

(1993) 02 KAR CK 0007

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 121 of 1990

Ranjeet Trading Co.

APPELLANT

Vs

Commercial Tax Officer, Challakere Circle, Chitradurga District
and others

RESPONDENT

Date of Decision : 11-02-1993

Acts Referred:

Sale of Goods Act, 1930 — Section 2 (6)

Citation : (1994) 94 STC 134

Hon'ble Judges : M.M. Mirdhe, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The petitioner is engaged in the business of groundnuts and groundnut seeds. It is registered under the provisions of the Karnataka Sales Tax Act, 1957 (for short "the Act") as well as the Central Sales Tax Act, 1956 (for short "the CST Act"). According to the petitioner, it effected local sales of groundnut seeds of Rs. 2,91,969 covered by 3 bills bearing Nos. 410, 426 and 440 within the State of Karnataka during the assessment period October 25, 1984 to November 12, 1985. According to the petitioner, the goods were delivered in the State of Karnataka itself and the purchaser took possession of the same, as can be seen from the signatures of the purchaser's representative in the aforesaid bills. However, in the course of the assessment for the period in question the assessing authority held that the aforementioned sales were inter-State sales as the goods were despatched by the petitioner as part of the sale transactions. The petitioner's appeals to the appellate authority as well as to the Appellate Tribunal were not successful. Hence this revision petition.

2. We may also note that to some extent of the quantum of turnover the first appellate authority had granted partial relief to the petitioner.

3. It was held by the assessing authority as well as the appellate authorities that

the purchaser's Central sales tax registration number was mentioned in the sale bills issued by the petitioner and similarly the lorry number was also noted therein and this is a clear indication that the contract of sale envisaged despatch of goods by the seller. It was also held that one of the items sold was returned by the purchaser and the return of the goods was accepted by the seller, i.e., the petitioner; in case there was a completed sale, the seller would not have accepted the goods returned to it by the purchaser.

4. It was contended before us by the learned counsel for the petitioner that the burden is entirely on the Revenue to establish that there was a sale in the course of inter-State trade and that the despatch of goods was the result of the same; in other words, the contract to sell envisaged the movement of goods from one State to another. The learned counsel further pointed out that the sale bills were signed by the purchaser's agent, on which there is no dispute. These sales were under cash bills, which conclusively establishes the fact that the sales were effected immediately and the purchaser took delivery of the goods.

5. We are of the view that it is quite likely that the purchaser would have written to the seller to mention the lorry and CST numbers for the convenience of the purchaser and from this fact alone it cannot be inferred that the seller had despatched the goods as part of the sale bargain. It is also quite possible that the numbers were mentioned on behalf of the purchaser after the completion of the sale and possession was taken on behalf of the purchaser. These entries could have been made for the purpose of transportation on behalf of the purchaser.

6. The petitioner pointed out that having regard to the relationship between the seller and the purchaser, the return of the goods in one instance cannot be a ground to hold that sale was not completed earlier. A goods businessman, to maintain his goodwill, may accept return of the goods sold by him and this fact cannot be ignored by the court. The principle applicable to the fact-situation has been explained by several decisions.

7. In *Jeewanlal (1929) Ltd. Vs. Commercial Tax Officer, Lyons Range Charge and Others*, the Calcutta High Court pointed out that :

"..... a sale is an inter-State sale if the contract (a) contemplates or (b) necessarily involves the movement of goods from one State to another. In other words, the contract must be of a nature which necessitates inter-State movement of goods."

Again, at page 360 the court observed thus :

"..... If a sale or purchase occasions such movement it would be a sale or purchase in the course of inter-State trade or commerce. In our view, a sale or purchase "occasions the movement of goods" either when the contract for such sale or purchase itself contemplates or necessarily involves the movement. In other words, the movement must occur under the contract. When the movement

is not under the contract but due to reasons extraneous to the obligations under the contract, it cannot be said to be a movement in the course of inter-State trade or commerce."

In *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, , the Supreme Court also applied a similar test. The relevant facts and observations are found at pages 461 and 462 thus :

"It is clear from these averments that the goods were manufactured by respondent 1 in its factory at Faridabad, Haryana, in pursuance of specific orders received by its head office at Delhi. The contracts of sale were made at Delhi and in pursuance of those contracts, goods were manufactured at Faridabad according to specifications mentioned in the contracts. This, therefore, is not that type of case in which goods are manufactured in the general course of business for being sold as and when orders are received by the manufacturer for their purchase. Contracts of sale were finalised in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. Those were "future goods" within the meaning of section 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured to agreed specifications, they were despatched to the head office at Delhi for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The goods could as well have been despatched to the respective customers directly from the factory but they were sent in the first instance to Delhi as a matter of convenience, since there are better godown and rail facilities at Delhi as compared with Faridabad. The despatch of the goods to Delhi was but a convenient mode of securing the performance of contracts made at Delhi. Goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by respondent 1 only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers."

At page 463 again the position has been clarified by pointing out that :

"..... it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale."

8. The learned Government Advocate relied on the above observation to contend that in the instant case the authorities were justified in coming to the conclusion that the movement of goods was in pursuance of and incidental to the contract of sale. But, these observations will have to be read along with the principle that movement occasioned on sale of the goods. In other words, the requirement to despatch the goods was in integral part of the contract or, at any rate it was a necessary incident to the contract.

9. The position is made clear by the Supreme Court in *Commissioner of Sales Tax v. Suresh Chand Jain* [1988] 70 STC 45 sc. At page 47 the court observed thus :

"The principles of inter-State sales were well-settled. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, justice Venkatarama Ayyar had held that sale could be said to be in the course of inter-State trade only if two conditions concur, namely, (1) a sale of goods and (2) a transport of those goods from one State to another. Unless both these conditions were satisfied, there could be no sale in the course of inter-State trade. There must be an evidence that the transportation was occasioned by the contract and as a result goods moved out of the bargain between the parties from one State to another.

It is apparent from the facts found by the Tribunal that the assessee had since the very beginning been contending that he had effected only local sales.

He had also filed an affidavit stating that he had not effected any sales of tendu leaves during the course of inter-State trade and commerce and that he had never applied to the Forest Department for issue of form T.P. IV and that no such form was ever issued to him and the tendu leaves in dispute were not booked by him through railways or trucks for places outside U.P. The Tribunal found nothing to discredit this version of the assessee. The onus lies on the Revenue to disprove the contention of the assessee. The Tribunal found no material to do so. On these facts the Tribunal rejected the contention of the department.

On these contentions the Revenue went up in appeal before the High Court. The question posed before the High Court was as follows :

"Whether, on the facts and under the circumstances of the case, the Tribunal, Sales Tax, Kanpur, was legally justified in knocking off the tax imposed by the assessing authority ?"

The High Court addressed itself to the question whether the sales effected by the respondent were inter-State sales or not. On an analysis of the findings of the Tribunal, the High Court found that the goods were not moved out of U.P. in pursuance of an agreement for sale entered into between the assessee and their customers. The existence of T.P. form IV was taken note of but that did not conclude the matter."

The above observation makes it clear that there must be evidence that the transportation was occasioned by the contract and as a result goods moved because of the bargain between the parties, from one State to another and that the onus lies on the Revenue to disprove the contention of the appellant that it was not an inter-State sale.

In *Bhoorey Khan Glass Bangle Factory Vs. Commissioner, Sales Tax*, the Allahabad High Court applied the same principle and pointed out that if the seller despatches the goods after the sale as per the instructions of the purchaser and such a despatch was not part of the bargain of the sale, it was not a case of inter-State sale. At page 334 the Bench observed thus :

"..... In our opinion, the real test for determining when a sale occasions the movement of goods contemplated by clause (a) of section 3 of the Central Sales

Tax Act, is that the movement of goods should be as a result of an integral part of the contract of sale that the goods should cross the border from one State to another; it is not enough that the buyer takes delivery of the goods from the seller for the purposes of despatching them to another State, nor is it enough that the seller pursuant to the instructions of the buyer despatches the goods across the border to another State. The contract of sale must itself provide as an integral part of it that the goods shall be transported from one State to another."

10. In view of the above principles, we are of the view that the Revenue has not proved that the movement of the goods in the instant case was occasioned by the sale but the despatch was subsequent to the sale and either the goods were taken by the purchaser or they were despatched by the seller-petitioner as per the instructions of the purchaser subsequent to the completion of the sale.

11. The revision petition is accordingly allowed.

12. Petition allowed.