(2002) 06 MAD CK 0212

In the Madras High Court

Case No : T.C. No. 455 of 1995

K. Mohan and Company — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 24-06-2002

Acts Referred:
Central Sales Tax Act, 1956 — Section 3

Citation : (2002) 128 STC 279

Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Ramagopal, for the Appellant; S.V. Radhakrishnan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—The petitioner is a dealer in chemicals having its place of business at Chennai. The dispute relates to the liability to tax under the Central Sales Tax Act, 1956 on the turnover of a sum of Rs. 32,760 which was taxed as inter-State sales in the sales tax assessment for the assessment year 1988-89.

2. The case of the petitioner is that the petitioner sold silicon carbide to Jai Bharat Enterprises, 55, Upper Chitpur Road, Calcutta, for a sum of Rs. 32,760 which is made up of the sale price of Rs. 31,500 and Central sales tax of Rs. 1,260. There is no dispute that the goods were transported to Calcutta by lorry and the documents of title were handed over to the United Bank of India, Calcutta for collection from the buyer, Jai Bharat Enterprises. The buyer did not pay the amount to the bank and clear the goods. It was found that the dealer came to know about the same through its banker and then, arranged to sell the goods which were sent earlier to Calcutta to another buyer.

3. The case of the dealer is that the sale in favour of Jai Bharat Enterprises was an unfructified sale and the sale to the subsequent buyer is not an inter-State

sale, but a local sale in the State of West Bengal and the turnover is not liable to be taxed under the provisions of the Central Sales Tax Act. The claim of the dealer was rejected by all the authorities including the Sales Tax Appellate Tribunal. It is against this order, the present revision has been filed.

4. Mr. K. Ramagopal, learned counsel for the petitioner, strenuously argued that the sale in favour of the purchaser, viz., Jai Bharat Enterprises, Calcutta, did not fructify and the sale in favour of the subsequent purchaser is not liable to be taxed under the provisions of the Central Sales Tax Act. Learned counsel submitted that there was no agreement for the movement of the goods from the State of Tamil Nadu to the State of West Bengal in respect of the subsequent sale as the movement had already taken place from the State of Tamil Nadu to the State of West Bengal at the time of earlier unfructified sale and the provisions of Section 3(a) of the Central Sales Tax Act are not attracted and the authorities are not correct in holding that it is an inter-State sale.

5. Learned Government Advocate for the respondent, on the other hand, supported the order of the Tribunal.

6. We have carefully considered the submissions of the learned counsel for the petitioner. There is no dispute that the goods were sent from the State of Tamil Nadu to Calcutta by lorry in pursuance of an agreement of sale with Jai Bharat Enterprises and the documents relating to the goods were handed over to the petitioner''s banker for collection. There is no dispute that had the sale been fructified, it would have been inter-State sale. It is on the refusal by the first purchaser that the goods were sold to a subsequent purchaser. The dealer, the petitioner herein, has not established that the goods were taken delivery from the carrier by its local agent when the goods reached Calcutta, nor was it established that the journey had terminated in terms of Explanation 1 to Section 3(b) of the Central Sales Tax Act. The petitioner has also not established that there was a local agent who took delivery of the goods from the carrier and who in turn, sold the goods in favour of the subsequent purchaser, nor is it the case of the petitioner that on the refusal by the first purchaser, the goods were returned to the petitioner and the petitioner took delivery of the goods.

7. Clause (b) of Section 3 of the Central Sales Tax Act provides that if the sale or purchase of goods is effected by a transfer of documents of title to the goods during the movement of the goods from one State to another, then it is to be taken as an inter-State sale. Explanation 1 to this provision provides that where goods are delivered to a carrier, the movement of goods shall be deemed to commence at the time of such delivery and terminate at the time when the delivery is taken from such carrier. The petitioner has not established that it has a local agent at Calcutta who had taken delivery of the goods and the petitioner has also not produced any material to show that the goods were sold otherwise than by an endorsement on the documents of title in favour of the subsequent purchaser after delivery was taken from the carrier.

8. We find that the sale of goods, on the facts of the case, would attract the provisions of Clause (b) of Section 3 of the Central Sales Tax Act. We have already held that the petitioner has not produced any evidence to show that the goods were taken delivery from the carrier and in the absence of any such evidence, it must be taken that the goods were not taken delivery from such carrier. Under Explanation 1 to Section 3(b) of the Central Sales Tax Act where the goods are delivered to carrier, the movement of goods shall be deemed to commence at the time of such delivery and terminate only at the point of time when the delivery is taken from such carrier. On the facts of the case, we hold that the movement of the goods from this State to the State of West Bengal did not terminate until the subsequent buyer took delivery of the goods.

9. We also find that the ratio of the decision of this Court in Thavakkal Agencies v. State of Tamil Nadu [1981] 47 STC 179, would apply to the facts of the case where a similar question was considered by this Court and this Court held that a similar transaction would attract the provisions of Section 3(b) of the Central Sales Tax Act. Following the decision, we hold that the sale effected by the petitioner was an inter-State sale and was liable to be taxed under the provisions of the Central Sales Tax Act. We dismiss the revision petition. No costs.

