

(1972) 12 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 11 of 1971 and W.P. No. 39 of 1971

Rallis India Ltd.

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 4
Constitution of India, 1950 — Article 304

Citation : (1974) 34 STC 326

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Srinivasan, for S.V. Desikan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—Both these cases related to the same subject-matter. Messrs. Rallis India Limited, Madras, is the petitioner in both. For the

assessment year 1966-67, it was assessed under the Madras General Sales Tax Act, 1959, to a taxable turnover of Rs. 2,31,63,560. The said

taxable turnover included a sum of Rs. 16,70,044.55 being the turnover on last purchase of cotton within the State. The petitioner objected to the

inclusion of the said turnover contending that, cotton being declared goods when it is sold inter-State, the tax levied and collected under the

Madras General Sales Tax Act, 1959 (hereinafter called the State Act), has to be refunded u/s 4-A of that Act, that, therefore, once the said

declared goods are sold inter-State, there cannot be a levy and collection on the last purchase of those declared goods for, even if the levy and

collection is made it has to be refunded later and that the levy and collection of the Central sales tax on the inter-State sales can never be a

consideration for refund of tax paid under the State Act, which the assessee is statutorily entitled to u/s 15(b) of the Central Sales Tax Act, 1956

(hereinafter called the Central Act). These contentions of the assessee had been rejected by the assessing authority.

2. Against the order of assessment so far as it relates to the turnover on last purchase of cotton, an appeal was filed before the Appellate Assistant

Commissioner. That appeal, however, failed. The assessee took the matter on appeal to the Sales Tax Appellate Tribunal. The Tribunal held that

the assessment, so far as it relates to the turnover on last purchase of cotton within the State u/s 4 cannot be challenged and that the claim for

refund of the tax paid on that turnover is not sustainable as it has not fulfilled the conditions imposed by the provisions of Rule 28(1) of the Madras

General Sales Tax Rules, 1959. Against the order of the Tribunal the assessee has filed T. C. No. 11 of 1971 u/s 38 of the State Act.

3. The assessee has also filed the above writ petition seeking a writ of mandamus to the respondent to refund the sum of Rs. 33,400.89 being the

tax collected from them for the year 1966-67 on the turnover of last purchase of cotton within the State, Thus, the two questions that arise in these

cases are: (1) whether the assessee is liable to pay tax on its last purchase of cotton within the State u/s 4, and (2) whether the assessee is entitled

to the refund of Rs. 33,400.89, the tax paid on its last purchase of cotton within the State without showing that it has paid the Central sales tax on

the same goods.

4. So far as the second question is concerned, it is true that the Tribunal relied on Rule 23(1) of the Tamil Nadu General Sales Tax Rules, 1959, in

support of its view that the assessee is entitled to a refund only if it has paid the tax under the Central Act and, naturally, the assessee has

challenged the validity of that rule. But in view of the amendment to Section 15(b) with retrospective effect from 1st October, 1958, by Central

Act 61 of 1972, the petitioner is not entitled to claim refund of tax paid under the State Act as he has not admittedly paid the Central sales tax on

the inter-State transactions in the same goods. In view of this change in the law it is unnecessary to go into the validity of the said rule.

5. As regards the first question it is the assessee's contention that no tax at all can be levied u/s 4 of the State Act in respect of declared goods

such as cotton when once the same goods are sold inter-State by the assessee itself, and that the assessment to tax under the State Act on the last

purchase of cotton in the State cannot legally be sustained. The learned counsel for the assessee develops his point thus: Declared goods are liable

to levy of tax only once, that once declared goods are shown to have been sold inter-State, they are liable to charge only under the Central Act

and cannot be brought to charge under the State Act. According to the learned counsel, once it is seen that the declared goods have been sold

inter-State, there cannot be any levy at all under the State Act. It is also contended by the learned counsel that Section 6 of the State Act read

along with Section 15(b) of the Central Act virtually takes declared goods out of the purview of taxation under the State Act, that inter-State sales

effected by the assessee should also be treated as an inside sale for the purpose of the State Act and, in that case, the assessee will not be the last

buyer in the State but the out-of-State purchaser from the assessee will be the last buyer. The learned counsel seeks support for his submissions

mainly from the decisions of this court in *Madura South India Corporation (P.) Ltd. v.*

6. Joint Commercial Tax Officer [1968] 21 S.T.C. 163 and that of the Supreme Court on appeal in *State of Tamil Nadu v. Madura South India*

Corporation (P.) Ltd. [1972] 30 S.T.C. 401 This court in *Madura South India Corporation Private Ltd. v. Joint Commercial Tax Officer*¹ dealt

with a case of an assessee having a head office at Madras, who purchased yarn from Madura Mills for delivery to its branches outside the State

and thereafter brought the same to Madras and sold them inside the State. The question arose as to whether the sales made locally of yarn

transferred to the Madras State from the stocks of yarn in the States of Andhra Pradesh and Kerala referable to inter-State sales already charged

to tax are again liable to tax as first sales in the State of Madras. Considering that question this court expressed the view thus:

In our opinion, where the terms of a first sale are such that it may well be said to be an inside sale but it bears also the characteristics of an inter-

State sale and, therefore, it has been taxed under the Central Act, that sale being physically a first sale inside the State out of which the interstate

sale has been carved out, it should follow that as the tax levied on the inter-State sale must prevail, there will be no tax liability on the same sale

under the local Act on the ground that it is an inside sale. Logically the result will be that when the goods pursuant to the inter-State sale have been delivered outside the State but brought back into the State and then sold, that sale, as we consider, cannot in fact or in law be regarded as the first sale within the meaning of the Second Schedule to the local Act. What the position will be when a sale is an inside sale within the meaning of Section 4 of the Central Act and is also an inter-State sale, because it occasioned the movement of the goods to another State and out of the goods delivered outside the State pursuant to the inter-State sale, a part has been brought into the State and sold again as an inside sale, in the sense that every incident including delivery is in the State, we need not decide on the facts of this case. Possibly, it may even be argued in that case that once a sale is held to be an inside sale u/s 4 but it is also an inter-State sale u/s 3, there cannot be a subsequent sale inside the State which can be regarded as a first sale for the purpose of the local Act.

7. Ultimately, this court held that the sales of yarn to local dealers by the assessee following its inter-State purchases from Madurai were not first sales in this State coming within the single point scheme of tax under the State Act. The above decision was affirmed by the Supreme Court in

State of Tamil Nadu v. Madura South India Corporation (P.) Ltd. [1972] 30 S.T.C. 401 The learned counsel for the assessee relies on the

observations of this court and of the Supreme Court in the said decisions for his submissions that an inter-State sale can also be treated as an inside

sale in the context of the single point scheme of tax under the State Act. But we are not able to understand the above decisions as establishing the

principle that inter-State sales also could be treated as inside sales for the purpose of the State Act, From the facts of that case it appears that the

terms of the first sale by the Madura Mills to the assessee were such that it was only an inside sale. But it took the characteristics of an inter-State

sale in view of the goods having been delivered to the assessee's depots situate outside the State. Further, the court also took note of the fact that

tax had been levied under the Central Sales Tax Act on the sale by the Madura Mills to the assessee as an inter-State sale, that Section 15(b)

prohibits any further sale of the goods being taxed and that the first sale having attracted tax under the Central Act and the goods having thus

suffered tax, there is no further and subsequent liability on the assessee to pay a further single point under the State law on its local sales. If, as

contended by the assessee, the court had held that an inter-State sale is always an inside sale, then it is unnecessary for the court to go into the

question of applicability of Section 15(b). As a matter of fact, the decision in Madura South India Corporation Private Ltd. v. Joint Commercial

Tax Officer [1968] 21 S.T.C. 163 has been explained in a later decision in Anwaraula A.M. Ghouse and Co. v. State of Tamil Nadu [1971] 28

S.T.C. 610. In a context similar to the one in the present case, the same learned counsel relied on the observations in Madura South India

Corporation Private Ltd. v. Joint Commercial Tax Officer [1968] 21 S.T.C. 163 and contended that an inter-State sale is also an inside sale and,

as such, the seller under the inter-State sale cannot be the last purchaser within the State and that, therefore, the seller in an inter-State transaction

cannot be taxed on his purchase under the single point scheme of tax of the State Act. That contention was rejected in these words:

It is not contended that the local purchases of raw hides and skins are not liable to tax under item 7(a) of the Second Schedule at the prescribed

rate of tax. But it is said that: (1) Sections 4, 6 and 9 of the Act in so far as they charge inter-State sales are invalid, and (2) that item 7(b) being

violative of Article 304(a) of the Constitution, it is invalid, and if that be so, Clause (a) of item 7 is not severable and should, therefore, fall with

Clause (b). We find no substance in the first of the grounds. Only we have got to read the language of the three Sections to reject the contention.

None of those Sections charges inter-State sales. It was pointed out that an inter-State sale was equated to an inside sale and on that basis, it

should be taken that these Sections charged also inter-State sales. We do not think that any case has laid down that proposition that an inter-State

sale is also an inside sale. But what has been held by this court is that for the purpose of giving a locus to an inter-State sale, with reference to the

components of sale, the concept of inside sale has been adverted to, but not to equate inter-State sale to a local or intra-State sale.

8. In the above decision, the earlier decision in Madura South India Corporation Private Ltd. v. Joint Commercial Tax Officer [1968] 21 S.T.C.

163 has been explained that for the purpose of giving a locus to an inter-State sale with reference to the components of sale, the concept of inside

sale had been adverted to, but not to equate inter-State sale to a local or intra-State sale. Apart from the above decision in Anwaraula AM,

Ghouse and Co. v. State of Tamil Nadu [1971] 28 S.T.C. 610 explaining the earlier decision in Madura South India Corporation Private Ltd. v.

Joint Commercial Tax Officer [1968] 21 S.T.C. 163, a perusal of the statutory provisions in Sections 4, 6 and 9 of the State Act would show that

in respect of declared goods the tax payable by a dealer is only on the sales or purchases inside a State, as the case may be, preceding the inter-

State sale or purchase at the point specified against each in the Second Schedule. In this case the assessee has purchased cotton locally and then

sold inter-State to dealers outside the State. As per Section 4 read with Section 6 single point levy under the State Act can relate only to sales or

purchases other than inter-State sale effected by the assessee. If that inter-State sale is excluded as it should be u/s 6 from the series of sales

coming within the single point scheme of taxation, the assessee being the last purchaser of cotton is liable to tax u/s 4 read with Schedule II. It is

not, therefore, possible for us to accept the contention of the learned counsel for the assessee that the assessee is not the last purchaser in the

State. The learned counsel is also not right in his contention that Section 6 of the State Act will be inapplicable to sales of declared goods. If that

contention were to be accepted, all declared goods will be outside the scope of the charge under the State Act. The learned counsel refers to the

following observations in Madura South India Corporation Private Ltd. v. Joint Commercial Tax Officer [1968] 21 S.T.C. 163:

The provisions of Section 15 make an inroad into the texture of the local law, so that Section 6 of the local Act will have to be read subject to and

in conformity with the provisions of Section 15 and the policy underlying that section. In other words, Section 6 will be inapplicable to sales of

declared goods.

9. But we find that those observations came to be made in the context of the stand taken by the revenue that notwithstanding the levy of tax on

declared goods under the Central Act, Sections 4 and 6 of the State Act will enable a further single point tax being levied on the goods if they are

brought again into the State and sold. As already stated, these observations have been explained in the subsequent decision in Anwaraula AM.

Ghouse and Co. v. State of Tamil Nadu [1971] 28 S.T.C. 610, wherein it has been specifically expressed that Section 6 does not deal with an

inter-State sale and that an inter-State sale cannot be equated to an inside sale and brought within the terms of Section 6.

10. We are also not inclined to accept the assessee's contention that at all events there can be only one levy on declared goods. It is true that

Section 15 of the Central Act contemplates declared goods suffering tax only at one stage but that section itself specifically contemplates more than

one levy on declared goods and refund being made in respect of tax levied at all other stages except the one levied under the Central Act. This

position is made clear in the decision of this court in Sitalakshmi Mills Ltd. v. Deputy Commercial Tax Officer [1968] 22 S.T.C. 436, where it has

been pointed out that Section 15 provides that the State Government may levy a tax on declared goods at any stage under the local laws but only

on condition that if the goods were sold in the course of inter-State trade or commerce the tax, if any, collected on the local sale of such goods has

to be refunded. Therefore, the petitioner's extreme contention that there can be only one levy on the declared goods under the Central Act and

that they cannot be brought to charge at all under the State Act cannot at all be sustained.

11. The result is the tax case and the writ petition are dismissed with costs. Counsel's fee Rs. 250 each.