
(1969) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 8 of 1965

Ramchandra Rampratap

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 16-09-1969

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1971) JLI 525 : (1970) 26 STC 334

Hon'ble Judges : K.L. Pandey, J; A.P. Sen, J

Bench : Division Bench

Advocate : R.K. Tankha, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Judgement

A.P. Sen, J.—The question that arises in this reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, is whether, in the facts and circumstances of the case, the sales amounting to Rs. 2,74,965.77 were inter-State or intra-State sales.

2. The facts stated by the Tribunal are these: The assessee, Messrs Ramchandra Rampratap, Satna, is a registered dealer, dealing in foodgrains and oil-seeds. During the financial year 1959-60, the assessee claimed that its sales of oil-seeds to a Nagpur merchant worth Rs. 2,74,965.77 were sales in the course of inter-State trade or commerce and, therefore, not taxable u/s 18(4) of the Madhya Pradesh General Sales Tax Act. The nature of these transactions was that the Nagpur buyer gave to the assessee a standing instruction for the purchase and supply of the goods to him. Pursuant thereto, the assessee purchased the goods in question appropriating them to the account of the Nagpur purchaser debiting him with the purchase price, adhat etc. Intimation of the purchases were in due course sent by it to the Nagpur merchant and on receipt of instructions from him, it sent the goods to parties outside the State. Such despatch instructions were received either on phone or by letters or telegrams. Both the revenue as well as the Tribunal held against the assessee.

3. By an earlier order dated 15th November, 1967, this court has made a direction in terms of Section 44(4) requiring the Tribunal to submit a further statement of the case. It was observed :

In such a case, the real question is whether the movement of goods outside the State took place in pursuance of the contract of sale with the outside buyer or it took place as a result of a subsequent direction given by the aforesaid outside buyer either on account of a fresh contract made by him with a third party or otherwise. To determine that question, it is necessary to consider all the material terms of the contract on the basis of which the Board of Revenue took a particular view. Since the terms of the contract, as found by the Board of Revenue, have not been set out fully and precisely as required and the case, as stated, is not sufficient to enable us to answer the question, it must go back to the Board of Revenue for a fuller statement.

In compliance of this direction, the Tribunal has furnished us with a supplementary statement of the case setting out all the facts discernible from the record. It has been accepted before us that there was no written contract between the assessee and the Nagpur buyer from which the terms of the contract between the parties could be determined. As regards the other documents, the Tribunal had noticed the assessee to appear for assisting it to draw up a further statement of facts, but despite notice the assessee preferred to remain absent. We have reasons to believe that the assessee has deliberately withheld the relevant documents like the account books, bill-books, sales tax register, railway register and the correspondence pertaining to the contract in question, because their production was felt by the assessee to be detrimental to its interest.

4. Nevertheless, the facts are really not in controversy. In dealing with the transactions, the first appellate authority stated :

From the records, it is found that the appellant received order for the purchase and supply of goods from Ramkishan Agarwal of Nagpur. Pursuant to these contracts of sales, the appellant started purchasing the oil-seeds in the market and the goods purchased were appropriated to him by debiting them to his account. The purchase prices with hamaly charges and his adhat were debited to his accounts and the appellant was duly informed of the same. Their unconditional appropriation had the effect of passing of the property to Ramkishan Agarwal of Nagpur. The goods were despatched on the subsequent instructions from the Nagpur buyers. These instructions were received either on phone or by letters or by telegrams. These instructions were complied with and the goods were booked, the appellant acting as consignor and consignee. The railway receipts, bills and hundis were sent through bank. Hundis were drawn against the Nagpur buyers, The appellant stated that these instructions were treated by him as inter-State sales liable to be taxed under the Central Sales Tax Act and, accordingly, he obtained declarations in Form "C". He further stated that there is absolutely no privity of contract with the Madras parties and that he did

not know their names. According to him, there was a single sale by him to the Nagpur merchant for the purposes of delivery in Madras. He, therefore, argued that these transactions are inter-State sales u/s 3(a) of the Central Sales Tax Act, because there is a movement of goods from one State to another in consequence of a sale between him and the Nagpur merchant. It is contended that Section 3(a) of the Central Sales Tax Act is silent as to when the movement should take place and it only lays down that the sale must occasion the movement of the goods and, if the movement takes place, no matter when, it would be an inter-State sale. It is further argued that Section 3 does not lay down that the movement should take place from the State of the seller to the State of the buyer.

It is not disputed that there was a standing order for the purchase and supply of goods from the Nagpur merchant and the appellant purchased and supplied the goods from them and informed them about it. It means that the property in the goods had passed to the Nagpur buyer from the time of their unconditional appropriation. In all his correspondence, he has referred these goods as his goods. When the standing order or a contract of sale was entered into by the parties, the destination to which the goods should be sent was not specified or mentioned. Thus the transportation of the goods from this State to any other State was not a part of the contract. There was no stipulation in the contract of sale as to where the goods should be delivered, at the cost and at the instance of the seller. Hence, the contract of sale culminating in sales sought to be taxed did not provide for the delivery of the goods at any point outside the State or the movement of the goods from one State to another. After the goods had been sold, there is no doubt a correspondence with the buyer about the despatch of the goods and it seems that, after the goods had been purchased, the Nagpur merchant entered into a contract of sale with the Madras merchant whose identity he did not disclose to the appellant; but he simply asked the appellant to send the goods to the destinations in Madras, in order to fulfil his own contracts of sales with the Madras parties. Even though the appellant did not know the names of the Madras parties, it means that the goods have been sent to the Madras destinations, in order to fulfil the contracts of sales by the Nagpur parties with the Madras parties and not in consequence of sales with the appellant and the Madras parties. These despatch instructions, as stated above, were not a part and parcel of the contracts of sales between the appellant and the Nagpur merchant. Hence, there is no manner of doubt, that though there is a movement of goods from Madhya Pradesh to several places in Madras State, such movement is not in consequence of a contract of sale by the appellant with the Nagpur merchant. The movement has taken place in order to fulfil the contracts of sales or in consequence of sales by the Nagpur merchant to the Madras parties. So, it cannot be said that there is a movement of goods as a direct result of sale or as part or covenant of a contract of sale by the appellant with the Nagpur party. In view of this, the transactions sought to be taxed, cannot be treated inter-State sales, because the transactions have not occasioned the

movement of the goods.

5. What are the sales in the course of inter-State trade was explained by their Lordships of the Supreme Court in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, . The expression "occasions the movement of goods" in Section 3 of the Central Sales Tax Act, 1956, was interpreted by their Lordships to mean "in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale and the property in the goods passes in either State." This view has again been reiterated by them in *State Trading Corporation of India Ltd. Vs. State of Mysore*, and in *State of Mysore Vs. Guduthur Thimmappa and Son and Another*, . Applying these principles to the facts of this case, we are satisfied that the Tribunal was right in holding that the sales were not sales in the course of inter-State trade or commerce.

6. The real criterion to be adopted u/s 3 of the Central Sales Tax Act, as indicated by their Lordships in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, is-

In our view, therefore, within Clause (b) of Section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto: Clause (a) of Section 3 covers sales, other than those included in Clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale and property in the goods passes in either State.

The nature of transactions as found by the Tribunal in the case before us clearly shows that property in the goods sold by the assessee did not pass during their movement from the State of Madhya Pradesh to another State by any transfer of documents of title ; nor was the movement of such goods from the State to places outside was as a direct result of any covenant or incident of the contract of sale. On the contrary, the contract of sale with the Nagpur buyer had been completely carried out within the State of Madhya Pradesh itself wherein the price was received by sending the documents of title to the buyer. The subsequent movement of the goods to places outside the State, being on the despatch instructions of the buyer, must be regarded as having been effected by the Nagpur buyer, after property in the goods had passed to him, so that the sales were not sales in the course of any inter-State trade or commerce but were intra-State sales.

7. In that view, the answer to the question referred must be that the sales amounting to Rs. 2,74,965.77 were intra-State sales, liable to be taxed u/s 18(4) of the Madhya Pradesh General Sales Tax Act, 1958. The Commissioner shall have the costs of this reference. Hearing fee Rs. 100.