(1997) 04 MAD CK 0057

In the Madras High Court

Case No : Tax Case (Revision) No. 214 of 1985

Khivraj Motors (Private) Limited APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4, 9
Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1997) 04 MAD CK 0057

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Having failed before all the three authorities below, including the Sales Tax Appellate Tribunal, the assessee has preferred

this tax case revision u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, read with section 9(2) of the Central Sales Tax Act, 1956

(hereinafter referred to as ""the Act"").

2. The only question involved is regarding a turnover of Rs. 4,39,686 for the assessment year 1969-70 relating to the sale value of 22 motor cars.

According to the assessee, the sale of these 22 cars to customers in Nellore and Chittoor in Andhra Pradesh were local sales within Andhra

Pradesh. But, rejecting the said contention of the assessee all the authorities below have concurrently held that the said turnover related to inter-

State sales coming u/s 3(a) of the Act and exigible to tax by the assessing authority in Tamil Nadu. According to the respondent-Revenue, pursuant

to the sale contracts in relation to the said motor cars, the said motor cars moved from Chennai in Tamil Nadu to the above referred to Nellore

and Chittoor in Andhra Pradesh. The said contention of the Revenue has been accepted by all the authorities below.

3. The argument of learned counsel for the assessee before us is that either (1) the said sales were local sales in Andhra Pradesh and exigible to tax

in Andhra Pradesh or (2) pursuant to the relevant sale contracts, the goods (motor cars) which were manufactured in West Bengal by Hindustan

Motors, Hoogli, moved from West Bengal to the 22 customers in the above referred to Nellore and Chittoor in Andhra Pradesh and consequently

the relevant sales are inter-State sales, exigible to tax only in West Bengal and not in Tamil Nadu.

4. In making the latter of the two above referred to alternative submissions, learned counsel also submits that simply because the goods while

moving from West Bengal, went through Chennai in Tamil Nadu, the Tamil Nadu authorities cannot levy tax on those sales. In this regard learned

counsel also submits that the Tribunal has erred in relying on South India Automotive Corporation Private Limited v. State of Tamil Nadu [1980]

46 STC 1 for coming to the conclusion that the said sales were only inter-State sales, in which pursuant to the relevant sale contracts, the goods

moved from Chennai in Tamil Nadu, where the assessee''s head office is located, to the abovesaid Nellore and Chittoor in Andhra Pradesh.

5. Dealing with the first of the above referred to two alternative submissions, he points out that the said sales have also been found, to be sales that

took place in the above referred to Nellore and Chittoor in Andhra Pradesh, by the authorities in Andhra Pradesh, including Andhra Pradesh Sales

Tax Appellate Tribunal, whose order was also confirmed by Andhra Pradesh High Court in revision. In this connection he also invites our attention

to the fact that the Andhra Pradesh Sales Tax Appellate Tribunal''s order dated October 9, 1974 was placed before the Tribunal at Chennai.

6. On the other hand, learned counsel for the Revenue points out that the abovesaid sales are only inter-State sales, whereby pursuant to the

relevant sale contracts, the abovesaid goods moved from Chennai in Tamil Nadu to the above referred to Chittoor and Nellore, where the branch

office of the assessee is also located. He also points out that the reliance placed by the authorities below on South India Automotive Corporation

Private Limited v. State of Tamil Nadu [1980] 46 STC 1 for coming to the conclusion that the abovesaid turnover represents inter-State sales exigible to tax by the authorities in Tamil Nadu.

7. Learned counsel for the Revenue also points out that once the abovesaid sales are such inter-State sales, they cannot be also sales within

Andhra Pradesh and that even assuming that Andhra Pradesh authorities have held that those sales are sales within Andhra Pradesh, that fact by

itself, will not prevent the authorities in this State from holding, based on the relevant facts, that those sales are only inter-State sales exigible to tax

by the authorities in the State.

8. We have considered the rival submissions. First of all, we must point out the provisions u/s 3(a) of the Act, which runs as follow :

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......

Thus, as has also been held in several Supreme Court decisions, for an inter-State sale, coming under the above referred to section 3(a), the sale

must occasion movement of goods from one State to another, that is, the sale contract must cause the movement of goods from one State to

another.

9. Regarding the contention that, on the footing that those sales were inside sales in Andhra Pradesh, they were actually assessed to tax by the

Andhra Pradesh authorities and the assessment had even become final since the matter had been concluded even by the Andhra Pradesh High

Court in revision, we must state that even though the copies of the orders of the Andhra Pradesh Sales Tax Appellate Tribunal and the High Court

of Andhra Pradesh produced before us show that the sale involved therein were held to be sales within Andhra Pradesh the said orders relate not

simply to the present assessment year 1969-70, but relates to four assessment years, viz., 1969-70, 1970-71, 1971-72 and 1972-73 and, in

regard to assessment year 1969-70, the turnover involved before the Andhra Pradesh Sales Tax Appellate Tribunal was Rs. 16,96,044.61. In the

above circumstances, we cannot assume that the above referred to turnover of Rs. 16,96,044.61 has any correlation with the turnover in question

in the present case in relation to the said assessment year 1969-70 only, viz., the abovesaid turnover of Rs. 4,39,686. For this reason itself, we

cannot place reliance on the abovesaid orders of Andhra Pradesh Tribunal and the

Andhra Pradesh High Court.

10. We shall now deal with the relevant facts in the present case, which only lead us to hold that the conclusion reached by all the authorities below

is right and that the above referred to sales in question were inter-State sales, where as a result of the relevant sale contracts, the abovesaid goods

moved from Chennai in Tamil Nadu to Nellore and Chittoor in Andhra Pradesh, though the goods were initially brought from West Bengal (where

the goods were manufactured) to Chennai. The said facts could be gathered from the following observations in the original assessment order in the

present case :

................an inspection of the place of the dealers on August 28, 1970 and September 27, 1971 by officers of the Intelligence Wing, Madras

resulted in securing certain incriminating records. Examination of the accounts and records revealed that they had claimed exemptions on large

scale (automobiles) as sales effected at Nellore and Chittoor, that in all these case orders for cars were placed by the customers with the Madras

office only who in turn place orders with the manufacturers, i.e., Tvl. Hindustan Motors Limited, Hoogly, that supplies were made by the

manufacturers only to the Madras office, that authorisation for delivery of car, complaints for defects, etc., were all made by the parties with

Madras office only, that the goods moved from Madras on specification in each case to customers as a result of the order and sale, that the dealers

had no branch at Nellore till June 17, 1969 as proved by the agreement signed on April 18, 1967 with the sub-dealers, M/s. Subbudaya

Automobiles........ There was actually no branch at Nellore as seen from the following correspondence....... Correspondence were handled by

Madras office only by affixing the rubber stamps of the branch offices to suit the occasion. Gate passes of cars with the stamps of branches affixed

in it were kept at the Madras office. The usage of the gate pass book for the said two branches were all make believe records............... Records

also show that the dealer''s alleged branch at Nellore was inspected by the Commercial Tax Officer, Gudur on December 19, 1966. The

inspection proved that the branch existed only by name and that the sales manager of Tvl. Royan Motors, Nellore was acting as commission agent.

The shop at Chittoor was also got inspected by the Deputy Commercial Tax

Officer, Chittoor on August 14, 1971. Statement was recorded from

the branch manager, Thiru Jayaram. He had bluntly told the truth that sales or purchases were not done at Chittoor, that only orders were booked

and that it was the Madras office which executed the orders. He also admitted that no account was maintained at Chittoor. Thus, the statements of

the managers of Nellore and Chittoor branches prove that all sales of cars were done by the Madras office only.

The books of the dealers show a turnover of Rs. 17,13,473.32 as sales made outside the State, out of which a turnover of Rs. 7,21,945.62 had

already been assessed to tax under Tamil Nadu General Sales Tax Act, 1959 in TNGST. No. 33405/69-70 dated December 13, 1971 where

inter-State nature of sales had not been proved. Hence the balance of turnover of Rs. 9,91,527.70 should have been made to dealer s outside the

State.

11. Here, it must be noted that the books of the assessee themselves included the abovesaid sales of Rs. 4,39,686 as turnover of the assessee

itself comprised in the above referred to aggregate turnover of Rs. 17,13,473.32. If really there was only one inter-State sale by the West Bengal

manufacturer to customers in Chittoor and Nellore, the assessee would not have shown the abovesaid turnover of Rs. 4,39,686 as its own sales in

its books of accounts (and those sales would have remained only as sales by the abovesaid manufacturer in West Bengal itself directly to the

abovesaid customers in Andhra Pradesh). So, since the assessee''s books themselves disclosed the disputed turnover of Rs. 4,39,686 as its own

sales, it could only be inferred that after the initial sales from West Bengal manufacturer to the assessee (whether these initial sales are inter-States

sales or inside sales in West Bengal or Tamil Nadu), there were subsequently inter-State sales by the assessee to the abovesaid customers in

Andhra Pradesh, as a result of which the good (the abovesaid motors cars) moved from Chennai in Tamil Nadu to Nellore and Chittoor in Andhra

Pradesh. Through the learned counsel for the assessee also submits that they were actually inter-State sales directly from the abovesaid West

Bengal manufacturer to the abovesaid customers in Nellore and Chittoor in Andhra Pradesh, we must first of all point out that such a contention

had neither been taken before any of the authorities below, nor is there ground to that effect even in the present revision before us. Further, the

very fact that in the books of the assessee themselves, the disputed turnover of Rs. 4,39,686 is shown as assessee''s own sales to the abovesaid

customers in Nellore to Chittoor, would falsify the abovesaid submission that they were actually that they were actually inter-State sales, directly

from the abovesaid West Bengal manufacturer to the customers in Nellore and Chittoor.

12. The following observation of the Tribunal in its order may also be noted :

........even on the assumption that the branches at Nellore and Chittoor existed, still the cars were allotted at Madras where really the earmarking

of the vehicles took place.

This may also indicate that as a result of the relevant sale contracts, the abovesaid earmarking or allotment, followed by movement of the goods so

allotted or earmarked from Chennai to Nellore and Chittoor, took place. No doubt, appropriation of the goods for the sale contract is relevant

only in the case of section 4(b) of the Act. But the fact that the books of accounts of the assessee show disputed turnover as sales effected by the

assessee, will go to prove that pursuant to sale contracts between the assessee and the customers in Andhra Pradesh, the goods moved from

Chennai in Tamil Nadu to Nellore and Chittoor in Andhra pradesh.

12-A. In the above light we have only to hold that the ratio of The South India Automotive Corporation Private Limited Vs. The State of Tamil

Nadu, would apply even to the present facts. In fact, the Tribunal in its order observes that the facts in South India Automative Corporation

Private Limited v. State of Tamil Nadu [1980] 46 STC (Mad.) are exactly similar to the present facts. No doubt, the learned counsel for the

assessee sought to point out some variance in the facts in the case of The South India Automotive Corporation Private Limited Vs. The State of

Tamil Nadu, . In this connection, we may points out what is stated in The South India Automotive Corporation Private Limited Vs. The State of

Tamil Nadu, regarding the facts therein. The relevant observation therein is as follows :

.... Taking one transactions typical, there was a deposit on 29th July, 1971, at Nellore, by a party named G. Venkatanarayana Reddy. On 16th

June, 1972, the assessee, after receiving the requisite number of vehicles from

Hindustan Motors Limited, Calcutta made what is called ''stock

transfer'' and this transfer was to its branch at Nellore. There is a delivery note executed by the branch at Nellore on the same date in favour of the

head office of the assessee at Madras. On 17th June, 1972, the pledge of the deposit is released and there is a communication addressed to the

Postmaster, Nellore, for the purpose. This letter is said to have been written by the Nellore branch. After obtaining a letter from the purchaser that

he has not purchased any new motor car of any other brand during the calendar year anywhere in India, the assessee delivered the motor car on

16th June, 1972, to the party. The invoice purports to be by the Nellore branch of the assessee.

Thus, in The South India Automotive Corporation Private Limited Vs. The State of Tamil Nadu, also, the assessee initially received the requisite

number from Calcutta and then made the above referred to ""stock number"" to its branch at Nellore and thereafter effected delivery to the Nellore

customers. In the present case, though there is not such ""stock transfer"", yet in view of the fact that the books of accounts of the assessee showed

that the abovesaid disputed turnover represents sales by the assessee to the above referred to customers at Nellore and Chittoor, we should

necessarily hold that after the initial sales to the assessee from the West Bengal manufacturer, there arose the above referred to inter-State sales

from the assessee at Chennai to the abovesaid Andhra Pradesh customers, whereby the goods moved from Chennai to the abovesaid Nellore and

Chittoor in Andhra Pradesh. Therefore, we are unable to find any material difference between The South India Automotive Corporation Private

Limited Vs. The State of Tamil Nadu, and the present case. Thus, we see no reason to differ from the orders of the authorities below, including the

Tribunal.

13. In the result, the tax case revision is dismissed. No costs.

14. Petition dismissed.

