
(1997) 08 MAD CK 0122
In the Madras High Court
Case No : T.C. No. 721 of 1986

Duvent Fans Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2)

Citation : (1997) 08 MAD CK 0122

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

Bench : Division Bench

Judgement

Jayasimha Babu, J.—The assessee is aggrieved by the order made by the Sales Tax Appellate Tribunal, in respect of assessment year 1980-81. The claim of the assessee for excluding the value of the turnover, which is Rs. 1,67,153.44, has been rejected on the ground that the transactions were not second sales, but, in fact constituted the first sale during the course of the inter-State trade.

2. It is not in dispute that the goods were transported from this State to Kerala. The consignor of the goods was the fabricator, who had entered into contractual arrangements with the assessee, and the consignments were made to the customers of the assessee in Kerala. The assessee had furnished "C" forms to the suppliers and had directed them to effect delivery of the goods to the assessee's customers in Kerala. He had obtained form E-1 from his suppliers as also form "C" from the customer in Kerala and furnished the same to the authorities.

3. There is no written contract as between the assessee and the supplier both of whom are carrying on business within the State. The documents considered by the Tribunal and other authorities, include the lorry receipts which shown that the supplier of the assessee had consigned the goods to the customer of the assessee in Kerala.

4. The petitioner's claim for excluding this sum from its turnover has been rejected by treating the assessee as the first seller in the course of inter-State

trade of these goods. It is not in dispute that the goods in fact had moved from the State of Tamil Nadu to the State of Kerala. Form E-1 produced by the assessee from his supplier has been rejected on the ground that the enforcement wing, had in the course of inspection of the petitioner's records found a slip which showed a sum of Rs. 100 as cartage charges for transporting the goods from the premises of the assessee's supplier to the office of the transporter. The rejection was also based on the ground that in respect of two of the invoices prepared by the supplier, the lorry receipt number had not been mentioned and that the lorry receipt number was mentioned only in the delivery challan issued by the assessee to its customer. From these two circumstances it was inferred that other claims, though covered under different invoices in respect of which forms E-1 had been produced, also deserve to be rejected.

5. Section 3(a) of the Central Sales Tax Act, 1956 lays emphasis on the movement of the goods from one State to another as being an essential ingredient of an inter-State sale. The actual transfer of property in the goods need not necessarily take place in the State in which the movement commences, nor is it essential that it takes place in the State in which the movement terminates. There is no bar to the seller as also the purchaser being within the same State. A contract of sale may be entered into the State wherein the goods are at the time of contract, or such a contract can be entered into in a different State. What is material for the purpose of section 3 is the movement of the goods from one State to another as a result of a sale or purchase, and it is not essential that a direction for the movement of the goods be expressly set out in the contract. It can also be incidental to the transaction of sale. These proposition can be gathered from the decisions of the apex Court in the case of *Tata Iron and Steel Co. Limited, Bombay v. S. R. Sarkar* [1960] 11 STC 655, *Union of India v. Khosla and Co. Ltd.* [1979] 43 STC 457 and *Co-operative Sugars (Chittur) Ltd. v. State of Tamil Nadu* [1993] 90 STC 1. This Court also in its decisions in *Vinay Cotton Waste Company v. State of Tamil Nadu* [1986] 63 STC 391 and *State of Madras v. Bramhappa Tavanappanavar (Mysore) Private Ltd.* [1974] 33 STC 601 has held that the presence of the seller as also the purchaser in the same State does not militate against the sale transaction between the two being an inter-State sale, if the movement of the goods inter-State is the direct consequence of the sale.

6. In the instant case, the fact that the goods were manufactured in the State and were consigned by the supplier to a destination outside the State is not in dispute. The purchaser from that consignor is also a person who carries on business within the State. The fact that the purchaser carries on business in this State does not necessarily lead to the inference that the movement of the goods to a destination outside the State was not contemplated, and that the purchaser intended to, and had in fact taken delivery of the goods within the State. The facts on record show that the goods purchased by the assessee from its supplier were not any time stored, or used by the assessee in the State. The goods had been consigned to the assessee's customer at Kerala on lorries, and the lorry

receipts evidencing such despatch have been produced. The specific case of the assessee that the supplier was required to send the goods to Kerala as an essential condition of the sale is not in dispute although there is no written agreement. The assessee had directed the supplier to send the goods to the assessee's customer at Kerala and to furnish to the assessee form E-1.

7. The Tribunal and the authorities below have held that the transactions between the supplier and the assessee do not amount to inter-State sale, as in their view the assessee had taken delivery of the goods from the supplier within this State, and had himself placed the goods on the lorries for delivery to its customer at Kerala. The material relied on by the Tribunal to reach that conclusion is a slip which shows the payment of Rs. 100 as cartage charges, for carting the goods from the premises of the supplier to the transporter's place of business. The slip by itself does not establish that the assessee had taken delivery and had placed the goods on the lorries. The other circumstance relied on is that the invoices prepared by the supplier did not specify the number of the lorry receipt, while that number was to be found in the delivery order sent by the assessee to its customer in Kerala. This circumstance also does not establish that the assessee had taken delivery of the goods within the State and notwithstanding the fact that the assessee's supplier was the consignor and the movement of the goods resulted in the same being transported out of the State, there was a local sale from the supplier to the assessee.

8. When the broad features of the transaction are clear, viz., that the order placed by the assessee on the supplier was for the delivery by the supplier to the assessee's customer outside the State and the goods had in fact moved out of the State and the lorry receipt showed the name of the supplier as the consignor, the transaction has to be regarded as one which falls within the ambit of section 3(a) of the Central Sales Tax Act, 1956. Even assuming that the assessee had rendered some assistance to its supplier by way of arranging cartage from the supplier's premises to the premises of the transporter or in booking the goods on the lorry, such assistance does not render what is otherwise an inter-State sale into a local sale.

9. The finding given by the Tribunal that the sale by the supplier to the assessee did not constitute the first inter-State sale, and therefore, the assessee is not entitled to exemption in respect of the sales effected by him by way of endorsing the lorry receipts to its customer cannot be sustained. u/s 6(2) of the Act the second sale so effected by the assessee is required to be exempted and the assessee was entitled to the exemption as claimed. Admittedly, in respect of these transactions form E1 from the supplier as also form "C" from the assessee's customer in Kerala had been produced.

10. The impugned order of the Tribunal is therefore, set aside and this tax case is allowed. No costs.

11. Petition allowed.