

(1982) 08 MAD CK 0057

In the Madras High Court

Case No : T.C. No's. 784 and 785 of 1977 (Appeal No's. 59 and 60 of 1977)

S.K. Shanmugavelu and Another

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-08-1982

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1983) 54 STC 12

Hon'ble Judges : R. Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K. Kumaraswami Pillai, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—These are two appeals filed by the two assesses u/s 34 of the Tamil Nadu General Sales Tax Act (hereinafter referred to as the Act) against the suo motu revisional orders passed by the Board of Revenue revising the appellate orders of the Appellate Assistant Commissioner, Pollachi, relating to the assessment year 1968-69. Since these tax cases arise out of the common order of the Board of Revenue and the issues involved in them are the same, they are dealt with together.

2. The appellant in T.C. No. 784 of 1977 was a dealer in cane jaggery and he reported a total and taxable turnover of Rs. 13,78,024.64 for the year ending 31st March, 1969, in the returns in form A-2. However, the dealer claimed exemption on a turnover of Rs. 6,86,230.36 at the time of check of accounts as being inter-State sales. His claim was not accepted by the assessing authority on the ground that the turnover on which exemption is claimed has not been shown to relate to inter-State sales for the following reasons. There is no prior contract of sale between the assessee and the out-of-State purchaser. That the assessee has not shown to have met the incidental charges for the movement of the goods from this State to the out-of-State purchaser. The assessee himself has not consigned the goods as a result of the prior contract of sale and the goods were

delivered only at the assessee's place of business to outside dealers. The non-resident buyers or their representatives had come to the place of the business of the assessee, effected purchase either in cash or credit and moved the goods themselves and the buyers or their agents have signed the bills in token of their having taken delivery of the goods. Though the sale bills in the name of the out-of-State buyers and also the obtaining of C forms are not the deciding factors, this will not convert what was local sale to inter-State sale.

3. The assessee preferred an appeal to the Appellate Assistant Commissioner against that portion of the order of assessment which rejected the assessee's claim for exemption in respect of Rs. 6,86,230.36 said to represent the inter-State sales of cane jaggery. The Appellate Assistant Commissioner, however, took the view mainly relying on the production of C forms and the affidavits of the out-of-State purchasers that they took delivery of the goods outside the State, that the assessee had despatched the goods to their destination in pursuance of the contract of sale, and that the turnover relating to Rs. 6,61,395.94 should be taken to relate to inter-State sales. The Appellate Assistant Commissioner mainly relied on the decision of this Court in *State of Madras v. Bramhappa Tavanappanavar (Mysore) Private Ltd.*, Madras-21 [1974] 33 STC 601, wherein this Court has held that though the relevant contract of sale was not produced, the invoices and other correspondence and the C forms would indicate that the assessee had collected the sale price by sending the bill of lading and other documents to indicate that the goods had moved to the out-of-State destination only as an incident of the contract of sale and so the sales could be taken to be inter-State sales. In this view, the Appellate Assistant Commissioner allowed the assessee's claim for exemption.

4. Similarly, the appellant in T.C. No. 785 of 1977 had claimed exemption in respect of Rs. 6,61,431.40 for the year 1968-69 on the ground that they represent inter-State sales and the claim was rejected by the assessing authority. But the same has been allowed in part to the extent of Rs. 4,76,680.62 by the Appellate Assistant Commissioner for the same reasons.

5. The Board of Revenue, after examining the orders of the Appellate Assistant Commissioner in both the cases, considered that the Appellate Assistant Commissioner was not correct in holding that the transactions were inter-State sales and allowing exemptions in respect of the turnover of Rs. 6,61,431.40 in one case and Rs. 4,76,680.62 in the other case. The Board of Revenue, therefore, issued a show cause notice to both the assessees to show cause why the orders of the Appellate Assistant Commissioner should not be revised and the assessment on the turnovers referred to above made by the assessing authority should not be sustained. The assessees submitted their representations, and after a due consideration of those representations the Board of Revenue passed a common order dated 22nd March, 1977, holding that the disputed turnovers in both the cases related to local sales and not to inter-State sales, and therefore, the assessees were not entitled to exemption on the said turnovers. The Board of

Revenue has given the following three reasons as to why the turnover should be taken to relate to local sales : (1) That immediately after the assessments, the assesseees had taken the assessments to the High Court in Writ Petitions Nos. 1721 and 1725 of 1974. Though the said writ petitions were dismissed at the stage of admission, the court actually went into the merits and sustained the order of the assessing authority on merits. (2) That the assesseees themselves have given signed statements before the assessing authority admitting the transactions to be local sales and stating that they have no objection to be taxed under the Tamil Nadu General Sales Tax Act in respect of the disputed turnover. (3) That in any event, the transactions covering the turnover in question have not been shown to have been inter-State sales.

6. The reasoning given by the Board of Revenue has been challenged by the appellants in these two appeals. As regards the first reason given by the Board of Revenue, the learned counsel for the appellants contends that the filing of writ petitions against the assessment orders and their disposal will not prevent them from resorting to the statutory remedies by way of appeal and that the order of the High Court passed in the writ petitions will not stand in their way of contention that the sales were inter-State sales. Though initially we were inclined to accept the contention of the appellants in this regard, on a careful consideration, we hold that it is not open to the assesseees to ignore the order passed by this Court in the said two writ petitions which appears to be a decision on merits. No doubt it is true that if this Court had dismissed the writ petitions without going into the merits on the ground that there is an alternative remedy open to the assesseees under the statute, then it will be open to the assesseees to have resorted to the alternative remedies. But where the assesseees allowed or called upon this Court to express its view on the merits of the case, and the court gives its verdict then they are bound by the said decision and it is not possible for them to treat the same as non est. In this case, the High Court had dismissed the writ petitions after going into the merits by observing as follows :

"The consignment itself was not made by the assessee to the orders of the out-of-State buyers. The view of the assessing authority is that there was nothing to show that the transaction was of inter-State character. We have nothing before us to be satisfied that this statement by the assessing authority is not well-founded."

7. It is no doubt true that this order was passed while dismissing the writ petitions at the stage of admission. But none the less it is an opinion expressed by this Court on the merits of the case. As seen from the above extract, this Court has found that the consignment itself was not made by the assessee to the orders of the out-of-State buyers and that the view of the assessing authority that there was nothing to show that the transactions were of an inter-State character is well-founded. It is not in dispute that, after the disposal of the writ petitions by this Court, the assesseees did not file any additional material either

before the Appellate Assistant Commissioner or before the Board of Revenue apart from those filed before the assessing authority to show that the disputed transactions were inter-State sales, and therefore, the finding given by this Court while dismissing the writ petitions that on the materials placed before the assessing authority his conclusion that the transactions were not inter-State sales in correct has to be given due weight by the Appellate Assistant Commissioner or by the Board of Revenue. Though the Appellate Assistant Commissioner did not take into account the decision of this Court in the assessee's Writ Petitions Nos. 1721 and 1725 of 1974 in respect of the same assessment years, the Board of Revenue felt that the appellate authority should not have gone behind the order of the High Court which was given on merits. We are of the opinion, that the issue taken by the Board of Revenue that the matter is concluded by this Court in the two writ petitions as the assessee has not filed any additional materials to hold that the transactions were inter-State sales, and the said decision of this Court has to prevail is right.

8. Coming to the second contention relating to the statements given by the assessee before the assessing authority, which have been extracted in the Board's order, the assessee's contention before the Board of Revenue was that they were not aware as to who gave those statements, without taking care to see the statements which have been signed by the appellants themselves. After the matter came before this Court and when the admission contained in the statements given by the assessee were put to the counsel, the learned counsel took time to get instructions from the appellants and filed the affidavits of the two appellants raising a new plea. In the affidavit itself, it has been stated by each of them that the statement was obtained by the assessing authority under coercion, persuasion and misrepresentation telling them that without such a statement, they would be liable to pay tax at 10 per cent, and therefore, the statements taken from them under coercion cannot be acted upon. It is seen from the show cause notices issued by the Board of Revenue proposing to suo motu revise the orders of the Appellate Commissioner, a specific mention has been made to the statements given by the assessee. In the objections filed by the assessee, no reference has been made to the said statements, and no explanation has been given as to how and when the statements were given admitting that the out-of-State purchasers came and purchased and took delivery of the goods in this State. The learned counsel for the appellants who was the counsel who appeared before the Board of Revenue as well concedes that the Board of Revenue specifically put a question to the appellants and wanted their explanation in relation thereto, and that at that time the binding nature of the statements was not questioned on the ground that they have been obtained under coercion, persuasion and misrepresentation. On the facts set out above, we are of the view that the present stand taken by the appellants at the last minute that the statements have been taken from them by the assessing authority under coercion, persuasion and misrepresentation is purely an afterthought and this has been made with a view to get over the admissions

contained therein. We therefore feel that the Board of Revenue is not in error in acting upon the statements made by the assesseees before the assessing authority. In these statement, it has been specifically admittedly by the assesseees that the out-of-State dealers came and purchased and took delivery of the goods in this State and transported the same themselves and this would indicate that the goods have been sold locally to the out-of-State dealers and the movement of the goods from this State to the buyers" State is not in pursuance of or as incident of the contract of sale.

9. As regards the third reason given by the Board, the learned counsel for the appellants contends that in this case the affidavits from the out-of-State buyers and the C forms issued would clearly indicate that the sale were inter-State sales. But, that if the goods were delivered to the buyers and they transported the goods on their responsibility some times in the lorries arranged by the assesseees and some times in the lorries arranged by the buyers themselves, as evidenced by the statements given by the assesseees, the transactions can be called as purely local sales. It appears that the price agreed to between the parties was ex-godown price and the goods were delivered at the place of the sellers and the assesseees were not concerned as to what happened to the goods afterwards. Admittedly, there is no written contract of sale from which the intention and the bargain between the parties could be gathered and all the orders are said to have been placed by the buyers over the phone and the goods are claimed to have been sent by the assesseees to the buyers" place of business which is out-of-State and the buyers" affidavits and the C forms are said to support the said contention of the assesseees. Even the Appellate Assistant Commissioner finds that the sales were ex-godown. The mere fact that the sale was on credit does not mean that the transaction is one of inter-State sale. The following incidents will indicate that the transaction is not an inter-State sale. (1) That price payable is ex-assesseees" godowns. Even the credit bills do not include the transport charges. (2) The assesseees" own admission contained in the statements given by them before the assessing authority that the out-of-State buyers or their agents came and took delivery in this State and then the goods were moved at the cost and responsibility of the purchasers. On those facts, the conclusion of the Board of Revenue that the transactions in question did not represent inter-State sales appears to be correct. It is no doubt true that the assessing authority is in error in stating that in all transactions where written contract is not available, the transaction of sale cannot be taken to be inter-State. In *Commissioner of Commercial Taxes, Bihar v. Bhag Singh Milkha Singh* [1974] 34 STC 535 it has been observed :

"To make a sale as one in the course of inter-State trade or commerce there must be an obligation, whether of the seller or the buyer, to transport the goods outside the State and it may arise by reasons of statute, contract between the parties, or from mutual understanding or agreement between them or even from the nature of the transaction which linked the sale to such transportation. Such an obligation may be imposed expressly under the contract itself or impliedly by

a mutual understanding. It is not necessary that in all cases there must be pieces of direct evidence showing such obligation in a written contract or oral agreement. Such obligations are inferable from circumstantial evidence also."

11. In *Asbestos Cement Limited v. Government of Tamil Nadu* [1972] 30 STC 251, this Court has laid down :

"..... that all the transactions where ex-works price was charged by the assesseees should be taken to be transactions in respect of which the sellers had not undertaken the obligation of transporting the goods to the out-of-State destinations and of effecting actual delivery to the buyers there as part of the contract of sale and it was only the buyers or their nominees that should have arranged for the transport of the goods after taking actual delivery at the factory. Accordingly, such sales should be deemed to have been completed by actual delivery within the State by the sellers to the buyers or their nominees and the subsequent movement of the goods could not be taken to be in pursuance of or incidental to the contract of sale which had already been completed by actual delivery to the buyers or to their nominees within the State of Tamil Nadu."

12. We are of the view that the facts in this case attract the decision in *Asbestos Cement Limited v. Government of Tamil Nadu* [1972] 30 STC 251. The learned counsel for the appellants would, however, rely on the decision of this Court in *State of Madras v. Bramhappa Tavanappanavar (Mysore) Private Ltd.* [1974] 33 STC 601. In that case also, the assessee claimed exemption in respect of certain transactions which were alleged to be inter-State, but he did not produce the relevant contracts of sale to prove that the contracts were for inter-State sales. But the invoices and other correspondence produced by the assessee were taken to indicate that the goods should have been transported by ship from Madras to Calcutta and the assessee had collected the sale price by sending the bill of lading and other documents through bank for collection. The assessee had also got the C forms from the out-of-State buyers. The Tribunal took the view that the movement of the goods to the out-of-State destination could only be as an incident of the contract of sale, and therefore, the sales were inter-State in character. The decision of the Tribunal was affirmed by the High Court observing :

"..... the contracts have not been made available and it is not possible to say whether there was any contract of sale between the assesseees and the out-of-State buyer and whether such contracts specifically provided as a term thereto, the movement of the goods from this State to Calcutta. But, the invoice and the other correspondence indicate that the goods had been transported by ship from Madras to Calcutta and the assesseees collected the sale price by sending the bill of lading and the other relevant documents for collection through banks. The assesseees have also got C forms from the out-of-State buyers. The out-of-State buyers would never have issued C forms to the assesseees unless there was actual contract to purchase the goods from the assesseees. The Tribunal has relied on these materials for taking the view that the movement of the goods to the out-of-State destination can only be as incident of the contract of sale. We are of the

view that the Tribunal has come to the right conclusion in this case. It is true that the actual contracts are not available and we have to consider the nature of the transactions only from the other available documents."

13. It is no doubt true, as pointed out in *Commercial of Commercial Taxes, Bihar v. Bhag Singh Milkha Singh* [1974] 34 STC 535 and *State of Madras v. Bramhappa Tavanappanavar (Mysore) Private Limited* [1974] 33 STC 601, even if there is no written contract of sale, it is possible to hold the transactions inter-State if the sale bills, lorry receipts and other correspondence indicate that the movement of the goods was in pursuance of or incident of the contract of sale. But in this case the sale bills indicate that the price agreed is only ex-assessee's godowns and that the assessee did not incur any incidental expenses for moving the goods from this State to the buyers' State. In addition, the assessee's own statements given before the assessing authority that it is the buyers who came to this State, purchased the goods and then moved the goods at their risk and cost indicate that the transaction can only be intra-State sales and not inter-State sales.

14. The learned counsel for the assessee very strongly urges that this is a case in which the assessee should be given an opportunity to explain the circumstances under which the said statements had been given before the assessing authority to establish that the statements having been obtained under coercion and misrepresentation, they cannot be relied on. We do not, however, think that this is a fit case for giving a further opportunity to the assessee to get over the statements given by them before the assessing authority. As a matter of fact, the Board of Revenue, even in the show cause notice, specifically asked the assessee to explain as regards the admissions contained in the statements given by them and the assessee did not question the genuineness of the statements in the objections filed by them. There was a personal hearing before the Board of Revenue and even at that time the genuineness of the statements has not been attacked on the ground now put forward in the affidavit that the statements were taken from the assessee under duress and misrepresentation. We are, therefore, of the view that we will not be justified in reopening the entire matter by giving an opportunity to the assessee to throw any light which was never thought of nor projected at any time, by remitting the matter to the Board of Revenue for giving a further opportunity to the assessee to explain their stand as regards to the statements given by them.

15. In this view of the matter, we are confirming the view taken by the Board of Revenue in this case. The appeals therefore fail. There will, however, be no order as to costs.