

(1990) 10 MAD CK 0051

In the Madras High Court

Case No : Tax Case No's. 74 and 75 of 1981

State of Tamil Nadu

APPELLANT

Vs

Mount Mechanical Works Pvt. Ltd.

RESPONDENT

Date of Decision : 26-10-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1990) 10 MAD CK 0051

Hon'ble Judges : Venkataswami, J;Abdul Hadi, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader Taxes, for the Appellant;

Judgement

Abdul Hadi, J.—These two tax revision cases preferred by the Revenue u/s 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter

referred to as "the Act") are against the order dated July 18, 1980, of the Sales Tax Appellate Tribunal, Main Bench, Madras, in Tribunal Appeal

No. 810 of 1979 and Tribunal Miscellaneous Petition No. 67 of 1980.

2. T.C. (R) No. 75 of 1981 is against the order in T.A. No. 810 of 1979 relating to a turnover of Rs. 3,828 which has been held, by the Tribunal,

to be the local sale in Karnataka and not chargeable as inter-State sales by Tamil Nadu under the Central Sales Tax Act, 1956. T.C. (R) No. 74

of 1981 is against the order in T.M.P. No. 67 of 1980 preferred by the Revenue for enhancement of turnover relating to a turnover of Rs.

2,51,540 held by the Tribunal (concurring with the Appellate Assistant Commissioner) to be local sales in Karnataka, negating the contention of

the Revenue that they were inter-State sales assessable to tax under the Central

Sales Tax Act by the State of Tamil Nadu.

3. The question for consideration in T.C. (R) No. 75 of 1981 is whether the turnover in dispute, viz., Rs. 3,828 is exigible to tax as inter-State

sales taxable by Tamil Nadu or local sales at Karnataka State and as such taxable by that State. On facts, the Tribunal has found as follows :

As regards the first transaction (Bill No. 201 for Rs. 3,828) it is seen that the order was never placed on the Madras office. It was only on an

internal arrangement that a subsequent order was place by Bangalore factory on Madras. But the goods moved only in consequence of the

contract with Bangalore office within Karnataka and hence it is a local sale as rightly contended on behalf of the appellant. This turnover of Rs.

3,828 is therefore deleted.

We concur with the view taken by the Tribunal which necessarily follows on facts as found by the Tribunal. Hence, we dismiss T.C. (R) No. 75 of

1981.

4. Now, let us consider T.C. (R) No. 74 of 1981 relating to the abovesaid turnover of Rs. 2,51,540. This case arose out of the dismissal of

T.M.P. No. 67 of 1980 confirming the order passed in the enhancement petition filed by the Revenue before the Tribunal against the order of the

Appellate Assistant Commissioner, deleting the abovesaid turnover on the ground that it was only a local sale in Karnataka and not an inter-State

sale, taxable by the State of Tamil Nadu. The facts relating to this turnover, as set out in the above referred to Appellate Assistant Commissioner's

order, are as follows :

The respondent-assessee has its factory and head office at Madras. It has also a factory at Bangalore controlled and operated by its Bangalore

branch. This branch made its own purchases, produced the goods in the factory at Bangalore and sold them locally. In a few cases it could not

produce the goods ordered by its buyers, in the factory at Bangalore and so placed orders for the said goods to its Madras office. The Madras

office, in turn, produced the goods so ordered by the branch office at Bangalore and transferred them to that branch to enable it to execute the

orders from its buyers. On receipt of the goods from the head office the branch included them in its stocks and sold them to its buyers. So, the

Madras office has no connection with the ultimate buyers from the Bangalore

branch. The abovesaid turnover of Rs. 2,51,540 is one such case where the buyer is one Rajam Transport, Bangalore, and the contract between the said buyer and the Bangalore branch of the assessee specifically contain in clear terms"" indicating that there was no contemplation of any movement of goods from Tamil Nadu to the other State as a result of sale. The said contract shows only delivery at Bangalore ""including the excise duty and the sales tax of that State"". There is no mention about the manufacture of the goods at Madras. Against the contract, the Bangalore branch requested the head office for the manufacture of the goods for fulfilling the said contract with the abovesaid buyer. But, the contract does not show the placing of orders with the head office by the branch for the manufacture of the goods. The head office manufactured the goods according to specification and transferred the goods to the branch office at Bangalore. The goods were moved from Madras to Bangalore. The copy of the delivery note in relation to the goods sent to the branch does not shows the contract or the order placed by the abovesaid buyer at Bangalore. The way-bill relation to this despatch from the head office to the branch also does not show that the goods are sent to the above referred to buyer. Further the goods so sent were also included in the stock account of the branch office at Bangalore. The copy of the stock register produced shows the receipt of goods on March 18, 1978 and the sales to the abovesaid buyer on March 20, 1978. The goods were delivered to the buyer on March 20, 1978 as shown by challan. The ownership and risk rested with the Bangalore branch office till the goods were delivered to the buyer. All the charges for transferring the goods from Madras to the branch office at Bangalore were met by the assessee and they were not passed on to the buyer. The affidavit from the abovesaid buyer Sri Rajam Transport was also filed stating that the said buyer placed orders only with the branch office at Bangalore and that he took delivery only from the office at Bangalore.

5. In the above circumstances, both the Appellate Assistant Commissioner and the Tribunal have held concurrently that the abovesaid turnover is not exigible to tax by the State of Tamil Nadu as inter-State sale and the sale in question was only a local sale in Karnataka.

6. The learned counsel for the Revenue, however, submitted that English Electric

Co. of India Ltd. and Another Vs. The Deputy Commercial Tax

Officer and Others, would apply to the facts of the present case and as the transaction before the Supreme Court was held to be inter-State sale,

the present transaction also should be held to be inter-State sale. When this tax revision case came before us initially, the learned counsel for the

assessee was not present in the court. But, however, after the learned Additional Government Pleader for the Revenue argued, a request was

made on behalf of the learned counsel for the respondent for adjourning the case for the argument of the learned counsel for the respondent.

Accordingly it was adjourned to October 15, 1990. However, on October 15, 1990 also, the learned counsel for the respondent was not present

in the court and hence judgment was reserved by us.

7. As per section 3(a) of the Central Sales Tax Act, inter-State sale is a sale which occasions the movement of goods from one State to another.

So, the sale must cause the abovesaid movement. In other words, the inter-State movement must be the result of a covenant express or implied in

the contract of sale or an incident of the contract. So far as English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax

Officer and Others, relied on by the learned Additional Government Pleader for the Revenue is concerned, we find that the facts therein were as

follows :

The appellant-company therein had its registered office at Calcutta and branches at Bombay and other places. It had its main factory at Madras. A

Bombay buyer wrote to the Bombay branch of the appellant, asking for lowest quotation of the goods. The Bombay branch wrote to the Madras

branch, giving all the specifications and stating that the goods were for the Bombay buyer. The Madras branch, in reply referred to the order of the

Bombay buyer, giving the required particulars and mentioned that the price was f.o.r. Madras. The Bombay branch, thereafter gave these

particulars that the goods would be manufactured at the Madras factory. The Bombay buyer placed an order with the Bombay branch, accepting

all the terms and conditions. The Bombay branch placed an independent order addressed to the Madras branch, giving all the particulars - the

buyer's name, order number and date. On the receipt of invoice from the Madras branch, the Bombay branch informed the Bombay buyer that the

goods were ready for despatch and on getting despatch instructions from the Bombay buyer, the Madras branch despatched the goods to

Bombay. The goods were delivered to the Bombay buyer through the clearing agents and the insurance charges were collected from the buyer. It

was also found that there was no question of diverting the goods, which were sent to the Bombay buyer.

8. In the above circumstances, the Supreme Court has held as follows :

The appellant was one entity and it carried on business at different branches. Branches are not independent and separate entities. They are different

agencies. The contract of sale was between the appellant and the Bombay buyer. When a branch of a company forwards a buyer's order to the

principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those

instructions, it would not be a sale between the factory and its branch. The steps taken from the beginning to the end by the Bombay branch in co-

ordination with the Madras factory showed that the Bombay branch was merely acting as the intermediary between the Madras factory and the

buyer and that it was the Madras factory, which pursuant to the covenant in the contract of sale, caused the movement of goods from Madras to

Bombay. The sale was, therefore, liable to be taxed u/s 3(a) of the Central Act.

10. It would be clear that there are very many distinguishing features between the facts in the present case and the facts in the abovesaid case

before the Supreme Court. In the present case, first of all, the contract between the buyer and the Bangalore branch did not contemplate any

movement of goods from Tamil Nadu to Karnataka. It shows only delivery at Bangalore and payment of local sales tax of Karnataka State and

there is no mention therein about the manufacture of the goods at Madras. Further, the goods were not directly delivered to the buyer, but only

sent to the branch office at Bangalore and included in the stock account of the branch office and only after two days the goods were delivered to

the buyer by the branch office. It should also be noted that the ownership in the goods vested with the Bangalore branch till the goods were

delivered to the buyer. So, it can also be concluded that nothing prevented the Bangalore branch from diverting the abovesaid goods from the head

office at Madras for purposes other than fulfilling the contract that was entered

into with the abovesaid Bangalore buyer. The corresponding facts in the case before the Supreme Court was altogether different as shown in the above narration of the facts in the said case. The steps taken from the beginning to the end by the Bombay branch was merely acting as the intermediary between the Madras factory and the Bombay buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale, caused the movements of the goods from Madras to Bombay. But, in the present case, the Bangalore branch was not such a mere intermediary as shown by the facts stated above. Further, it was also noted earlier that the Bangalore branch itself manufactured some goods at its own factory at Bangalore and only in few cases, when it could not produce the goods ordered by their buyers, in the factory at Bangalore branch, it placed orders for the goods to the Madras office. Therefore, the decisions of the Supreme Court turned on its own facts and it cannot be applied to the present case of totally different facts. In the present case, it cannot be said that the contract of sale entered into by the Bangalore branch with the Bangalore buyer caused the movement of goods from Tamil Nadu to Karnataka.

11. Therefore, T.C. (R) No. 74 of 1981 is also dismissed. However, in the circumstances of the case, no costs.

12. Petitions dismissed.