

(1963) 08 MAD CK 0009

In the Madras High Court

Case No : Tax Cases No's. 288 and 290 of 1962 (Revision No's. 118 and 119)

Lakshmi Mills Company Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-08-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1964) ILR (Mad) 282 : (1964) 77 LW 111 : (1963) 14 STC 899

Hon'ble Judges : Venkatadri, J; Jagadisan, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastri, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Jagadisan, J.—The petitioners are dealers in yarn. Their course of business consists of purchasing cotton and producing and selling yarn.

During the year 1957-58 they purchased cotton of the value of Rs. 3,13,177-74 np. from a Bombay dealer and claimed that the said amount

should not be included in their taxable turnover for assessment under the Madras General Sales Tax Act, 1939. This claim was made on the basis

that the purchase was an inter-State purchase and that as such it was exempt from the levy of sales tax under the State law. The department as

well as the Tribunal held that the purchase covered by the turnover was intra-State and was within the scope of the Act. The petitioners also

claimed that the turnover relating to two items of sale of yarn during the year 1956-57 should not be taxed as the yarn was sold to dealers in places

outside the Madras State and that the sales were inter-State sales not covered by the Act. Both the department and the Tribunal negatived relief to

the petitioners in regard to these sales as, in their opinion, they were not inter-State in character. In these revision petitions the petitioners contend

that both these sets of transactions should not properly be included within their taxable turnover under the Madras General Sales Tax Act.

2. The petitioners purchased cotton from various dealers, some of whom were Jeevaraj Motiram and Company (Bombay dealer), Volkart

Brothers (Coimbatore dealer), and Kilachand Devchand (Bombay dealer). The goods moved from outside the State, and were delivered inside

the State, either by rail or by lorry. One set of transactions in which the goods were consigned through railway by the outside dealer, was held to

be inter-State in character and the Tribunal gave relief to the petitioners on that basis. In respect of other items of goods which were dispatched

from places outside the State to the petitioners by lorries the Tribunal held that the purchases were inter-State in character. But, as regards the

disputed turnover, in respect of which the Tribunal refused relief to the petitioners and which forms the subject matter of this revision petition, the

goods were actually shipped by the Bombay dealers (sellers) to Tuticorin Port and were cleared at that port by the sellers' agents and were

loaded in lorries and delivered at the petitioners' place of business at Koilpatti. The Tribunal has taken the view that the break of movement of

goods at Tuticorin and the change of the means of transport from ship to lorry impair the exemption claimed on the footing of inter-State

transactions. According to the Tribunal, the inter-State movement ceased when the goods were landed at the Tuticorin Port and carried to

Koilpatti through lorries and that therefore at the point of time when the goods were taken delivery of by the petitioners the purchases could not be

attributed with the character of inter-State purchases. We are unable to agree with this view of the Tribunal and it seems to us that it is essentially

unsound.

3. The Central Sales Tax Act, 1956, defines an inter-State sale as follows:-

Section 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) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation I.-Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause

(b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2...

4. This statutory provision practically codifies the pre-existing judge made law on the subject. An inter-State sale consists of two essential

elements: (1) a sale of goods and (2) a transport of those goods from one State to another under the contract of sale. Where a dealer in "A" State

agrees to sell goods to another in "B" State and undertakes as part of that contract to deliver the goods to the purchaser in the "B" State and the

goods are transported from "A" State to "B" State, whatever be the means of transport, air, road or rail, the transaction viewed as a whole is an

inter-State sale or purchase. The movement of the goods from one State to another in a contract of inter-State sale is the necessary result of the

contract as otherwise the contract cannot be fulfilled or performed. The manner of transport or the stages involved in such transport would not

have any material bearing upon the nature of the sale. Taking the present case, we do not understand why the landing of the goods at the Tuticorin

Port and their subsequent carriage by lorry to Koilpatti should operate to destroy the inter-State character of the transaction, if at the inception the

parties entered into a contract and did intend that they should be delivered only at Koilpatti. That there should be a continuity of passage or non-

variance in the means of transport in an inter-State sale is a fanciful notion unsupported by any principle of law or authority.

5. The characteristic of an inter-State sale or purchase is the movement of goods from one State to another under a contract between the seller

and the buyer. The method of delivery adopted, the route through which the goods are despatched, and the stages involved in the course of

journey of the goods are extraneous circumstances in the determination of an inter-State sale or purchase.

6. We have examined a few of the contracts relating to this disputed turnover to ascertain the terms and conditions under which the Bombay

dealers sold cotton to the petitioners. The following is an extract of one of the contracts and we may at once mention that all the contracts are of

the same type.

Kilachand Devchand & Co., Private Limited, 45-47, Appollo Street, Fort, Post Box No. 746, Bombay-1. (Letter head) (Addressed to) Messrs

The Lakshmi Mills Co., Ltd., Koilpatti. (Petitioners)

...

We confirm having sold you this day the above 51 (fifty-one) bales only, of Tarantaran 320F (lot No. 1) and 100 (one hundred) bales only of

320F Patiala, crop 1956/57, as per our samples submitted to you, at Rs. 815 (rupees eight hundred and fifteen) only per candy of 784 lbs.

F.O.R., Koilpatti.

(Sd.)...For Kilachand Devchand & Co. Pvt. Ltd."

7. The words "'F.O.R. Koilpatti'" clearly indicate that the delivery of the cotton consignment was to be effected only at Koilpatti. Therefore, when

the goods were disembarked from the ship at Tuticorin and put on forward journey from Tuticorin to Koilpatti that was in due performance of the

contract. It must also be noted that the person who actually took delivery of the cotton at Tuticorin and handled the goods is not the buyer or his

representative but only the seller. The terms of the contract expressly provide that the delivery should be at Koilpatti. The movement of the

consigned goods from Bombay to Koilpatti was occasioned by the contract. We have no doubt that these transactions of purchase of cotton were

really inter-State in character and hence not liable to tax under the State law.

8. On the question whether the disputed turnover relating to yarn sales represented inter-State sales or intra-State sales, we find ourselves

completely in agreement with the view taken by the Tribunal. It is true that the State Representative filed a report before the Tribunal expressing the

view that these sales would be inter-State. But the Tribunal, however, went into the question in great detail and reached the conclusion that there

was no acceptable evidence to prove their inter-State character. The only evidence produced by the petitioners was a register called bale order

register. The Tribunal verified some of the entries in this register. We have ourselves looked into a few of the entries in the register and we have no

hesitation in agreeing with the inference drawn by the Tribunal as a result of the perusal of the entries therein. A typical entry in the register may be

referred to :

Please deliver to A. P. Sathappa Chettiar, Quilon, the following yarn bales and take his receipt for the same through Mr. S. S. T. S. Nataraja

Nadar.

9. The number of bales is given. The buyer's place of business is Quilon, outside Madras State. The lorry number is also given (MDR 1522). But

these entries do not show by themselves that the delivery was effected at Quilon, the place of business of the buyer. These entries are consistent

with the deliveries having been effected at Koilpatti itself to the outside dealer. This register merely contains instructions to the manager to deliver

the goods to the buyer. There is no evidence to show that the goods were actually taken to the place of business of the buyer by the petitioners. If

in fact and in truth the Quilon purchaser had obtained deliveries at the mill premises of the petitioners the entries in the bale order register would

support that view also. The petitioners could well have placed other evidence, if any, to show that actually delivery was effected outside the State.

We are unable to say that the Tribunal committed an error in drawing the inference from the entries in the bale order register that deliveries must

have been effected at Koilpatti itself.

10. In the result, the petitioners succeed in so far as the turnover relating to purchase of cotton from Bombay. That turnover will stand deleted from

their assessment. The petitioners fail on the other question relating to the sale of yarn. That part of the decision of the Tribunal will stand confirmed.

11. There will be no order as to costs in this petition.

(T.C. No. 290 of 1962)

12. The petitioners in this case also are the Lakshmi Mills Company Limited, Coimbatore, who were the petitioners in T.C. No. 288 of 1962. This

petition arises out of the assessment in the year 1956-57. The dispute is whether the purchase turnover of cotton amounting to Rs. 2,27,205-2-0

at the Koilpatti branch relates to inter-State purchases. In this case also the sellers' agents took delivery of the cotton at Tuticorin Port and

delivered the goods at the Koilpatti branch by lorry. The Tribunal has taken the view that the transaction cannot be viewed as inter-State in

character because there was break of journey at the Tuticorin Port in the course of movement of the goods from Bombay to Koilpatti.

13. We have held in T.C. No. 288 of 1962 that this view is untenable. For the reasons stated in that decision we are of opinion that the petitioners must succeed in this case.

14. In the result, the order of the Tribunal relating to the turnover of Rs. 2,27,205-2-0 is set aside. There will be no order as to costs.