
(1977) 06 MAD CK 0026

In the Madras High Court

Case No : Tax Case No"s. 266 to 269 of 1974 (Revisions No"s. 122 to 125 of 1974)

Fairmacs Trading Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-06-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4
Constitution of India, 1950 — Article 269, 286
Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1978) 41 STC 157

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

Bench : Division Bench

Advocate : C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Appellant; Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—These tax revision cases arise out of an order of the Sales Tax Appellate Tribunal dated 7th February, 1974, in four appeals relating to the assessment years 1968-69 to 1971-72. The assessee is a dealer in ship's stores and is also doing business as ship chandlers. The assessee imports goods from abroad for the purpose of supplying the said goods either to foreign going vessels or to diplomatic personnel. The said goods, which are imported, are received in a customs bonded warehouse and at the time of placing the indent and also in the subsequent bills of lading and invoice, there was a declaration by the assessee that the goods were intended either for "re-export" as ship's stores and/or for supply to diplomatic corps. The goods were cleared under the supervision of the customs authorities whenever they were sold by the assessee. In the present case, we are concerned with supplies made to certain ships located at that time in the Madras Harbour. The orders for supplies of the goods required by the said ships were usually received from the Captain or the Master or the Chief Steward of the ship. The orders listed out the required supplies

mentioning the description of the goods and the quantity required and stated "please arrange to supply us the following local-bonded stores". There were supplies of goods like whisky, vegetables, etc. In respect of the bonded goods, the assessee prepared a bill and the customs authority checked the bill with the written order. The bill was, after verification, passed to the Assistant Collector of Customs (Bonds) permitting the supply. The bill was then filed in export department of the customs authorities and the goods got released from the bonded warehouse. The preventive officer of the customs authority, who released the goods, escorted the transportation of the goods and the goods were then placed by the ship's officer in a special locker provided in the ship. This was obviously to ensure that the bonded goods, which had not paid any duty, did not enter into the local market. Along with the goods, the assessee sent a delivery receipt, which was got signed by an officer of the ship in token of receipt in good condition.

2. The assessee claimed that the property in the goods passed only after the goods passed the customs frontier and that the property did not pass in the territory of Tamil Nadu. It was further contended that the sales were in the course of export because they were to be on the board of the ship, which ultimately moved out of the Madras Harbour. The assessing authority did not accept the assessee's submission and held that the goods were taxable under the Tamil Nadu General Sales Tax Act, 1959. The appeals of the assessee to the Appellate Assistant Commissioner were unsuccessful. On further appeals, the Tribunal dismissed the appeals. The order of the Tribunal is the subject of the present revision proceedings.

3. The learned counsel for the revision petitioners submitted that the sales took place outside the State or were inter-State sales and, therefore, are not liable to be taxed under the Tamil Nadu General Sales Tax Act. He contended that the territorial waters do not form any part of the State and for this purpose relied on certain cases decided by this court. The learned Additional Government Pleader submitted that the present case came squarely within the scope of the Tamil Nadu General Sales Tax Act, as the sales took place within the State. For this purpose, he relied on the provisions of Section 4(2)(b) of the Central Sales Tax Act and also the charging provision read with Section 2(n), explanation (3), of the Tamil Nadu General Sales Tax Act.

4. The point to be considered is whether the sale took place within the State of Madras so as to be taxable under the Tamil Nadu General Sales Tax Act. We have first to see whether the sales come within the scope of Section 3 of the Central Sales Tax Act. If so, the State law cannot tax them. Section 3 of the said Act, in so far as it is material, runs 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; or

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

5. It is not suggested that Clause (b) of Section 3 has any application to the present case. The only point that is sought to be argued on behalf of the assessee is that this is a case where the sale occasions the movement of goods from one State to another. The postulate behind the argument is that the territorial waters being outside the State will have to be treated as the Union territory. When the goods moved from this State to the territorial waters, it will be, according to the assessee's counsel, a case coming within the scope of Section 3(a). In order to establish this proposition that the sale occasions the movement of goods, it is necessary for the assessee to show that there was movement of the goods from one State to another under the contract. This is a case where, as already seen, the Master of the ship or the other officers working in the ship placed orders for the supply of certain specified goods. There is nothing to show in the communications from the ships that the goods had necessarily to be supplied only in the ships. It was open to the officers working in the ship to come here and take delivery of the goods in which event the sale will be a local sale. Unless there is some kind of contemplation in the minds of the contracting parties that the goods were to be moved from one State to another it is not possible to take the view that the sales are inter-State sales. The sale and the movement of the goods are independent events. For the above purpose, we have assumed that the territorial waters do not form part of the State of Madras.

6. On this point as to the territorial waters, there is scope for the view that the territorial waters form part of the State of Madras or Tamil Nadu even in the decisions cited for the assessee. In *A.M.S.S.V.M. & Co. v. State of Madras* ILR [1953] Mad. 1175, it was observed at page 1191 that there was no warrant for the contentions that under the Constitution, the territorial waters vested in the Union. In *Susori v. Director of Fisheries* (1965) 2 M.L.J. 35, this position was reiterated. Again in *Deputy Commissioner of Commercial Taxes v. Devar and Company* ILR [1964] Mad. 383, this court held that the State had legislative power over the territorial waters. The last case went up on appeal to the Supreme Court and its decision is reported as *State of Madras v. Davar & Co.* [1969] 24 S.T.C. 481. Though this court's decision was reversed, it was on another point and this part of the decision was not the subject of discussion. We do not, however, think it necessary to go further into the point as to whether the territory covered by the territorial waters forms part of the State of Madras or not for the purpose of the present case, as even on the view that the territorial waters do not form part of the State, there is nothing to show that this is a case of inter-State sale.

7. The sale in the present case appears to us to be a local sale in view of the specific provision of Section 4(2)(b) of the Central Sales Tax Act read with Section 2(n), explanation (3), of the Tamil Nadu General Sales Tax Act. The genesis of Section 4 can be traced as follows : Article 286 of the Constitution of

India imposed a ban on the State levying a tax on the sale or purchase of goods where such sale or purchase took place outside the State or in the course of the import of the goods into, or export of the goods out of, the territory of India. Article 286(2) as amended in 1956 provides that Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1) of the said article. Similarly, Article 269 provides that certain duties and taxes could be levied and, collected only by the Government of India and had to be assigned to the States in the manner provided in Clause (2) of the said article. One of the taxes contemplated by Article 269 to be levied and collected by the Government of India is the taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce. Clause (3) of Article 269 provides that Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. In pursuance of these powers, the Central Sales Tax Act was enacted in 1956. Section 4(1) of the said Act stated that subject to the provisions contained in Section 3, when a sale or purchase of goods is determined in accordance with Sub-section (2) of that Section to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States. Clause (2) of Section 4, which is material for our present purpose, runs as follows:

4. (2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State-

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

8. It is unnecessary to extract the explanation appended to Section 4(2), as it is not relevant for our present purpose. u/s 4(2), the test laid down is a simple one of finding out where the specific goods were or where, if the goods were unascertained, they were appropriated to the contract. Thus the location of the goods in the first case or the place of appropriation in the second case determines the place of sale for purposes of taxation. This is not a case of a specific or ascertained goods so as to come within the scope of Clause (a) of Section 4(2). The goods were in the warehouse and, therefore, the goods had to be ascertained or appropriated to the contract as and when the orders were placed by the officers in the ship by description. Thus, this is a case of unascertained goods by description and the assessee appropriated the said goods in respect of each contract of supply to be made to the ship in the city of Madras and, therefore, Under Clause (b) of Section 4(2) of the Central Sales Tax Act, the sale took place at the time of their appropriation to the contract of sale in this city, whether assent of the other party was prior or subsequent to such

appropriation. In the present case, there is no dispute that there was an assent, at any rate subsequent to the said appropriation, because the goods in question were all taken by the ship. They were thus local sales coming under the provisions of Section 4(2)(b). Section 4(1), as already seen, states that such sale shall be deemed to have taken place outside all other States. Explanation (3) to Section 2(n) of the State Act specifically incorporated the provisions of Section 4(2) therein. It, therefore, follows that the present sales are taxable under the Tamil Nadu General Sales Tax Act. In these circumstances, the assessment in question cannot be considered to be wrong in any manner.

9. The learned counsel for the assessee quite fairly brought to our notice a decision of the Andhra Pradesh High Court in the assessee's own case reported in *Fairmacs Trading Company v. State of Andhra Pradesh* [1975] 36 S.T.C. 260. In that case also, the assessee had made similar supplies of bonded goods to the ships in the Vizag Harbour. The question was whether they could be brought to tax under the Andhra Pradesh General Sales Tax Act, 1957. The Andhra Pradesh High Court has taken the view that the supply of the said goods came within the scope of Section 4(2) (a) of the Central Sales Tax Act and, therefore, they were rightly taxed under the Andhra Pradesh General Sales Tax Act. It is not necessary for us to examine how far the application of Section 4(2)(a) in that case was justified. If the sales had taken place in the same manner as here, the sales would not be liable to be brought within the scope of Section 4(2)(a), as Section 4(2)(a), as already seen, relates to specific or ascertained goods. We need not pursue that point. In the present case, the assessee was not selling specific or ascertained goods, because the goods formed part of a larger stock within the bonded warehouse and had, therefore, to be separated and appropriated to the contract. We, therefore, consider that the case here falls Under Clause (b) of Sub-section (2) of Section 4 rather than Under Clause (a) of Sub-section (2) of Section 4.

10. It is unnecessary in this view to go into any other contention taken by the learned counsel for the assessee. The tax (revision) cases are dismissed with costs. Counsel's fee Rs. 250. One set.