuram in this State. The imposition of liability for tax only on the basis of this

instruction cannot be sustained. Imposition of liability for tax cannot depend upon speculation as to what was meant by the person who prepared

the lorry receipt by using words such as unloading by the consignee parties. The transaction of sale before it can be taxed has to be established

with reasonable certainty. The burden of proof placed upon the assessee to prove that the goods moved from one State to another State not by

way of sale, does not imply that the Tribunal and the assessing officer are at liberty to reject all the documents maintained by the assessee in the

normal course of its business and proceed to infer from the terms used in a lorry receipt that a inter-State sale had taken place, even when the

receipt does not indicate anything about the goods having been sold.

The mere fact that the cost of unloading was to be borne by the consignee which is more than the consignor, does not reasonably give rise to an

inference that a third a party buyer was involved in the transaction. We must hold that the manner in which the documents have been read by the

Tribunal is perverse. We reach this conclusion in the background of the fact that the mass of documents placed before the Tribunal, properly

examined show that the assessee had received orders for these goods at Bombay, after the goods had arrived at Bombay, and the goods had been

delivered at Bombay to those customers on various dates subsequent to the date on which the goods reached Bombay. The tax on the sale of

those goods at Bombay has also been paid by the assessee to the State of Maharashtra.

12. We therefore set aside the order of the Tribunal and of the authorities below, in so far as the levy of tax on that part of the turnover relating to

the goods moved by the assessee from this State to its godown at Thane under these lorry receipts.

13. In so far as the delivery receipt which showed the consignee as Berlia Chemicals is concerned, the document on the face of it would show that

the goods were despatched from this State to a buyer in another State. The finding of the Tribunal that those despatches were part of the turnover

by way of inter- State sales, cannot be interfered with, though the learned counsel for the assessee contended that Berlia Chemicals was merely the

name of the location at which the assessee had a godown and that goods despatched to Berlia Chemicals were in fact consignments meant to itself.

The certificate of registration of assessee does not also show the location of any godown of the assessee at the premises of Berlia Chemicals.

14. So far as the sales to the consignment agent are concerned, the Tribunal has failed to advert to the agreement with the consignment agent. That

agreement clearly shows that the agent carries on business at several places and on the terms of the agency, the agent was to store the goods at

any of those places and effect sales therefrom on behalf of the principal, and render accounts. The ownership, as also the risk, in relation to the

goods were that of the assessee, till the final disposal of the goods by the agent on behalf of the assessee, to buyers in other States. The Tribunal

and the authorities below were, therefore, in error in holding the despatch of the goods to the consignment agent resulted in inter-State sales.

15. The revision petitions are therefore, allowed in part. The assessing officer in directed to compute the amount of the turnover in relation to the

goods despatched by the assessee to Berlia Chemicals and the assessee shall be liable to pay the Central sales tax on that part of its turnover for these years.

Petition allowed in part.