
(2010) 12 KAR CK 0136
In the Karnataka High Court
Case No : S.T.R.P. No. 42 of 2006

L and T Komatsu Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 9 (2)
Karnataka Sales Tax Act, 1957 — Section 28 (6)

Citation : (2011) 41 VST 212

Hon'ble Judges : Manjula Chellur, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : S. Prakash, for the Appellant; S. Sujatha, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—The revision Petitioner is a public limited company formed by Komatsu Asia Pacific Pre (KAP) and Larsen & Toubro Limited (L & T Ltd.,) each holding 50 per cent of the Petitioner's equity. The registered office is at Mumbai and the manufacturing plant is located at Byatarayanapura, Bellary Road, Bangalore. The Petitioner is engaged in the business of manufacture and supply of hydraulic excavators, hydraulic equipment and parts there of.

2. The Petitioner was assessed to sales tax under the Karnataka Sales Tax Act, 1957 (for short, "the KST Act") and the (for short, "the CST Act"). The case of the Petitioner falls under entry M. 1(I)(a)/II and liable to tax at eight per cent under the KST Act during the relevant period for the assessment in question. Subsequently, by notification bearing No. FD.117.CSL.2001(1), dated July 26, 2001, the State Government reduced the rate of tax on the sale of hydraulic excavators and other earth moving equipment to two per cent if the sale was by a registered dealer to another registered dealer, subject to production of a declaration that the goods were being purchased by the registered dealer for its own use and resale.

3. According to the Petitioner, products of the Petitioner-company being very expensive and most of the purchasers being finance companies, who would purchase the Petitioner's products and in turn leased, hired or sold such products to the end-users under an agreement for lease or hire-purchase or hypothecation, as the case may be. The business place of the Petitioner came to be inspected by the Commercial Tax Officer, who seized the documents and certain books of account. During the inspection of the same, in the presence of the representatives of the Petitioner, it was found that the Petitioner marketed its products through L & T Limited. L & T Limited received orders for purchase of hydraulic excavators equipment from various financiers by placing orders directly on the Petitioner. Thereafter, the goods were manufactured according to the specification mentioned in the purchase orders and the Petitioner handled the marketing for the entire country. According to the Petitioner, the name of the hirer was shown in the purchase order.

4. During the year 2002-03 the revision Petitioner effected number of sales to finance companies like L & T Limited, Ashok Leyland Ltd., City Corporation, which amounted to 553. Out of them 444 were the inter-State sales and the rest, 109 were local sales. Out of 109 local sales, the controversy relates to 41 instances of sales. According to the Revenue, the revision Petitioner did not maintain any records relating to the sales made through financiers outside the State. But however, records were maintained relating to equipment, which were invoiced in the name of the actual users. The L & T Limited received purchase orders from different financiers outside the State and conveyed such order to the Petitioner.

5. According to the Revenue, the Petitioner maintained bills of purchasing, finance companies, addresses, names of persons who placed orders on the Petitioner, details of payment received, balance to be received, addresses of the actual receivers who purchased equipment on hire-purchase basis and advance amount received by the Appellant directly from the legitimate customers and credited to the account of finance companies who had agreed to finance the equipment.

6. According to the Revenue, the following facts would conclude that Petitioner has in fact occasioned inter-State sale and the documents were fabricated which were make believe documents:

(i) That the Petitioner received advances from the persons who bought or took on hire the excavators from the finance companies and that the Petitioner accounted for such advances while raising invoices on the finance companies;

(ii) That the purchase orders placed by the finance companies on the Petitioner were through L & T Limited.

(iii) That the purchasing finance companies did not take delivery of the equipment as the movement from the Petitioner's factory continued up to the premises of the eventual buyer/lessee.

7. For this, the CTO relied on the GCV note issued by the transporter showing the Petitioner as the consignor and the finance company's office at Bangalore as consignee and another GC note showing the finance company's local branch as consignor and the finance company which actually placed the order which is outside the State as the consignee.

8. The CTO after initiating the proceedings u/s 28(6) of the KST Act read with Section 9(2) of the CST Act issued a notice and eventually passed an order dated June 16, 2003 determining the total turnover under the CST Act of Rs. 15,99,80,720 and CST thereon at 10 per cent thereof, i.e., Rs. 1,59,98,072. After giving credit for the KST paid by the Petitioner, viz., Rs. 31,99,614, the CTO determined the net tax liability at Rs. 1,27,98,548.

9. Aggrieved by the said order, an appeal came to be filed and the appeal before the Commissioner of Commercial Taxes came to be disposed of on September 27, 2004 wherein it was observed that the revision Petitioner had prevailed upon the finance companies to raise the documents showing the delivery of equipment in the State of Karnataka though final destination of the same was outside the State. With these observations, the said order came to be upheld.

10. Aggrieved by the same, an appeal came to be preferred before the Karnataka Appellate Tribunal (for short, "the Tribunal"). The same came to be disposed of on April 27, 2006. The said order of the Tribunal is impugned before us.

11. The contention of the Petitioner is that all the sales under controversy-41 in number, which were questioned by the Department are local sales. In order to constitute inter-State sales necessary ingredients like, movement and casual connection between the sale and movement are necessary but the same are absent in the present case.

12. According to the Petitioner's counsel, purchase order does not even remotely suggest movement outside the State. On the other hand, positive material indicates delivery at "X" factory as required in the purchase order which would go to show that it was a local sale. There is no express contract of sale and movement of the equipment. Therefore, it is a local sale.

13. As against this, the learned Government Advocate defending the Revenue contends that only small amount of advance would be paid by hirer directly to the revision Petitioner; the said amounts are nominal less than one per cent of the consideration; credit is given to the finance company and the purchase orders are processed by L & T Finance Ltd., therefore, the Department was justified in holding that these 41 cases were also inter-State sales, but the documents were fabricated.

14. As a reply, the learned Counsel for the revision Petitioner contends that the Appellant by concealing the 41 cases as inter-State sales does not gain anything, as it would be collecting the taxes from the purchasers. In many other cases, the first appellate authority opined that L & T Finance has paid taxes to the

authorities and other Departments. According to the learned Counsel, even in these 41 matters, the finance company must have paid taxes and other charges to different Departments. It is further contended that the receipt of advance pertains to only six instances as against 41 from the finance companies and according to them, the quantum of advance is very negligible amount and as the advance was received, it was the duty of the Petitioner to accommodate without having any direct relation with the buyers. According to the Petitioner, the finance companies took delivery of the equipment at the Petitioner's factory through authorised representatives or agents or transporters. The subsequent events up to the stage of reaching the eventual premises would be immaterial and the G. C. note has nothing to do with the Petitioner as it refers to different transactions between the finance company and the eventual buyer. Therefore, the order of the appellate authority is not justified.

15. On perusal of the records, we note that out of total 41 disputed cases, 11 are through L & T Finance Ltd., 18 are through Ashok Leyland Finance Ltd., 4 are through Sri International Finance Company Ltd., and 1 is through ICICI Bank. However, all are local finance companies.

16. The learned Counsel for the revision Petitioner relies on the following decisions:

(i) In Commissioner of Sales Tax, U. P., Lucknow v. Suresh Chand Jain [1988] 70 STC 45 (SC), the Assessee's contention was that there was no inter-State sale of tendu leaves in question. According to the Assessee, he did not know if the purchasers had taken these tendu leaves to places outside U. P., and even if they had so taken, the Assessee was not responsible to pay the tax under the CST Act. In that case, the Tribunal concluded that the Forest Department gave in writing that transport permit did not relate to sale, but it was certified regarding the validity or veracity of tendu leaves from the forest.

(ii) Further, he placed reliance upon a decision The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , wherein it was held that there must be evidence that the transportation was occasioned by the contractor and the goods had gone out of the border between the parries from one State to another. According to the learned Counsel for the revision Petitioner, two conditions, i.e., sale of goods and transport of those goods from one State to another State are to be satisfied.

(iii) He also relied upon a decision reported in Karnataka Soaps and Detergents Ltd. Vs. The District Forest Officer, Sathyamangalam Division and Others, In this case, the movement of goods is outside the State. It was held that the inter-State sale is one that the contract of sale must incorporate stipulation, express or implied, regarding the inter-State movement of goods. The contract must at least impliedly provide for movement of goods from one State to another State, even if not necessary for sale to be inter-State sale. It was held to be so in the said case as there was no stipulation, express, or implied providing for

movement of goods, therefore, it could not even be said an inter-State sale.

(iv) He relies upon another decision in *State of A.P. Vs. Computer Graphics Pvt. Ltd.*, . In this case, the assessing authority granted exemption to the dealer in terms of its turnover of stocks from one branch to another. The appellate authority dismissed the appeal challenging the imposition of inter-State tax at 10 per cent on the ground that though the copies of some of the invoices showed local deliveries they were in fact effected to parties authorised by the buyers, who transported the goods to their branches outside the State and those sales were inter-State sales. The authority also found that the head office of the Respondent at Chennai received the payments for the goods sold by it at Hyderabad. The Respondent preferred appeal to the Sales Tax Appellate Tribunal, which held that the sales made by it were local sales and the mere fact that the buyers from the Respondents dispatched the goods purchased by them to persons outside the State would not make the sales made by the Respondent inter-State sales.

17. This came to be questioned by a revision before the High Court. It was held that according to the Assessee the sales made by it were local sales and though the buyer had dispatched the goods to a place outside the State the onus was on the Department to establish that the sales made by the Respondent were inter-State sales. There was no such evidence on record. The place of payment of price was not of much consequence in deciding the question whether a sale was an inter-State sale of those goods, as sold by the Respondent, passed to the buyer immediately on the delivery of the goods to him at Hyderabad. Merely because the person who took delivery of the goods from the Respondents happened to be an agent of some other person outside the State, the purchase of the goods made by him from the Respondent would not make the Respondent's transaction of sale one of inter-State sales.

18. The file containing the details of 41 disputed cases are furnished to the court. The same was perused.

19. So far as the facts in the present case are concerned, the material would reveal that the transporter who had taken the delivery of the equipment has transported the equipment to the legitimate customer residing in the State of Karnataka and delivered the goods. As the delivery of the equipment was directly related to hire purchase agreement between the financiers and the legitimate customer residing outside the State of Karnataka, the transaction is inter-State trade. The contention of the revision Petitioner-asses-see that token advance received from the purchasers who live outside the State of Karnataka, was rightly rejected by the authority concerned as during the inspection of premises, the bills showed, after deducting the advance amount the Assessee has sold the equipment collecting the balance amount from the customers outside the State of Karnataka. During the course of investigation, the authorities had collected the records from transporters' godown and also local branches of the financiers. Similarly, copies of records of the financiers from branches situated outside

Karnataka were also obtained including the hire purchase agreement, etc. All these records rightly persuaded the authority to conclude that the goods moved outside the State in pursuance of contract between the Petitioner and the financiers and the customers are all residing outside the State of Karnataka. Though the revision Petitioner has supplied the equipment to its customers who are residing outside the State, it has raised the note of consignment pertaining to the goods as if the equipment was delivered to the financiers in Karnataka. Therefore, the revision Petitioner through various finance companies entered into contract of sale with its customers outside the State of Karnataka and the movement of the equipment was in pursuance of such contract outside the State of Karnataka. There is movement of goods directly from State of Karnataka to customers outside the State. Therefore, we are of the opinion that no good ground is made out to interfere with the orders of the Tribunal.

20. Accordingly, the revision petition is dismissed.