

(1972) 07 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No's. 1118, 1119 and 1630 of 1970

Radhakrishna Mills Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-07-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 9

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1973) 32 STC 166

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : C.S. Chandrasekhara Sastry, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—In these three writ petitions, a common question arises. The three petitions relate to orders of revision made by the assessing officer said to be in exercise of his powers u/s 16 of the Tamil Nadu General Sales Tax Act read with Section 9 of the Central Sales Tax Act. The years of assessment are 1964-65, 1965-66 and 1966-67. As the facts are almost similar except for the difference in the numerals, I shall refer to the facts in Writ Petition No. 1630 of 1970.

2. The case of the revenue is that for the assessment year 1966-67, a certain turnover has escaped assessment. The petitioner has some depots particularly in Calcutta and Bombay. But it carries on business in the State of Tamil Nadu. The petitioner-mills was originally assessed to Central sales tax by an order of the Joint Commercial Tax Officer, Singanallur Division, Coimbatore, on 14th December, 1967. From the records it is seen that the assessing officer went into the account books, the sale bills and all other necessary materials and granted exemptions in the matter of payment of Central sales tax on the foot that certain sales were made outside the State. Later, the petitioner was informed once again

by the assessing authority by a notice dated 24th January, 1970, that the turnover in respect of which exemption was granted and gained by the petitioner was not exemptible in the eye of law, as according to the assessing authority who was revising the original assessment, there were contracts for the sale of yarn at the Calcutta depot to which destination, goods were sent and such despatches were in fulfilment of those contracts. In short, the devising authority was of the view that the contract occasioned the movement of the goods within the meaning of Section 3(a) of the Central Sales Tax Act and that this was omitted to be noticed by the first assessing authority and, in that view, there is an escapement of assessable turnover. The petitioner was at pains to point out from time to time to all such and similar notices issued by the assessing authority that all available and necessary records were placed even at the first instance before the first assessing authority, that there were indeed contracts with the depot agents at Calcutta which had to be fulfilled, but at no point of time the despatch of goods was intended to fulfil a particular contract which was on hand with the depot agent and that ultimately the depot agent had the discretion to distribute the goods received by him from the petitioner-mills in a manner convenient to him. The petitioner once again, having regard to the lapse of time, placed such available materials before the revising authority to satisfy him that such was the *modus operandi* adopted with respect to all the depots including the one at Calcutta. After perusing the materials so produced, but without agreeing with the petitioner and negating all the objections to the proposal to revive, the respondent passed the impugned order on 24th April, 1970. Fairly enough, the respondent has summarised the gist of the documents produced before him at the time of the purported revision. The documents produced showed the course of transactions as follows :

- (1) Bulk quantities of yarn were despatched by Radhakrishna Mills Ltd., Coimbatore.
- (2) The goods were despatched to the Radhakrishna Mills Ltd., Calcutta and not to any particular person or buyer.
- (3) The goods were cleared by their agents at Calcutta and expenses were debited to them.
- (4) After clearance, the goods were sold at the discretion of the agents to a few of the several buyers with whom contracts were pending as on the date of despatch.

3. After having noticed that such was the reflection from the records, the assessing authority thought that the goods moved pursuant to definite contracts of sale and that, therefore, there was an escapement of assessment and after interpreting certain conditions of the contract which the depot agent entered into with the prospective buyers at Calcutta, came to the conclusion that the transactions should be deemed to be inter-State sales within the meaning of Section 3(a) of the Central Sales Tax Act and not out of State sales, which

automatically gain an exemption from being included in the assessable turnover under the Central Sales Tax Act.

4. I have already refer upon the petitioner to pay such Central sales tax.

5. On the facts of the case, I am thoroughly convinced that the revising authority was under a misconception that the dealings between the petitioner-mill on the one hand and its depot agents at Calcutta, Bombay and other places on the other projected a relationship of a seller and a buyer and in consequence, those transactions of sales are inter-State sales liable to tax under the Central Sales Tax Act. I have already referred to the synopsis of facts as rendered by the revising authority himself. It shows that at no time the goods moved from the State of Tamil Nadu for the purpose of satisfying a definite contract and for the purpose of which goods so despatched had been delivered to a particular known person under a defined contract. The course of transaction appears to be that the depot agent, having regard to the nature of the goods, secures various contracts from time to time and keeps such contracts for himself with the object of executing them himself. But as such contracts are entered in stereotyped forms, conditions which are unnecessary and which are inapplicable to the stated and admitted facts of this case have entered into the records. These are the conditions which have created the confusion in the mind of the revising authority. The normal circumstance which cannot be disputed and which is the essential feature of the bargain between the petitioner-mill on the one hand and its depot agent on the other is that the goods were sent in bulk without knowing whether the whole or any part of such goods was to be delivered to any particular person; and the appropriation of the goods took place outside the State and the contracts themselves were completed, in the popular as well as in the legal sense, outside the State of Tamil Nadu. Indeed, this is seen by the revising authority himself. I have already referred to this. But I would like to repeat this distinguishing feature in this case as noticed by the revising authority himself. The depot agent at Calcutta after clearance of the goods sells the same at his discretion to a few of the several persons whose contracts were pending as on the date of receipt. It is, therefore, clear that it is the depot agent who appropriates the goods towards particular contract which he wishes to perform at the other end without reference to his principals in the State of Tamil Nadu. There is, therefore, undoubtedly an intra-State sale in the State of West Bengal and certainly an out of State sale so far as the State of Tamil Nadu is concerned.

6. Two decisions were placed before me by Mr. C. S. Chandrasekhara Sastry, learned counsel for the petitioner, which almost clinch the issue. In *English Electric Company of India Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 32, a Division Bench of this Court, to which I was a party, had occasion to deal with a case where despatches were made from the State of Tamil Nadu to Bombay. But the distinguishing feature which distinguishes that case from the instant case is that the buyers have been apprised of the correct position as to the place of manufacture and as to the person for whose benefit the contract is

entered into, etc. There was, therefore, a sufficient nexus between the person who consigned the goods from the State of Tamil Nadu and the ultimate buyer in the State of Maharashtra, in the sense, that from the circumstances, a link could be established between the producer and the ultimate consumer of the goods in that case. Having regard to such a link, the court observed as follows :

If the pith and substance of the deal and the relative correspondence merely disclose the name of the ultimate buyer without there being a covenant that the movement of the goods is not only not relatable to a contract of sale, but also to a known buyer, it could hardly be said that the sale is of an inter-State character within the meaning of Section 3(a) of the Central Sales Tax Act.... If there is a conceivable link between the movement and the buyer's contract and if in the course of inter-State movement, the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus as above is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another.

7. All conceivable essential elements of inter-State sale are absent in the instant case. There is no link between the movement and the buyer's contract. The petitioner does not know to whom the goods are going to be supplied pursuant to the contract entered into between the depot agent at Calcutta and the buyer. There is no nexus between the movement of goods and the contract of purchase by such a buyer. There is no ascertainment of the goods at this end and it is admitted that the appropriation and ascertainment are made in the State of West Bengal. All these elements which are not disputed are sufficient to hold that the sales in question are out of State sales and which the first assessing authority rightly appreciated and granted the legal exemption to tax to the petitioner. To a similar effect is the decision in *Cement Distributors (P.) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 86.

8. Learned Government Pleader is unable to point out to me, as at present, any law with binding authority to the contrary. Having regard to the well-laid principles in the two decisions cited *supra*, it is clear that the revising authority had no jurisdiction to revise the assessment which was concluded not only because that the data or materials scrutinised by him do not warrant such a revision, but also because the records prove that the entire commercial activity of sale took place beyond the territorial limits of the State of Tamil Nadu.

9. Mr. C. S. Chandrasekhara Sastry also refers to me incidentally that the revising authority, which in this case is the assessing authority, has no jurisdiction to revise and it is only the appellate or the revisional authority such as the Deputy Commissioner who could undertake such a revision. In the view that I am taking, it is unnecessary for me to go into this question and this is left open.

10. In the result, the writ petitions are allowed and the rules nisi are made absolute. There will be no order as to costs in all the petitions.