

(1997) 08 MAD CK 0056

In the Madras High Court

Case No : T.C. No. 724 of 1986 (Appeal No. 16 of 1986)

Moti and Co.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1997) 08 MAD CK 0056

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Advocate : David Ambrose, for M/s. Surena and Surena, for the Appellant; T. Mathi, Government Advocate (Taxes), for the Respondent

Judgement

Jayasimha Babu, J.—The assessee has come up in appeal against the order made by the Joint Commissioner exercising suo motu revisional

power u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 read with section 9(2) of the Central Sales Tax Act, 1956 with regard to the

assessment of the appellant for the year 1979-80.

2. The assessing officer had included in the turnover of the assessee, for the purpose of assessment under the Central Sales Tax Act excluded by

the appellate authority in the appeal filed by the assessee against the assessment order by the Assistant Commissioner. The order in appeal was

passed on October 16, 1981 and the order in the suo motu revision was passed on December 27, 1985. The show cause notice had been issued

by the Commissioner on June 1, 1985.

3. The assessee, a dealer in tea, had purchased tea in the auctions held at Coonoor. It effected sales of the tea so purchased through a broker,

M/s. Fobbes and Co., Coonoor, to the purchasers outside the State. The broker issued a sale note to the purchaser which contained, a term that

the ""sales are by ex-godown at Coonoor"". The purchase note issued to the assessee provided that all the sale conditions set out in the sale note

issued to the buyer outside State, are accepted by the assessee. Thereafter delivery orders were issued by the broker and the goods were

delivered to the transport company for being moved through lorries to destinations outside the State. The name of the consignor was mentioned as

that of the assessee and the buyer being mentioned as consignee.

4. It was the stand of the assessee that the assessee had not entered into any contract with the buyer outside State, that the condition of sale was

ex-godown at Coonoor""; that the goods were delivered to the transport company pursuant to the delivery orders issued by the broker, that the

assessee's name was being shown as consignor only for the purpose of ensuring smooth movement of the goods across the check-posts; and that

the charges incurred for transportation were reimbursed to it by the out of State buyer. The services rendered by the assessee in arranging the

movement of the goods was said to be only a trade accommodation.

5. The assessing officer recorded the finding that ""sale note clearly show the terms 1. ex-godown, Coonoor. Even the delivery order produced

today shows that the goods were handed over to transport company under delivery order of the brokers"". The assessing officer proceeded to treat

this as inter-State sale on the ground that the lorry freight was paid by the dealers to move the goods outside the State.

6. In the appeal, the appellate authority held that there were two sales, one by the assessee to the broker and another by the broker to the buyer

outside the State and that sale was completed within the State to the broker and the despatch of the goods thereafter at the instance of the broker

could not constitute inter-State sale between the assessee and the buyer outside the State.

7. Four years after that order was passed by the Appellate Assistant Commissioner, the Joint Commissioner, revised that order after hearing the

assessee. The reason given by the Joint Commissioner for holding that these sales are inter-State sales is that if the broker had taken delivery

locally from the dealer as an agent of the outside State buyer, then the consignor

should be the broker and not the dealer as the way bills proved that the consignor is only the dealer and not the broker, the sale was by the assessee and buying outside the State and that sale had occasioned the movement from the assessee to the out of State buyer. The Commissioner did not advert to the conditions in the sale note that the Goods had been sold at ex-godown Coonoor/or the contentions of the assessee that the delivery was effected pursuant to the orders from the broker and that the transport charges incurred by the assessee was subsequently reimbursed or would be reimbursed by the buyers, from outside the State. The finding of the Commissioner was that the assessee was the consignor of the goods and not the broker.

8. We have examined the report of the enforcement officer on the basis of which the assessing officer had issued notice to the assessee, and had proceeded to arrive at the disputed turnover to tax as inter-State sale. That report shows that certain documents had been obtained from the office of the assessee. They show that the goods had been sent by the assessee to the buyers outside the State and that goods had been consigned by the assessee to these parties. The report of the officer, the sale note and the purchase note issued by the broker which contain condition regarding the sale ""ex-godown, Coonoor"" had been produced, before and the assessing officer, had found, after examining those documents, that the sale had in fact been effected Ex-godown, Coonoor"". He also found that the deliveries were effected pursuant to the delivery orders issued by the broker. The only reason given by him for holding that the sales were inter-State sales is that the consignors were the assessees.

9. Learned counsel for the assessee submitted that the Joint Commissioner as also the assessing officer have misled, themselves by holding that the movement of the goods is to be regarded as integral part of the sale transaction even though the contract of sale merely provided that the contract was on basis of delivery of goods ""ex-godown, Coonoor"". Any movement of the goods thereafter was at the instance of or pursuant to the direction given by the buyer and not as a direct result with the sale. The sale effected on term ex-godown, Coonoor, could not be said to have occasioned on the movement of the goods, which subsequently took place pursuant to the direction given by the buyer.

10. Learned Government Advocate on the other hand submitted that the intention of the parties was to effect inter-State sales and the fact that the goods were consigned by the assessee and the assessee was shown as consignor must be regarded as conclusive.

11. It is settled law that the sale cannot be regarded as inter-State sale unless the movement of the goods is, an integral part of the sale transaction.

The movement must have been occasioned by the sale. The relationship between the two should be that of cause and effect, sale being cause, and movement its effect. If this link is broken, the transaction cannot be regarded as inter-State sale.

12. The goods were sold by the assessee to the buyer from outside the State, the broker acting as intermediary for that sale, that sale was subject

to the condition that the goods were sold "ex-godown, Coonoor", the property in the goods was intended to pass to the buyer at Coonoor, and it

was open to the buyer to deal with the goods in any manner chosen by the buyer after it had acquired title to the goods. Anything done by the

seller thereafter at the instance of the buyer, was clearly an act of service rendered by the seller to the buyer, and any such act or service rendered

was not an obligation which formed part of the essential conditions of the sale. The fact that the assessee agreed to consign the goods to the

destination indicated by the buyer-even describing itself as consignor by itself would not establish an inseverable link between the movement and

the sale. It is a question of fact in each case as to whether the movement forms an integral part of the sale transaction. The fact brought on record

in this case are not sufficient to reach a definite finding that the movement and sale were integral part of the same transaction.

13. It is not necessary to discuss at length the numerous decisions relied upon by the counsel for the assessee who invited our attention to the

decisions of the apex Court reported in *The State of Tamil Nadu Vs. The Cement Distributors (P) Ltd. and Others*, [1993] 90 STC 1 [Co-

operative Sugars (Chittur) Ltd. v. State of Tamil Nadu] and [1988] 70 STC 45 (Commissioner of Sales Tax, U.P., Lucknow v. Suresh Chand

Jain). Counsel also referred to the decisions of this Court in [1972] 30 STC 251 (*Asbestos Cement Ltd. v. Government of Tamil Nadu*) [1976]

37 STC 544 [*Deputy Commissioner (Commercial Taxes), Tiruchirapalli v. Pudukkottai Textiles Limited*] [1983] 54 STC 12 (*S. K. Shanmugavelu*

v. State of Tamil Nadu) [1983] 52 STC 168 (Parrys Confectionary Ltd. v. State of Tamil Nadu) [1983] 54 STC 85 (State of Tamil Nadu v.

Hercules Rubber Co.) [1977] 40 STC 397 (Sri Ganapathy Mills Co. Ltd. v. State of Tamil Nadu) [1994] 95 STC 39 (State of Tamil Nadu v. K.

V. Baby & Co.) [1994] 93 STC 42 (Ramasamy & Brothers v. State of Tamil Nadu) and [1994] 92 STC 370 (Hotel Swagath v. State of Tamil

Nadu). The decisions of the High Court at Allahabad in [1971] 27 STC 61 (Maheshwari Devi Jute Mills Ltd. v. Commissioner of Sales Tax) and

[1992] 84 STC 308 (Commissioner of Sales Tax v. Shukla Transport Branch) as also that of Karnataka High Court in [1994] 94 STC 134

(Ranjeet Trading Co. v. Commercial Tax Officer) were also relied upon.

14. Learned Government Advocate invited the attention of the court to the decisions of the apex Court in [1979] 43 STC 457 (Union of India v.

K. G. Khosla and Co. Ltd.) and [1993] 90 STC 1 [Co-operative Sugars (Chittur) Ltd. v. State of Tamil Nadu]. He also referred to the decision

of the Patna High Court in [1972] 30 STC 451 (Commissioner of Commercial Taxes, Bihar v. State Trading Corporation of India Limited).

15. The question as to whether a particular sale is an inter-State sale is a question of fact to be determined in the light of the statutory provisions.

That question can also be regarded as a mixed question of law and fact in so far as the correct application of the relevant principles of law to these

facts are concerned. A consideration of the factual background in which the decisions were rendered in other cases is not of much assistance in

determining as to whether a particular sale is an inter-State sale or not. The essential tests to be applied are well-settled. Unless the movement and

the sale form an integral whole, the sale cannot be an inter-State sale. A sale which ostensibly takes place within the State can be an inter-State sale

if the movement is essential and inevitable, or necessary incidental, part of the sale transaction as held by the Supreme Court in the decision

reported in [1993] 90 STC 1 [Co-operative Sugars (Chittur) Ltd. v. State of Tamil Nadu]. In that case, sugar purchased by the agent of the sugar

factory situated in Kerala was normally required to be transported to Kerala in terms of the Government Order, and could not have been

diverted within the State. That sale was held to be an inter-State sale as there was an obligation on the buyer to whom the goods had been sold out

to take the goods any of the State to its factory in the neighbouring State.

16. In this case, no such obligation to move the goods out of the State has been established. It was therefore open to the buyer to take delivery of

goods by himself, and transport the goods as its own goods, from the State; or sell it to others within the State, or use it within the State or gift it if

it so choose to. The seller was required to deliver the goods within the State and was not directly concerned with the manner in which the buyer

chooses to deal with the goods after such delivery. If the buyer had himself, had arranged for the movement of the goods, such movement clearly

would not have been a part of the transaction of the sale, by the assessee to the buyer. The services rendered by the assessee on behalf of the

buyer in arranging the movement of the goods cannot by that act alone render what is otherwise a local sale into an inter-State sale.

17. We must also observe before parting with the case, that the manner in which the Joint Commissioner dealt with the matter is far too casual. He

has not adverted to all the relevant circumstances before proceeding to set aside the order made by the Appellate Assistant Commissioner, four

years after that order has been made. The power of revision suo motu should be exercised with care on sufficient grounds and not in the manner it

has been exercised in this case.

18. For the reasons stated above, we set aside the order of the Joint Commissioner made on December 27, 1985 and the appeal is allowed. No

costs.

19. Appeal allowed.