
(1973) 08 KAR CK 0011
In the Karnataka High Court
Case No : S.T.R.P. No's. 18 to 21 of 1972

Mysore Iron and Steel Ltd.

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 21-08-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 286 (1) (b), 5 (1), 9
Mysore Sales Tax Act, 1957 — Section 23 (1)

Citation : (1974) 34 STC 200

Hon'ble Judges : M.K. Srinivasa Iyengar, J;G.K. Govinda Bhat, J

Bench : Division Bench

Judgement

Srinivasa Iyengar, J.—These four revision petitions u/s 23(1) of the Mysore Sales Tax Act, 1957, arise out of the common order passed by the Mysore Sales Tax Appellate Tribunal dated 25th May, 1972, in Sales Tax Appeals Nos. 321, 322, 323 and 324 of 1970, dismissing the appeals filed against the orders of the Deputy Commissioner of Commercial Taxes (Appeals).

2. The matters relate to the assessments u/s 9 of the Central Sales Tax Act, 1956, read with rule 18(3) of the Mysore Sales Tax Rules, 1957, for the assessment periods 1964-65, 1965-66, 1966-67 and 1967-68. The dispute is in regard to the turnover of sales by the petitioner (hereinafter referred to as "sellers") to M/s. Inden Biselers, Madras, and to their successors M/s. Eastern Chemicals and Minerals (P.) Limited (hereinafter referred to as "buyers") in the respective years of ferro-silicon manufactured by the former.

3. An agreement was entered into dated 13th August, 1964, between the Mysore Iron and Steel Ltd., Bhadravati, and M/s. Inden Biselers "for the sale of ferro-silicon produced by the sellers for export to countries abroad and purchase by the buyers". The contention of the sellers was that the sales were in the course of export and, therefore, the turnovers were exempt from tax.

4. The Assistant Commissioner of Commercial Taxes rejected the contention and brought to tax the turnover in this behalf and his action was upheld by the

Deputy Commissioner of Commercial Taxes on appeals.

5. The further appeals to the Appellate Tribunal also did not meet with success. It held that the sales could not be treated as in the course of export though they could be said to be for purposes of export or for export. It referred to the several clauses in the agreement in this behalf. It noticed, inter alia, that the price stipulated was "f.o.r. loading station, Bhadravati" and the title to the goods would pass to the buyers on their being loaded into the wagons at Bhadravati. Clause 17 of the agreement was as follows :

"17. In consideration of the buyers building the export markets for ferro-silicon of the sellers in the teeth of heavy competitions in the world markets and with the wide price gap between the Indian price and the International price, the sellers agree to confine the sales of their ferro-silicon for export abroad to the buyers, not only till the end of April, 1965, by which period the present supply will cease, but also during the next financial year 1965-66, the supplies during the later year being subject to the export by the buyers. The prices of ferro-silicon are fixed by the Government of India from time to time. In case of any revision of prices by the Government of India during the year 1965-66 or by the sellers due to any other reason, the revision should be to the account of the buyers. The buyers have the option to give their refusal to buy ferro-silicon during 1965-66."

The Tribunal observed that the terms showed that the parties agreed that the ferro-silicon supplied by the sellers should be exported to foreign countries with a view to build up the export market. The buyers were registered exporters. The Tribunal further noticed that at the time of the agreement the buyers had no foreign buyers in view and agreements, if any, between the buyers and the foreign buyers had not been produced in the cases. It held that there was no link between the export of the goods abroad and the sales under consideration and these sales were independent of the sales by the buyers to their foreign counterparts and could not be said to occasion the export. The Tribunal referred to the principles enunciated in *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, and the interpretation placed by the Supreme Court on the provisions of section 5(1) of the Central Sales Tax Act, 1956, and the expressions used therein and held that the facts and circumstances in the cases on hand were not distinguishable from those in that case, and following the said ruling held that the sales were not in the course of export. It was pointed out before the Tribunal that the goods were being dispatched packed in particular steel drums and with markings thereon of foreign destinations and also with an inscription. "The Products of India". The railway receipts for movement of the goods from Bhadravati to Madras Harbour which contained markings "Intended for Exports" were also relied upon. These were in conformity with the instructions of the buyers. On these circumstances, it was urged that the movement of the goods from Bhadravati to Madras Harbour was a part of the onward journey in the course of export and which occasioned the export. But the Tribunal did not

accept this contention. It pointed out that the sellers themselves did not participate in the export undertaken by the buyers and these were not cases where an agent of a foreign buyer entered into an agreement with the sellers and there was no link between the foreign buyers and the sellers and the buyers in these cases intervened between the foreign buyers and the sellers and became an intermediary having independent dealings with the sellers and the foreign buyers thus removing the link between the importer and the sellers. It held that the link was between the buyers and the foreign buyers and there was no link in the chain of export between the sellers and the foreign buyers. The Tribunal pointed out that in the case of the Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, , the compulsion to export was more than in the cases on hand and if the coffee was not exported such quantities could be seized while there was no such prohibition from not exporting and only a penalty was contemplated under clause 14 of the agreement if there was default in taking delivery of the goods.

6. For the petitioner it was urged before us that the Tribunal was wrong in holding that the sales were not in the course of export. Though the agreement dated 13th August, 1964, was to be effective until 30th April, 1965, it is common ground that the main terms continued to be effective for all the years under consideration. An addendum dated 7th April, 1965, specifically extended the agreement until 30th April, 1966. Apart from the circumstances pointed out before the Tribunal, it is pointed out that in this addendum it was agreed that "no sales tax shall be collected from the buyers as the sales are intended for exports." Inter alia, clause 5 of the original agreement was modified in regard to the prices of particular grades of ferro-silicon and the addendum contained the following provision :

"No sales tax shall be collected from the buyers as the sales are intended for exports. Buyers undertake to furnish the sellers customs certificates certifying the export of ferro-silicon and such certificates shall be sent as and when the exports are completed. Buyers indemnify the sellers against any collection of sales tax by the Mysore Government in the absence of production of the customs certificates within six months from the date of despatch by the sellers. Sellers undertake to claim the necessary exemption under law and the buyers' responsibility shall cease the moment the customs certificate of export is sent to the sellers."

Reference was made to the ruling of the Supreme Court in The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., , and it was submitted that the decision in the Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, was based on the particular facts therein and was distinguishable. It was argued that in The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., , it was held where under the terms of a contract of sale, the buyer is required to remove the goods from the State in which he purchased the goods to another State, and when the goods are so

moved, the sale in question must be considered as a sale in the course of inter-State trade or commerce and the same interpretation should be applied to the purchase "in the course of export". For the respondent, the reasoning in the order of the Tribunal is relied upon and it is contended that in the light of the principles enunciated in the *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, the conclusion reached is correct.

7. The argument of the learned counsel based on the terms in the addendum, referred to above, can be of no avail and cannot be accepted. Merely because the parties to the contract agree that the sales are in the course of export and, therefore, the sales tax was not going to be collected, the sale cannot be treated as one in the course of export. The sales must come within the purview of sales in the course of export under law.

8. The case dealt with in *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd.*, arose under the Bihar Sales Tax Act and the question for consideration was whether the sales were inter-State sales and, therefore, exempt from sales tax under that Act. In such inter-State sales, the turnover is exempt from sales tax in the State from which the goods are moved, but would be exigible to tax in the State of destination. In the case of sales in the course of export, the sales are totally exempt and immune from sales tax imposition. The concept of sales in the course of export is based on a technical interpretation and the definition in section 5(1) of the Central Sales Tax Act. Such exemption is to be construed strictly and unless the conditions are fully satisfied, the exemption cannot be granted.

9. In our opinion, the facts and circumstances in the cases on hand cannot be distinguished from those in the *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, if at all the facts and circumstances in that case were stronger than in the cases on hand. The coffee put up for auction was meant only for export. They were earmarked for export and could not be diverted for home market. There was provision for seizure of the goods if not exported and sold inland. Even the Supreme Court held that the sales in auction were independent of the ultimate sales which resulted in export. In the cases on hand, there is no prohibition regarding the sale of ferro-silicon in the home market. There was no question of seizure of the goods if not exported or sold in India. Clause 14 of the agreement only provided for a penalty in case the goods were not taken delivery within time. The terms of delivery were f.o.r. Bhadravati and, once the goods were loaded into the wagons, the title to the goods passed to the buyers. The ultimate object was no doubt export. But that by itself cannot make the sale to the buyers as in the course of export. It cannot be said that these sales occasioned the export. The sales that would occasion the export would be the sales arranged by the buyers with their foreign buyers. This would be independent of the sale between the sellers and the buyers and distinct from them. There is no integral chain between the sales between the sellers and the buyers, and the subsequent sales to the foreign buyers. The interposition of the

buyers would break the chain.

10. We may notice in this context the ruling of the Supreme Court in *The State of Madras Vs. Davar and Co. etc.*, where the sales involved were effected by transfer to the buyer of documents of title and the expression "customs frontiers of India" was construed. The sales were effected by transfer of documents of title after the imported goods had reached the Indian harbours and it was held that such sales could not be called as effected in the course of import. The proclamation in regard to the extent of territorial waters of India was relied upon and it was held that the sales had taken place after ships carrying the goods had crossed the territorial waters and, therefore, were not exempt. This implies that the course of import stops as soon as the limit of territorial waters is crossed. The course of export or import is thus a restricted one.

11. In *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd.*, , the decision of the *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, was explained thus at page 150 :

"In the *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, , this court found that what was insisted on by the Coffee Board was that the coffee set apart for the purpose of export must be exported; it was not incumbent on the purchasers at the auction to export that coffee themselves; they may do it themselves or they may sell it to somebody who may export it outside India. On that basis this court came to the conclusion that the sales effected by the Coffee Board are not sales in the course of export; they are only sales for the purpose of export"

In our opinion, no support can be found from this decision for the contention urged for the petitioner.

12. The tests laid down by the Supreme Court in the *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, for determining whether the sales are in the course of export are expressed thus :

"The phrase "sale in the course of export" comprises in itself three essentials : (i) that there must be a sale, (ii) that goods must actually be exported, and (iii) the sale must be a part and parcel of the export. Therefore either the sale must take place when the goods are already in the process of being exported which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The word "occasion" is used as a verb and means "to cause" or "to be the immediate cause of". Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is bound up with it. The word "course" in the expression "in the course of" means "progress or process of" or shortly "during". The phrase expanded with this meaning reads "in the progress or process of export" or "during export". Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person

exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two, for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer.

Therefore the tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer.

The course of export may be established by agreement or by force of law. To be the former the agreement between the seller and the buyer must envisage an export out of India who then become exporter and importer respectively. By force of law a person selling the goods may be compelled to sell them only in an export sale but that too is not essentially different from the first. In either case there is a seller and a buyer who by reason of the sale also become exporter and importer respectively. Any other buyer who is not himself the importer buys for export even if export ultimately results. It is to bring out these results that Parliament has recognised only two cases of sale in the course of import : (a) where the sale is effected by a transfer of documents of title to goods after the goods have crossed the customs frontiers, that is to say, the goods are already on the way to the importer and (b) when the sale itself causes the export to take place, that is to say, the exporter and importer negotiate and complete a sale which without more would result in the export of the goods. No other sale can qualify for the exemption u/s 5(1) read with article 286(1)(b)."

At page 543 of the Reports it was observed :

"One of the indicia of a sale in the course of export is the compulsion to export because the sale which is protected must be itself inextricably bound up with the export. If this were not so a chain of sales each making a mere condition for terminal export, will be exempted and the distinction between a sale for export and a sale in the course of export will completely disappear."

Applying these tests to the facts and circumstances in the cases on hand, it is clear that the buyers purchased the goods on their own from the sellers to export in their own turn to foreign buyers. It is difficult to say on the terms and conditions in the agreement in the cases on hand that there was a compulsion to export, though it can be said that the ultimate object was to promote export of the commodities produced by the sellers. In these circumstances, the sale from the sellers to the buyers was only a sale for export. This sale cannot be said to be inextricably bound up with a particular export and, therefore, cannot be said to be in its course.

13. We, therefore, are of opinion that the view taken by the Tribunal that the

sales were not in the course of export was correct. The revision petitioners are accordingly dismissed with costs. Advocate's fee Rs. 250. One set.

14. Petitions dismissed.