
(1975) 04 AP CK 0002

In the Andhra Pradesh High Court

Case No : T.R.C. No's. 29 of 1974 and 8 and 9 of 1975

Raju Industries and Another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 11-04-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4, 8, 9

Citation : (1975) 36 STC 297

Hon'ble Judges : Shiv Shanker, J; Ramachandra Rao, J

Bench : Division Bench

Advocate : N. Ramamohana Rao, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

1. In these three revision petitions, a common question arises and hence they can be disposed of by a common order.

2. The petitioner herein are dealers in graphite and crucibles in East Godavari District. Their agents booked orders from purchasers outside the State and in pursuance of the said orders goods were despatched under self railway receipts and the said railway receipts were sent to the bankers for delivery of the said documents against payment by the purchasers and issue of C forms in the other State. The petitioners claim that the sales in respect of the transactions were sales outside the State and therefore they could not be subject to tax under the Central Sales Tax Act. This contention was negated by the Commercial Tax Officer and the Assistant Commissioner, as well as the Tribunal. Hence the revision petitions.

3. In these revision petitions, it is contended by Sri N. Ramamohana Rao, the learned counsel for the petitioners, that the transactions cannot be said to be sales in the course of inter-State trade and they were sales completed outside the State and hence they are not exigible to tax under the Central Sales Tax Act.

The learned counsel relied upon Sections 3 and 4 of the Central Sales Tax Act and contended that unless it is established that the movement of the goods was occasioned by the sale, they cannot be said to be inter-State sales. The argument of the learned counsel is that the agents merely register the orders placed by the purchasers outside the State and the agents in their turn inform the petitioners and thereafter the goods are sent by rail to the destinations outside the State and that the railway receipts along with the other documents are sent to their bankers outside the State and the bankers deliver the documents to the purchasers on payment of the amount; therefore at the time the goods moved there was no completed contract of sale and, therefore, the transactions do not fall within Section 3(a) of the Act.

4. But we do not think that there is any force in this argument. The order form produced before us clearly shows all the terms and conditions of the sale agreed to between the purchaser and the agents of the petitioners. The items are specified, the prices are fixed and the mode of transport is also provided for as by rail. The purchasers also agree to bear any loss occasioned by reason of their failure to take delivery of the goods. Thus all the ingredients of a contract of sale are contained in this order form itself. It is pursuant to this placing of the order by the purchasers that the goods are despatched by the petitioners by rail. Therefore the movement of the goods is a covenant in, or the incident of, the contract of sale and it is the sale that occasioned the movement of the goods.

5. Sri N. Ramamohana Rao, the learned counsel for the petitioners, contended that the mere fact that the agent booked the orders does not amount to acceptance of the offer of the purchasers and that unless the petitioners had actually sent a communication to the purchasers about the acceptance of the offer contained in the order form, it could not be said that there was a completed contract of sale. But we are not inclined to agree with this submission. The moment the purchasers placed the orders and the agent accepted and took the offers and then registered the same, the contract had come into existence and if in pursuance of that completed contract of sale, movement of goods is occasioned, they fall within the description of sales in the course of inter-State trade.

6. Even alternatively the moment the petitioners booked the goods by rail and sent the documents to the bankers for delivery to the buyers on payment of the bill amounts, it could be said that there was acceptance of the contract because the order form shows that the buyers also prescribed the mode of transport, i.e., free on rail. Thus, the buyers constituted the railways as their agents and the moment the goods are booked by rail and the railway receipts are despatched to the bankers for delivery to the buyers, it can be said that there was acceptance of the contract, and even at that stage, there was a completed contract which occasioned the movement of the goods. Therefore the sales would constitute inter-State sales and not outside sales.

7. Sri N. Ramamohana Rao, the learned counsel for the petitioners, strenuously

contended relying upon the rulings in *Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes* 1970 26 S.T.C. 354 (S.C.) and *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, that the sales do not constitute inter-State sales ; but those rulings have no application because in those cases the goods were not sent directly to the buyers but only to the agent of the dealers in the other State and it is the agent that delivered the goods after separating the same from the bulk of the goods. Therefore it could not be said in those cases that the movement of the goods was occasioned by the sale.

8. Sri N. Ramamohana Rao sought to contend that the property in the goods passed in the other State and not in this State inasmuch as the goods were delivered to the buyers in the other State. But in view of the provisions of Sections 3(a) and 9 of the Central Sales Tax Act, the place of delivery and the place where the title in the goods passes are not relevant: Vide *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*,

9. It is next contended by Sri Ramamohana Rao that the sale should have preceded the movement of the goods, but we do not think this submission can be accepted. It is enough if the movement of the goods is the result of a covenant or an incident of the contract of sale and it is not necessary that the sale should have preceded the movement of the goods : Vide *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*,

10. We therefore agree with the view taken by the Tribunal that the sales in question constitute sales in the course of inter-State trade and fall within Section 3(a) of the Act.

11. Alternatively, it is contended by Sri D.V. Sastry, the learned counsel for the department, that the sales in question constitute sales in the course of inter-State trade inasmuch as the sales are effected by transfer of documents of title during their movement from one State to another and hence they fall within Section 8(b) of the Act. But Sri Ramamohana Rao submits that this contention was not raised before the assessing authority or the Tribunal and that even otherwise it cannot be said that the railway receipt is a document of title, and therefore the provisions of Section 3(b) are not attracted. But inasmuch as this question was not raised before any of the sales tax authorities or the Tribunal, we are not inclined to go into this question and express any opinion on the contentions urged by both the learned counsel on this point.

12. In the result, all the revision petitions are dismissed with costs. Advocate's fee Rs. 50 in each case.