

(1972) 02 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 17 of 1971

J.M.A. Industries Private Ltd.

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-02-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 22, 3

Citation : (1973) 32 STC 36

Hon'ble Judges : Prem Chand Jain, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Bhagirath Dass, R.K.P. Shankar Dass, Shanti Sarup and K.R. Choudhari, for Amrit Dutt, for the Appellant; C.D. Dewan, Additional Advocate-General, for the Respondent

Judgement

D.K. Mahajan, J.—This order will dispose of Sales Tax References Nos. 13 to 17 of 1971. These references relate to the assessment years 1961-62 to 1965-66. The facts are common and need only be stated in Reference No. 17 of 1971. The assessee-company is a private limited company having its registered office at 8, Padmani Enclave, Haus Khas, New Delhi. It manufactures electric horns, wiper arms, wiper blades and other motor car accessories. The head office is a registered dealer under the Bengal Finance (Sales Tax) Act, as extended to the Union Territory of Delhi, as well as under the Central Sales Tax Act, 1956. The factory is situated in the State of Haryana and is also a registered dealer under the Punjab General Sales Tax Act and the Central Sales Tax Act. In the present reference, we are only concerned with the sale of goods which were made in the following manner :

Orders were placed at the head office by customers. Those orders were transmitted to the factory. The factory packed the goods and sent the goods to the head office where they were delivered to the customers on payment of price.

2. Admittedly, the sale took place at Delhi. The only question is whether these sales are liable to Central sales tax u/s 3(a) of the Central Sales Tax Act, 1956.

The company's case was that the sales took place after the goods reached Delhi. Therefore, the sales were between the head office at Delhi and the customers in Delhi. The company took the stand that the head office was not bound to sell the goods ordered by a prospective purchaser to him and it had the absolute discretion to sell the same to anyone else. The Assessing Authority did not accept the stand taken by the assessee and held that the goods supplied to customers after the orders have been booked by the Delhi head office from Faridabad amounted to inter-State sales. The reasons which prevailed with the Assessing Authority may now be stated in its own words :

There is no written statement or contract for sale and the assessee could not prove that the contract is conditional except by producing affidavits of the customers to the effect that mostly goods are delivered from the head office. The affidavits are of the general nature and do not prove the nature of each specified transaction in this context. The assessee must, in the first instance, prove that the goods have been transferred to the head office from the factory in bulk without any reference to their supply to customers from the sub-office at Faridabad. Secondly, they must produce evidence that goods have been sold at Delhi independent of their movement from the factory premises for the specified customers, i.e., that these sales have not occasioned the movement of goods from Faridabad to Delhi.

3. The assessee preferred an appeal to the Deputy Excise and Taxation Commissioner against the order of the Assessing Authority. The appeal was rejected with the following observations :

In the present case, there is no denying the fact that the contract was placed with the head office at Delhi but the goods had actually moved from Faridabad to Delhi as a result of that contract for sale. It makes little difference whether the contract was given to the head office or to the factory at Faridabad because the proprietors of the head office and factory are one and the same. The net result is that the goods had actually moved from one State to Another as a result of the covenant or incident of the contract of sale. Besides the above legal aspect there is lot of circumstantial evidence on the file to prove that the goods were not actually transferred to the head office.

It is clear that the goods moved from Faridabad are not physically transferred to the head office at any stage. The appellant has not been able to produce any evidence to show the existence of goods at any time at the head office for its distribution for sale at Delhi. There is no receipt or despatch register maintained by the head office by which it can be known as to which of the goods were actually received on certain dates from the factory at Faridabad and which were disposed of and which remained in the balance. The mere existence of the so-called administrative office in a mian taken in the premises of Messrs. Jullundur Motor Agency Private Limited, Delhi, does not establish the fact that the goods were transferred from the factory to the head office at Delhi. If the goods had actually been transferred, there should be some kind of godown or other place to

store them and there should be a regular stock register showing the position of stock at different times but all this kind of evidence is wanting in the present case.

4. The assessee then preferred a petition for revision to the Excise and Taxation Commissioner. That too failed. The Revisional Authority found the following facts and circumstances:

(i) Just before the sales in question goods used to be supplied from Faridabad against "C forms which clearly indicates that the parties agreed to buy and sell goods from Faridabad even though the agreement took place at Delhi.

(ii) There is no godown in the so-called head office at Delhi. There is just a miani where a table and some chairs appear to have been placed. Goods have been sent direct to the purchasers in the truck of the company and delivery given to them. To a specific question put to the learned counsel for the petitioner during arguments, it was stated that the goods were not unloaded from the truck but that the buyer used to be informed and he would take the delivery.

(iii) The statement of Shri Parkash Singh, P.A. to the Permanent Director of the company, is quite revealing and the extract quoted below in fact constitutes the crux of the case. The entire accounts are maintained by the factory at Faridabad. The head office mainly carried on the administrative work pertaining to all purchases and sales besides conducting sales at the head office. At the head office they do not maintain any accounts of receipt of goods and despatch of goods.

(iv) There is no stock register with the head office nor are any entries made at the head office regarding goods.

(v) The buyers live in the close vicinity of the head office and they are presumed to know from the long standing dealings with the firm that the source of supply of goods is Faridabad. Orders in all cases were placed before the goods moved from Faridabad started (sic) only on receipt of orders from the intending parties (buyers) and, as stated above, these goods were despatched according to individual requirements and in separate packages identifiable for each buyer. The mere fact that octroi has been paid by the seller or that the goods were sent in their own trucks is of no consequence.

(vi) There is no transfer of goods to the head office as asserted on behalf of the petitioner. In fact the head office never received any goods and never delivered the same to the seller from their possession. Transfer of goods implies transfer of possession. The head office never had the "animus" to possess the articles; nor physically possessed the same.

5. On the basis of these facts and circumstances, it was held that the movement of goods was in pursuance of orders that had been placed at Delhi where the sale had, in fact, taken place. The assessee then filed a second petition for revision to the Financial Commissioner which was heard as a second appeal by the Sales Tax

Tribunal, Haryana. The Tribunal dismissed the appeal with the following finding:

The question for decision, therefore, is whether the goods have moved from Faridabad to Delhi otherwise than in pursuance of prior or concurrent contracts of sales entered into by the head office. What has to be examined closely, therefore, is whether the head office is functioning as a dealer carrying on sales in Delhi area separately and independently of the factory in relation to the goods that moved out of Faridabad during the years 1961-62 to 1964-65. It is not claimed by the appellants that they have any godown in the so-called head office at Delhi. It is admitted that no stock registers are made nor any entries made regarding the goods received and sold in the accounts maintained in the head office. The appellant-firm did not manufacture or deal in any other commodity. The orders of the buyers in Delhi were conclusively for goods produced at Faridabad. These orders were placed sometimes orally and sometimes in writing. On receipt of instructions from the head office, the factory packed and labelled these goods customerwise. The consignments were accounted for in the factory on the basis during transportation through the factory gates. According to the statement of Shri Parkash Singh, P. A. to the Permanent Director of the company, the entire accounts are maintained at Faridabad and any payments received by the head office in Delhi are billed to the factory in due course. Against this, the appellants can produce 4 affidavits for the year 1961-62 and statements of two other executives of the firm claiming that the sales in Delhi were in pursuance of contract made by the head office with the customers direct without any connection with the manufacturing process and sales organisation of the factory at Faridabad. The turnover involved is considerable and these few statements by themselves do not demolish the abundant circumstantial and documentary evidence that is available in the factory at Faridabad regarding the modus of sales. The mere fact that the head office performs certain administrative functions in handling the goods before delivery to the customers in Delhi does not change the position. In the previous years, the appellants were admitting these sales to be inter-State sales and furnishing "C forms. No reliable evidence is forthcoming to show that in the subsequent years, there was a change in modus of these sales from the factory to the customers in Delhi. Not one instance has been cited before me to show that the goods moved to Delhi and were stocked there in anticipation of meeting generally the demands of Delhi market. It is not even claimed that the goods received were in recoupment of the stocks sold. These sales are only a small portion of the total turnover and it is admitted that the main organisation for handling this turn over is at Faridabad. As mentioned already, there are no documents available to show that the head office at Delhi also maintained any additional organisation for conducting the sales as distinct from the office at Faridabad. That the head office is also separately registered as a dealer for the purpose of local sales tax at Delhi does not change the position. Quite clearly, the role that the head office played is more of a broker or a promoter rendering certain incidental services by virtue of its geographical location. Thus the position in regard to the movement of these

goods from the factory at Faridabad was no different to the despatches that were moved out of the factory to other States whether on receipt of orders direct at Faridabad or through orders received via the head office in Delhi. The transactions were clearly, therefore, inter-State sales and were liable to be taxed.

6. The assessee being dissatisfied with the order of the Tribunal made an application u/s 22(1) to the Tribunal to refer about six questions of law for the opinion of this court. This application was declined by the Tribunal. The assessee then moved this court u/s 22(2) and this court directed that the following question of law be referred for its opinion :

Whether in the facts and circumstances of the case, the Tribunal was justified in holding that the said sales were inter-State qua the State of Haryana.

7. Mr. Bhagirath Dass, the learned counsel for the assessee, contends that there was no contract of sale in pursuance of which the goods moved from Faridabad to Delhi. . His contention is that offers were made at Delhi and, in view of those offers, the goods moved from Faridabad to Delhi and it is thereafter that the sale was effected. His contention, broadly speaking, is that offers do not amount to sales. The contention is only correct in part. We are really concerned with the interpretation of Section 3(a) of the Central Sales Tax Act, 1956, which is in the following terms :

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) ...

Explanation 1...

Explanation 2...

8. We are of the view that on the facts found the requirements of Section 3(a) of the Central Sales Tax Act are satisfied. The matter is not *res Integra* and is, in fact, concluded by the Bench decision of this Court in *Prem Payari Aggarwal v. Punjab State* (1967) 69 P.L.R. 130 . We find no difference between the present case and the decision in *Messrs. Prem Payari Aggarwal's case* (1967) 69 P.L.R. 130. Mr. Bhagirath Dass has, however, strongly relied on the decision of the Supreme Court in *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, the decision of the Supreme Court being at page 374; and his main reliance is on the following observations:

Even on the assumption that any such orders had been received by the appellant they could not be regarded as anything but mere offers in view of the specific terms in exhibit I (the dealership agreement) according to which it was open to the appellant to supply or not to supply the dealer with any vehicle in response to such order. What was, therefore, relevant was the acceptance of firm orders occasioning the movement of vehicles out of the State of Bihar.

9. In the present case, the only conclusion at which we can arrive at is that the goods reached Delhi in pursuance of a specific order and were delivered to the person ordering the goods. Of course, the position would be different if the goods had been ordered by A, had reached Delhi and were delivered to B. In that case, there would be no movement of goods occasioned by a contract of sale which may have come into being between A and the company. There is no finding by the Tribunal that when orders are placed by a customer, the company has the option to deliver the goods to the buyer as and when received at Delhi. Therefore, these observations of the Supreme Court do not at all help the learned counsel. After giving our careful thought to the matter, we are of the view that there is no substance in the contention of Mr. Bhagirath Dass.

10. For the reasons recorded above, we answer the question referred to us in the affirmative, that is, in favour of the department and against the assessee. However, we leave the parties to bear their own costs.