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In the Madras High Court

Case No : Tax Case (A) No. 218 of 1978

Indian Duplicators Ltd. — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 23-01-1984

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 9(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1984) 57 STC 263

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : T. Suresh, for King and Partridge, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader (Tax Cases), for the Respondent

Judgement

Ratnam, J.—The appellant, who is a manufacturer and dealer at Madras with branches outside in duplicators, its accessories and duplicating

ink, etc., reported a total and taxable turnover of Rs. 6,08,344.91 and Rs. 5,70,056.30 respectively under the Central Sales Tax Act, 1956, for

1972-73. In the course of the assessment proceedings, the appellant claimed exclusion of a turnover of Rs. 90,500 being the value of 7,243 tubes

of duplicating ink, on the ground it represented stock transfer from Madras to the Hyderabad branch. The assessing authority examined this claim

and was of the view that the goods in question were moved from Madras specifically for the purpose of satisfying the requirements of the Director

of Stationery and Printing, Andhra Pradesh, and that this turnover should be considered to be inter-State sales falling u/s 3(a) of the Central Sales

Tax Act, 1956. Accordingly, the turnover of Rs. 90,500 was included and assessed at 10 per cent by the assessing authority. Aggrieved by this,

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the appellant preferred an appeal to the Appellate Assistant Commissioner disputing the inclusion of Rs. 90,500 on the ground that the sales were

effected outside Tamil Nadu, i.e., in Andhra Pradesh, and cannot properly be subjected to sales tax as inter-State sales. The Appellate Assistant

Commissioner took into account the fact that the orders were placed by the Director of Stationery and Printing, Andhra Pradesh, on the

Hyderabad branch, that the appellant despatched the goods to its branch office at Hyderabad which delivered the goods to the Director of

Stationery and Printing who had not received any consignment directly from the appellant and concluded that the movement of goods from Madras

to Hyderabad was not as a result of a covenant or an incident of a contract of sale, but that the goods were sent merely to execute the contract of

sale and they had remained property of the appellant till they were delivered to the buyer. In this view, the turnover of Rs. 90,500 was directed to

be deleted as representing stock transfer. Purporting to exercise suo motu powers of revision u/s 34 of the Tamil Nadu General Sales Tax Act,

1959, read with section 9(2) of the Central Sales Tax Act, 1956, the Board of Revenue issued a notice to the appellant calling upon it to show

cause why the deletion by the Appellate Assistant Commissioner of the turnover of Rs. 90,500 should not be set aside. In reply to that notice, the

appellant reiterated that the turnover cannot represent inter-State sales, as no movement of goods from Tamil Nadu to Andhra Pradesh was

envisaged at all, that the invoices for the goods were raised only on the Hyderabad branch and the goods were also delivered only at Hyderabad

by the branch, and therefore, the movement of goods was independent of any contract. On a consideration of these objections raised by the

appellant, the Board of Revenue concluded that there was a close nexus between the order placed by the Director of Stationery and Printing,

Hyderabad, with the branch of the appellant at Hyderabad and the movement of the goods from Madras to Hyderabad, and therefore, the

turnover should be regarded as representing inter-State sales falling u/s 3(a) of the Central Sales Tax Act, 1956. In the result, the order of the

Appellate Assistant Commissioner directing deletion of the turnover of Rs. 90,500 was set aside. It is the correctness of this order that is

challenged by the appellant in this appeal.

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2. Before this Court, the learned counsel for the appellant contended that the turnover of Rs. 90,500 represented transfer of stock from the

Madras office to the Hyderabad branch and it did not relate to inter-State sales effected by the appellant. Drawing attention to all the several steps

and features leading up to the despatch of goods to and delivery of the same by the branch of the appellant at Hyderabad to the Government of

Andhra Pradesh, the learned counsel urged that the goods had been moved from Madras to the branch office not in fulfilment of any contract

entered into by the appellant with the Director of Stationery and Printing, Hyderabad, and therefore, there was no connection or nexus between

the contract and movement of the goods. On the other hand, the learned Additional Government Pleader submitted that the tender of the

Hyderabad branch of the appellant had been accepted by the Government of Andhra Pradesh and thereafter, the goods were indented on the

factory at Madras, which manufactured the same with the markings ""Government of Andhra Pradesh 1972-73"" and then the goods were

despatched to the branch of the appellant at Hyderabad and that would clearly indicate that the goods moved from Tamil Nadu to Andhra Pradesh

Pursuant to a contract entered into between the Director of Stationery and Printing, Hyderabad, with the branch of the assessee at Hyderabad.

3. Before embarking upon a consideration of these rival arguments, we may refer to section 3 of the Central Sales Tax Act, 1956, which is as

follows :

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce. - 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.

4. For purposes of the present case, the two explanations are not germane. Whether on the features laid bare relating to the despatch and delivery

of goods in this case, in the light of the provisions aforesaid, the sales effected by the appellant, occasioned the movement of goods from Tamil

Nadu to Andhra Pradesh, is the only question that has to be considered, for, only

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if a sale occasions the movement of goods from one State to

another, it can be deemed to have taken place in the course of inter-State trade or commerce within the meaning of section 3(a) of the Central

Sales Tax Act. Clause (b) of section 3 is not very relevant for our purposes. The method and manner of transfer of goods by the appellant to its

branch in Andhra pradesh, as could be gathered from the records, appears to be as under. The stock transfer invoices are drawn on the branch at

Hyderabad. The goods are despatched to the appellant at its Hyderabad branch, taken delivery of by the branch and then made available to the

local buyer against orders placed by the buyer with the branch office at Hyderabad. There was no contract for the supply of goods by the Madras

office to the Government of Andhra Pradesh, Hyderabad. Nor has any link or nexus with the buyer either in the matter of manufacture, despatch of

goods or delivery at the branch office has been established. The goods despatched by the appellant to its branch office at Hyderabad were tubes

of duplicating ink which is one of the standard items manufactured by the appellant in the usual and ordinary course of its business and not against a

special or specific order with a view to fulfil the particular requirement of the Government of Andhra Pradesh. The despatch of goods had not been

done by the appellant directly to the Director of Stationery and Printing, Andhra Pradesh. Indeed, it is seen from the records that a certificate had

been produced by the appellant to the following effect from the Assistant Director of Stationery and Printing, Andhra Pradesh :

This is to certify that our order No. 4/B2/72-73/Gestet/40 dated 31-5-72 for the supply of ink tubes were placed by us with the Hyderabad

branch of M/s. Gestetner Duplicators (P.) Ltd., and the goods were supplied by them at our stores. The relevant invoices submitted by them were

also paid. We also certify that we had not received any ink tubes directly from the Madras factory of M/s. Gestetner Duplicators (P.) Ltd.

5. A similar certificate had also been issued by the branch manager of the Hyderabad branch of the appellant acknowledging receipt of stock

against BT. No. MF/ISO/42 dated 23rd June, 1972, BT. No. MF/ISO/38 dated 21st June, 1972, BT. No. MF/ISO/13 dated 13th July, 1972,

BT. No. MF/ISO/14 dated 27th July, 1972, and BT. No. MF/ISO/20 dated 24th July, 1972, from the factory of the appellant at Madras.

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Obviously, BT refers to branch transfers. In any event, there is not indication either in the requisitions for stock or in the acknowledgment thereof

to spell out any nexus or link between the supply to the Government of Andhra Pradesh and the despatch of the goods in that connection. The

Madras office of the appellant despatched the goods by lorry showing the Hyderabad branch as the consignee and the Hyderabad branch took

delivery and delivered the goods raising the invoices for the goods so supplied. The purchase order did not even specify the place from where the

goods are to be supplied, and therefore, merely from the fact that the goods had moved from Madras to Hyderabad, it cannot be readily assumed

that the movement was only pursuant to a contract for sale of duplicating ink entered into between the appellant and the Director of Stationery and

Printing, Andhra pradesh. It is thus seen that when stocks had been received by the Hyderabad branch of the appellant by way of branch transfers

without having been so requisitioned for fulfiling any particular contract, they had been delivered by the Hyderabad branch which had entered into

the contract with the Government of Andhra Pradesh and delivered the goods to the Government. The bills had also been raised and collected in

the name of the branch at Hyderabad and sales tax had also been paid according to the rates prevalent in Andhra Pradesh. A consideration of the

aforesaid facts relating to the transaction appears to us to indicate that the goods had been despatched by the appellant to its Hyderabad branch as

its own goods to be taken delivery of and dealt with by the Hyderabad branch in accordance with the local demand for such goods. We cannot

also accept that duplicating ink was a commodity which was specifically manufactured for use by the Andhra Pradesh Government only, and

therefore, there could not have been any possibility of diversion of goods. It is common ground that duplicating ink is a product which is normally

and ordinarily manufactured by the appellant and available in the market. The records do not establish that the tubes of duplicating ink eventually

supplied were specially manufactured to suit the need or requirement of the Government of Andhra Pradesh and in the absence of materials contra,

it must be taken that the duplicating ink was only an ordinary commodity manufactured by the appellant in the usual course of its business. We are

also not inclined to attach any importance to the mark ""Government of Andhra Pradesh 1972-73"" stated to have been found on the tubes of

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duplicating ink despatched to the Hyderabad branch by the appellant. Earlier, it had been noticed that it had not been established that there was

any connection or link between the despatches made by the appellant to its Hyderabad branch and any contract for supply of goods to the State of

Andhra Pradesh. The goods so consigned to the Hyderabad branch by the assessee had been taken delivery of by the branch and thereafter

supplied to the buyer with reference to its requirement. The mere fact that the mark ""Government of Andhra Pradesh 1972-73"" was found on the

duplicating ink tubes would not necessarily lead to the conclusion that there was a completed transaction of sale by the appellant in Madras by the

appropriation of the goods towards any contract. The marking at best would indicate that the goods were intended for a person who had entered

into a contract of purchase with the branch office in Andhra Pradesh. That would not either finally or conclusively determine the question as to the

nature of the transaction for, the mere marking of the name of the purchaser on the consignment when the lorry receipt under which they were

despatched stood in the name of the branch office would not, by itself, be sufficient to prove or establish a contract of sale between the appellant

and the Government of Andhra Pradesh. A recent decision of a Division Bench to which one of us was a party, had occasion to examine this

question in State of Tamil Nadu v. Hercules Rubber Co. [1983] 54 STC 85. In that case, the assessee, a manufacturer in Madras, despatched

certain goods to the branch office at Vijayawada, which booked orders for the supply of goods to the local purchasers. The question arose

whether the sales would be inter-State sales. In that case also, the orders were placed at Vijayawada, but the goods were despatched from

Madras, received by the branch at Vijayawada and handed over to the purchasers and the price was realised. The assessing authority was of the

view that these transactions were inter-State sales; but the Appellate Assistant Commissioner and the Tribunal thought contra. In questioning the

correctness of this order, it was contended that even at the time of the despatch of the goods, the name of the purchaser had been marked, which

indicated that the movement of the goods was in respect of the contract of sale entered into with a particular purchaser. It was on those facts, this

Court took the view that there was no nexus between the Madras office and the purchaser in Andhra Pradesh and the mere presence of marking,

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may, at best, indicate the person for whom the goods were intended and who had entered into a contract of purchase with the branch office, but,

would not, finally decide the question, especially when the lorry receipts evidencing the despatch stood in the name of the branch office. In dealing

with a similar question in Addison Paints and Chemicals Ltd., Madras v. State of Tamil Nadu represented by Deputy Commissioner of

Commercial Taxes (T.C. No. 25 of 1978 disposed of on 20th December, 1983 printed at page 269 infra, we had occasion to refer to all the

relevant decisions on the subject having a bearing on the question and it was held that the nature of the transaction has to be decided after taking

into account all the facts of the transaction. If so done, on the facts and the circumstances of the present case, it is seen that there is no

establishment of any direct link or nexus between the appellant and the movement of goods for supply to the Government of Andhra Pradesh,

especially when the goods despatched by the appellant had been manufactured by it in the ordinary course of its business. This has been

recognised by the Supreme Court in Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, . The cumulative effect of all

the circumstances of the present case clearly brings out that though there had been a movement of goods from Madras to Hyderabad, such

movement was of goods manufactured in the ordinary or general course of the business of the appellant and for being sold as and when the

manufacturers received orders for purchase at its branch office at Hyderabad. We are therefore of the view that having regard to to circumstances

under which the goods have been moved in this case, the transaction cannot be labelled as inter-State sale and the turnover of Rs. 90,500 cannot

be taken to represent inter-State sales effected by the appellant. The appeal is therefore allowed. There will, however, be no order as to costs.

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