

(1992) 09 MAD CK 0069

In the Madras High Court

Case No : Tax Case No"s. 85, 107 and 108 of 1983 (Revision No"s. 36, 60 and 61 of 1983)

State of Tamil Nadu

APPELLANT

Vs

N. Ramu Bros. (Electricals)

RESPONDENT

Date of Decision : 23-09-1992

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 5(2), 6(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 16(1)

Citation : (1992) 09 MAD CK 0069

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader, for the Appellant; K.J. Chandran for C.V. Mahalingam, for the Respondent

Judgement

Abdul Hadi, J.—T.C. Nos. 107 and 108 of 1983 are against two appeals on the file of Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18. T.C. No. 85 of 1983 is against the enhancement petition filed in those appeals. The said appeals C.T.A. Nos. 398 and 399 of 1981 and the enhancement petition, C.T.M.P. No. 180 of 1981 were disposed of by a common order dated October 5, 1981. The said appeals were preferred by the assessee/respondent herein and the said enhancement petition was filed by the Revenue, the petitioner in all the abovesaid tax cases. All the matters relate to the same assessee and pertain to the assessment year 1973-74. C.T.A. No. 398 of 1981 is against the tax levied under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the State Act") and C.T.A. No. 399 of 1981 is against the consequent levy of surcharge.

2. The only question involved in these matters is whether, as contended by the assessee and found by the Tribunal, section 6(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") would apply to the turnover in question, or, as contended by the Revenue, the said turnover would only be an intra-State sale, coming under the State Act. If section 6(2) of the Central Act

applies, the turnover is completely exempt from tax. If the State Act applies, since the goods sold are generators, they are taxable at the rate of 9 per cent., i.e., single point levy at the point of first sale.

3. It is well-known that there are two types of inter-State sales which are charged to tax under the Central Act, one, coming u/s 3(a) of the Central Act, namely, sale occasioning movement of goods from one State to another, and, the other, coming u/s 3(b) of the Central Act, i.e., sale effected by transfer of documents of title to goods during their movement from one State to another. However, section 6(2) of the Central Act grants, subject to certain qualifications and fulfilment of certain formalities, exemption to an inter-State sale of goods coming u/s 3(b), if it is subsequent to an earlier inter-State sale of section 3(a) type or section 3(b) type, provided the said subsequent sale is effected during the movement of said goods from one State to another. In other words, if such a subsequent inter-State sale is effected by transfer of documents of title to goods, during the movement of goods from one State to another pursuant to an earlier inter-State sale, such subsequent inter-State sale is exempted from tax.

4. The Tribunal below, having held that the turnover in question was such an inter-State sale coming u/s 6(2) of the Central Act, exempted it from tax. But the Revenue's contention is that the turnover in question has been effected by the assessee in Tamil Nadu locally only after the above referred movement pursuant to the former inter-State sale came to an end and that, therefore, assessable to tax as an inter-State sale, under the State Act.

5. Though, originally, the assessing officer granted exemption u/s 6(2), after inspection by the intelligence wing officers on September 7, 1978 and November 10, 1978 and recovering certain records, the exemption earlier granted was revoked in respect of a turnover of Rs. 41,59,000 relating to sales effected by the assessee, in favour of 15 registered dealers and the said turnover was charged to tax at 9 per cent. under the State Act, invoking section 16(1) of the State Act and revising the original assessment. Consequently, an assessment under the Tamil Nadu Sales Tax (Surcharge) Act, 1971, was also made.

6. In the two appeals, subsequently filed by the assessee to the Appellate Assistant Commissioner, he granted relief to the assessee as prayed for excepting in relation to the turnover therein to the extent of Rs. 1,08,400 which related to the sales in favour of one of the above 15 persons and a portion of the sales in favour of another, of them. In respect of the said turnover of Rs. 1,08,400 both tax and consequent surcharge were sustained.

7. Not satisfied, the assessee filed the above referred to two second appeals before the Tribunal. Therein, the Revenue filed the above referred to enhancement petition claiming that the entire revised assessment must be sustained and not merely the above referred to Rs. 1,08,400.

8. The Tribunal dismissed the enhancement petition in toto and allowed the appeal relating to tax under the State Act, only to the extent of Rs. 5,000 out of

the abovesaid Rs. 1,08,400. In the other appeal regarding surcharge, necessary modification was allowed to be made. Hence the abovesaid tax cases have been filed by the Revenue.

9. Before advertng to the submissions of the counsel on either side, we may point out the facts as found by the Tribunal :

The assessees sold generators to its various customers in this State. The intending purchasers placed orders for the said generators with the assessees. The assessees, on receiving the purchase orders, placed orders with the outside-State sellers, mostly from Delhi. Those outside-State sellers executed the orders placed by the assessees, despatched the goods through lorries of South Eastern Roadways, who were having their transport offices at the place of those outside-State sellers and also at Coimbatore in Tamil Nadu. On despatch of the consignments, those sellers outside the State, advised the assessees through postal communication, about the transport way-bill number, freight payable, insurance charges, etc. On receiving necessary particulars of the movement of the goods after despatch, the assessees informed its purchasers. Then the said purchasers paid the necessary transport charges from the place of origin outside the State and took delivery of the goods at their own respective business places in Tamil Nadu. The said purchasers also paid the transit insurance charges and other incidental charges before taking delivery of the consignments by themselves. (Anyway, as per the assessing officer's order, in some cases, the assessees paid the said charges initially and got reimbursed from the said purchasers subsequently). Since South Eastern Roadways are not having their own transport office in all places of destination, the assessees gave necessary "letters of authority" to the lorry office of the said carrier at Coimbatore with instructions to deliver the consignments to the assessee's purchasers in their doorsteps. (As per the assessing officer's order, in some cases, the assessees themselves rebooked the goods through the same carrier from Coimbatore to their purchasers' places in Tamil Nadu, obtaining fresh lorry receipts or way bills, showing assessees as consignors). The assessees used their own form XX delivery notes for onward transport of the consignments from Coimbatore to various places of the said purchasers in Tamil Nadu. (As per the assessing officer's order, in some cases, the said form XX delivery notes were issued by the respective consignees-purchasers.)

10. According to the Revenue, there was termination of the abovesaid movement of goods at Coimbatore and the assessees had taken notional deliveries of the goods at Coimbatore and then the goods were booked covered by those form XX delivery notes. So, according to the Revenue, the abovesaid subsequent sales by the assessees were only intra-State sales liable to be taxed under the State Act.

11. The learned Additional Government Pleader (Taxes), Mrs. Chitra Venkataraman, appearing for the petitioner, particularly submits that two main requirements which are necessary for the application of section 6(2) have not been fulfilled in the present case and that the Tribunal has erred in not

approaching the question in that light. According to section 6(2), inter alia, a sale if it is to be exempted, must be a second or subsequent sale in the course of the inter-State trade or commerce as stated above, and the said sale must be effected by transfer of documents of title to goods during the movement of the goods from one State to another pursuant to an earlier inter-State sale, as stated above.

12. Regarding the first of the above requirements, her submission is that in the present case there is no evidence at all as to when actually such second or subsequent sale has taken place. Substantiating the said submission, she also relied on *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, . She also points out that admittedly as per lorry receipts pursuant to the sales in favour of the assesseees, the destination of the goods in their movements from Delhi and other places outside Tamil Nadu is only Coimbatore and not the other places in Tamil Nadu to which the goods were subsequently sent by the assesseees and that, pursuant to the respective subsequent sales, admittedly, there are no transfers of those lorry receipts, in favour of the abovesaid purchasers of the assesseees. It has also been so found in the abovesaid revised assessment order. She also points out that though there are no physical deliveries to the assesseees at Coimbatore, there are notional deliveries at Coimbatore to the assesseees and that thereafter only the assesseees make certain arrangements for the goods being delivered physically to their purchasers at different places in Tamil Nadu. She also points out that in some of the sales in favour of the abovesaid 15 persons, there is also rebooking of the goods for transportation from Coimbatore to the respective places of the purchasers by separate lorry receipts in which only the assesseees figured as consignors, as found in the abovesaid revised assessment.

13. Further, regarding the second of the abovesaid requirements, her submission is that in the present case the turnovers in question do not at all represent sales effected by transfer of "documents of title to goods". She further points out that the abovesaid delivery notes in form XX are not "documents of title to goods" at all. In this connection she drew our attention to section 2(4) of the Sale of Goods Act, 1930, which defines the said term and also to the decision in *Laurie and Morewood v. John Dudin and Sons* [1925] 2 KB 383. She also submits that admittedly there are no endorsements of the lorry receipts under which the goods were sent from Delhi to Coimbatore, in favour of the assesseees' purchasers in different places in Tamil Nadu.

14. On the other hand, the learned counsel for the respondents/assesseees drew our attention to Explanation 1 to section 3(b) of the Central Act, according to which the movement of goods, when goods are sent by a carrier pursuant to an inter-State sale u/s 3(b) of the Central Act, shall be deemed to terminate "at the time when the delivery is taken from said carrier" Since no delivery was taken at Coimbatore and deliveries were taken from the carrier only at the respective places of the assesseees' purchasers, the sales effected by the assesseees in

favour of those purchasers were only prior to the said deliveries and, therefore, could rightly come u/s 3(b) and section 6(2) of the Central Act, according to the learned counsel for the respondents.

15. He also maintains that the abovesaid delivery notes coupled with the above referred to "authorisation letters" to the carrier for effecting delivery at various places of the assessee's purchasers and also the relevant invoices of the assesseees in favour of the said purchasers, would all come under the term "document of title to goods". He also submits that there is no necessity to make an endorsement in the relevant lorry receipts relating to movement from Delhi and other outside places to Coimbatore, for the assesseees to effect those subsequent inter-State sales by transfer of documents of title of goods. In this connection, he relied on *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, and *Bayyana Bhimayya Vs. The Government of Andhra Pradesh*, . He also submits that the facts in *Lucas Electrical Tractor Service Limited Vs. The State of Tamil Nadu*, are similar and the decision given therein, granting exemption u/s 6(2), should be followed in the present case also.

16. We have considered the rival submissions. We will first take up the second submission made by the learned Additional Government Pleader (Taxes). In her second submission she points out that one requirement for availing section 6(2) exemption, is that the abovesaid second or subsequent inter-State sales must have been effected by transfer of documents of title to goods. From section 6(2), it is clear that this is one of the several requirements provided u/s 6(2). In other words, if the said subsequent inter-State sales are effected by any other mode other than by transfer of document of title to goods, section 6(2) exemption cannot be granted at all. Here, first we have to consider, which document in the present case, would come under the definition of the term "document of title to goods", u/s 2(4) of the Sale of Goods Act and whether the sale is effected by transfer of the said document of title to goods. No doubt, the expression "sale effected by a transfer of documents of title to goods" means that title in the goods passed on to the buyer by the said transfer of documents of title to said goods. In other words, the term "effected" denotes the abovesaid passing of title, vide *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, .

17. The term "document of title to goods" is defined u/s 2(4) of the Sale of Goods Act, 1930, as follows :

""document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorize, either by endorsement or by delivery, the processor of the document to transfer or receive goods thereby represented;"

The abovesaid lorry receipts relating to transport from Delhi and other outside places to Coimbatore, no doubt, would come under the abovesaid definition but

admittedly they were not transferred to the abovesaid purchasers of the assesseees for effecting sales in favour of them as contemplated u/s 6(2) of the Central Act. On the other hand, the contention is that the abovesaid delivery notes coupled with the authorisation letters and invoices would come under the abovesaid definition of "documents of title to goods". But we are unable to accept this contention. No doubt, an order from the vendor to the warehouseman to deliver goods to the vendee would certainly come under the abovesaid definition [also see *Bayyana Bhimayya Vs. The Government of Andhra Pradesh*, . The abovesaid delivery notes in form XX, by no stretch of imagination can be taken as such delivery orders. The said form XX is prescribed pursuant to rule 35(5) of the Tamil Nadu General Sales Tax Rules, 1959. The said rule 35 deals with check-posts and clause (5) therein was framed pursuant to section 40(3) of the State Act which says :

"Every registered dealer or person who moves goods in pursuance of a sale or purchase or otherwise from one place to another shall send along with the goods moved a bill of sale or delivery note or such other documents as may be prescribed."

18. Further, as per the said form XX, only certain particulars regarding the consignor and consignee and the goods consigned have to be given therein and the consignor or consignee has to certify that the particulars given therein are true. The said form does not at all contain any order as such by the vendor for delivery of goods to the vendee. Form No. XX has been prescribed under rules 35(5) and 36(1) of the Tamil Nadu General Sales Tax Rules, as one of the documents to accompany the goods transported in a vehicle or boat and the direction contained in the said form to give the original copy to the officer-in-charge of the first check-post or barrier and the second copy to the officer-in-charge of the last check-post and retain the third copy by the person-in-charge of the goods vehicle or boat, would go to show that it was meant only to keep track of the movement of the goods to prevent evasion of tax and by no stretch of imagination could the same be held to be a document of title within the meaning of section 2(4) of the Sale of Goods Act, 1930. Even as per the above definition u/s 2(4) of the Sale of Goods Act, only "warrant or order for the delivery of the goods" can be document of title to goods. It is the position in both English law and Indian law. In the above referred to English decision [1925] 2 KB 383 (*Laurie and Morewood v. John Dudin and Sons*) the facts were as follows :

The defendants, warehousemen and wharfingers, held goods belonging to one "A" who sold a part of the said goods to "W" who, in turn, sold them to the plaintiffs therein, giving the latter a delivery note, which they lodged with the defendants. The defendants did not acknowledge it but some days later, no weighing out or appropriation of the said goods having taken place, "A" stopped delivery. In that context, the English court held that the abovesaid delivery note handed over to the plaintiffs by "W" was not a document of title to goods within the meaning of the Sale of Goods Act (1893) (of England).

19. Further we have to see whether the abovesaid "authorisation letters" could be considered as documents of title to goods coming within the abovesaid definition u/s 2(4) of the Sale of Goods Act. Regarding one such authorisation letter given by the assesseees to the carrier, the Tribunal, by way of illustration, factually finds as follows :

"They (assesseees) have stated in this letter that the generating set is in transit and the set need not be delivered to them but it may be transported to Kil Kotagiri and delivered to M/s. Kil Kotagiri Industrial Co-operative Tea Factory Limited (one of the abovesaid 15 persons), Bazaar Post, Kil Kotagiri, Nilgiris District, directly. They have also stated that they have already advised the purchasers regarding the transport and delivery charges of Rs. 4,201 to be paid on delivery at their factory. On receiving this letter M/s. South Eastern Roadways by their letter dated May 30, 1973, have responded to the appellants (assesseees) and stated that they have taken the set directly to M/s. Kil Kotagiri Industrial Co-operative Tea Factory Limited, Kil Kotagiri, Big Bazaar Post, Nilgiris District, and has also delivered the set to the purchaser."

So, actually, the abovesaid "authorisation letters" are only instructions given by the assesseees to the abovesaid carrier to deliver the goods, stating that the carrier need not deliver the goods at Coimbatore but has to deliver the respective goods to the respective purchasers at different places in Tamil Nadu and collect the delivery charges from them on delivery of the goods. However, even though these letters may look like delivery orders, they cannot be considered as documents of title to goods, coming within the abovesaid definition u/s 2(4), because, even a delivery order which has been specifically mentioned in that definition, must satisfy the requirements mentioned in the latter part of the said definition, namely, used in the ordinary course of business, as proof of possession or control of goods, or authorising its possessor to transfer or receive goods thereby represented. It has also been so held in AIR 1949 186 (Nagpur) (Abdul Shakur Ali Mohamad v. Motiram Premji Bhate) by Hidayathullah, J. as he then was. But in the present case it is not proved that the requirements mentioned in the abovesaid latter part of the definition u/s 2(4) of the Sale of Goods Act, have been fulfilled with references to these "authorisation letters".

Therefore, we cannot treat the abovesaid "authorisation letters" as "documents of title to goods" within the meaning of the abovesaid definition.

20. Likewise, the abovesaid invoices also could not come under the abovesaid definition since they also do not satisfy the requirements contained in the abovesaid latter part of section 2(4) of the Sale of Goods Act.

21. So, in our view, the Tribunal committed an error of law, in not having considered the case, in the light of the abovesaid definition of the term "document of title to goods" found in section 2(4) of the Sale of Goods Act.

22. No doubt, if a sale is to be effected by transfer of title to goods, there is no requirement that such transfer could be effected only by endorsing the document

of title to goods in favour of the purchasers. The above referred The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm, dealt with the case of a sale in the course of the import, by transfer of title to goods coming u/s 5(2) of the Central Act, where also similar expression was used as found in section 6(2) and section 3(b) of the Central Act. In that context a Division Considering these commercial facts, it is difficult to accede to the retailer's contention that the movement of goods continues even if the goods have landed in Delhi only because the importer has transferred the documents of title to the purchasing retailers and such retailers take delivery from the railways at a subsequent time. If taking delivery is the test of termination of movement and not the landing of the goods in any importing State, explanation 1 to section 3(b) of the Central Sales Tax would lead to anomalous results. If, after the landing of the goods in Delhi, the railway receipts are endorsed one after another to ten persons and the delivery is taken by the tenth person, say after three months, the movement of goods would on the dealer's interpretation artificially continue for three months after the landing of the goods in Delhi. The expanded concept of the movement of goods added by explanation 1 to section 3(b) of the Central Sales Tax Act, on our interpretation, does not pose any difficulty, as we have already held that explanation 1 to section 3(b) does not permit a purchaser from the dealer to "expand the movement" of goods beyond the time of the physical landing of the goods in the Union Territory of Delhi."

Therefore, the abovesaid movement of goods came to an end at Coimbatore at the time when the said notional deliveries were effected there and so the subsequent sales by the assessee are only after the termination of such movement. Therefore also, section 6(2) exemption cannot be granted. Regarding this point also the Tribunal has not approached the questions correctly and erred in law.

25. In the decision reported in Lucas Electrical Tractor Service Limited Vs. The State of Tamil Nadu, the facts are distinguishable from the present facts and so exemption cannot be granted in the present case. In that case there were three items of turnover and with reference to the first one, the exemption u/s 6(2) of the Central Act was claimed. Regarding the first item, the facts were :

The assessee (who was at Madras) purchased batteries from a seller in Calcutta. It later sold the same to a buyer in Madras itself, before the goods were delivered by the carrier to the said buyer, after transporting them to Madras. The assessee claimed exemption, u/s 6(2) with reference to the sale to the abovesaid buyer at Madras. In that context, it was found by a Division Bench of this Court that inter-State movement, from Calcutta to Madras, stood terminated only on the delivery of the goods at Madras to the buyer of the assessee and long before the said termination, the goods have been sold by the assessee to the said buyer. Thus it is not a case where the goods were further transported from Madras to some other places in order to effect deliveries to the buyer of the assessee, as in the present case. Further, in the above case, there was also

endorsement on the lorry way-bill in favour of the said buyer, unlike in the present case.

26. The net result is the order of the Tribunal below is set aside and the abovesaid revised assessment is restored and these three tax revisions are allowed. In the circumstances of the case, there will be no order as to costs.

27. Petitions allowed.