
(1991) 03 MAD CK 0042

In the Madras High Court

Case No : T.C. No"s. 913 and 914 of 1981 (Revision No"s. 461 and 462 of 1981)

Sundaram Industries

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4, 6(2), 8, 8(3)

Citation : (1991) 03 MAD CK 0042

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Judgement

Dr. A.S. Anand, C.J.—These two tax revisions relate to the assessment years 1975-76 and 1976-77 and since common questions of law

and fact are involved, the same are being disposed of by this common order.

2. The petitioner is the assessee, who is a dealer in high density polythene woven sacks. For the assessment year 1975-76, it was assessed under

the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Tamil Nadu Act") on a total taxable turnover of Rs. 23,48,630.92 by

the Joint Commercial Tax Officer, vide his assessment order dated January 4, 1977. In this order, exemption was allowed on a sum of Rs.

6,72,861.47 on production of E1 form u/s 6(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"), on sale of goods

effected in the course of inter-State movement. It transpires that the premises of the petitioner-industry was inspected by the officers of the Inter-

State Investigation Cell on August 7, 1978. The inspection revealed that the exemption granted on a sum of Rs. 6,72,861.47, as sales effected in

the course of inter-State movement of goods from one State to another was not in order and that the sale in question was intra-State and not inter-

State. The assessing authority found that the petitioner had entered into a contract with Southern Petro Chemical Industries Corporation Limited

("SPIC" for short) for supply of HDPE bags, according to which the assessee had agreed to supply 6 lakh numbers of HDPE bags to SPIC at Rs.

4.15 per bag. The bags were required to be delivered at the premises of SPIC at Tuticorin and the payment for the bags was to be made after

confirmation and verification of the specification, dimension, quality, etc., by SPIC. It was also found that the assessee was manufacturing HDPE

bags in its own factory at Karappakkam in Madras also but, in order to fulfil the contract with SPIC, the assessee had supplied HDPE bags not

only from its own factory but also by purchasing the same from manufacturers outside the State. It was in respect of the goods sold, out of the

purchases made from the suppliers from outside the State, that the assessee had claimed and obtained exemption u/s 6(2)(b) of the Central Act.

The assessing authority was of the opinion that whereas the transactions between the assessee and the non-resident dealer, outside the State, were

inter-State sales, the transactions between the assessee and SPIC were not inter-State but intra-State sales. The assessing authority was also of

the opinion that the goods purchased from the non-resident dealer and supplied to SPIC at Tuticorin were not sold by any transfer of documents

of title to the goods but by actual delivery of the goods at the premises of SPIC in accordance with the stipulations contained in the contract

executed between the assessee and SPIC. Consequently, a notice was issued to the assessee on October 17, 1978, proposing to levy sales tax at

4 per cent under the Tamil Nadu Act on the turnover of Rs. 6,72,861.47 (the amount on which exemption had been allowed). In the notice, it was

also proposed to levy surcharge and additional sales tax on the tax due on the escaped turnover. Objections were invited from the assessee and

the same were filed. It was maintained by the assessee that since the despatches of the goods had been made from outside the State and consigned

for door delivery to SPIC, the goods could not be said to be within the State at the time of their appropriation by the assessee. It was asserted that

the transactions could not be treated as local sales but that the same were inter-State sales. It was also pleaded that the sales had been effected by

transfer of consignment documents and that the endorsement of the goods consignment notes in favour of SPIC established the sale to have taken

place during the inter-State movement of the goods.

3. The plea of the assessee that the sales were effected by transfer of goods through the consignment notes was found to be not supported by any

record. Similarly, the objection of the assessee that the goods consignment notes had been endorsed and given to the buyer was neither supported

by evidence nor by the records recovered during inspection, or otherwise produced by the assessee. It was also found that it was under the

instructions of the assessee that the supplier, from outside the State, had directed the despatch of the goods direct to SPIC at Tuticorin to the

account of the assessee. Consequently, the assessing authority, relying upon the law laid down in *Deputy Commissioner (C.T.) v. Pudukkottai*

Textiles Ltd. [1976] 37 STC 544, held that it was neither a case of sale by transfer of documents, nor was there any material to show that the

goods had been appropriated outside the State. After finding it as a fact that the goods had been purchased by the assessee in Madras from

various dealers outside the State and then sold to SPIC at Tuticorin, the assessing authority concluded that the sale was intra-State sale and not

inter-State sale. The assessee was consequently assessed on the escaped turnover of Rs. 6,72,861.47 for the assessment year 1975-76.

4. For the assessment year 1976-77, the assessee was assessed by the Joint Commercial Tax Officer on a taxable turnover of Rs. 27,88,825,

which included the "transit" sales effected to SPIC to the tune of Rs. 7,47,090. The claim for exemption u/s 6(2) of the Central Act was negated.

The appeals before the Appellate Assistant Commissioner failed in respect of both the assessment years. By a common order dated July 15, 1981,

further appeals to the Tamil Nadu Sales Tax Appellate Tribunal were also dismissed.

5. The question raised before the Tribunal by the assessee was, whether the sales to SPIC by the assessee were inter-State sales, exempt u/s 6(2)

of the Central Act or intra-State sales. In the alternative, it was canvassed that even if the sales were not exempt u/s 6(2) of the Central Act, the

levy of sales tax under the Tamil Nadu Act was not permissible.

6. The Sales Tax Appellate Tribunal found that since the goods in question were consigned by the Bangalore manufacturers, non-resident suppliers

from outside the State, direct to SPIC at Tuticorin under the instructions and to

the account of the assessee, a dealer in Madras, the transaction between the assessee and SPIC was in the course of intra-State sale and thus, not exempt u/s 6(2) of the Central Act. It was also found that there was no material to establish that the sale had been effected by transfer of documents only. On the contrary, since the goods were subject to inspection, testing and approval by SPIC under the terms of the contract, at the time of the door delivery, the property in the goods could not be said to have vested with SPIC during the movement of the goods from one State to another. It was, therefore, held that the mere production of E1 form and C form could not by itself constitute the sale of the assessee to SPIC as inter-State sale, exempt u/s 6(2) of the Central Act. With regard to the alternative plea of the assessee, it was found that the sale, not being a "transit" sale u/s 6(2) of the Central Act and the goods being subject to inspection and approval by SPIC at the time of delivery at Tuticorin, the sales between the assessee and SPIC were only sales under the Tamil Nadu Act and leviable to local sales tax. The pleas raised before the Tribunal have been reiterated before us also.

7. The facts are simple and not in dispute. The assessee, a dealer in Madras, entered into a contract with SPIC for supply of HDPE bags at Tuticorin. The supply was subject to verification and approval at the time of delivery. A part of the supply was made by the assessee from its own factory in Tamil Nadu, while the rest of the supply was effected by purchase of the goods in question from suppliers, who were outside the State, at Bangalore in State of Karnataka (hereinafter referred to as "the Bangalore manufacturers"). The Bangalore manufacturers had directly sent the goods in question, by lorries, to SPIC at Tuticorin by mentioning the name of the consignee as SPIC. The supply was made under instructions and to the account of the assessee. There is no material at all on record to establish that the assessee had effected the transfer only by documents. There is also no material on the record to show that the transfer of goods had been made after the goods had left Bangalore and before they had reached Tamil Nadu, in so far as SPIC is concerned. Indeed, there is no doubt that as between the Bangalore manufacturers and the assessee, the sale is inter-State sale, but the controversy is only about the sale by the assessee to SPIC at Tuticorin. According to learned counsel for the

assessee, the supply was made to SPIC during the movement of the goods from Bangalore to Tamil Nadu and, therefore, the sale would be

exempt u/s 6(2) of the Central Act. It would be advantageous at this stage to notice the provisions of section 6(2) of the Central Act. It provides :

6(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or

commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to

such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of

title to such goods, -

(A) to the Government, or

(B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act :

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the

prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause,

permit, -

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a

prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made -

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8.

8. In order to claim exemption u/s 6(2) of the Central Act, it is necessary to establish that either the sale of any goods, implying transfer of the

property in the goods by one person to another for cash or for deferred payment or for any other valuable consideration, had occasioned in the

course of the movement of the goods from one State to another, or that the sale had been effected by a transfer of documents of title to such

goods during their movement from one State to another, by any subsequent sale during such movement by transfer of documents of title to such

goods. It has been found as a fact by the Tribunal that no sale had taken place while the goods were moving from Bangalore to SPIC at Tuticorin,

since the consignment notes were addressed directly to SPIC from Bangalore by the Bangalore manufacturers and the consignment was to the

account of the assessee. It was therefore, not a case of any sale of goods having taken place during the movement of the goods from Bangalore to

Tuticorin. It was also found as a fact, and that finding of fact has not been questioned, that there was no stipulation between the assessee and SPIC

about the place from where the goods were to be despatched. The finding of fact recorded by the Tribunal that the sale had not been effected by a

transfer of documents of title to the goods during their movement from Karnataka to Tamil Nadu by any subsequent sale during that movement by

transfer of documents of title to such goods has not been displaced. On these findings of fact, it is futile to contend that the case of the assessee

would be covered by section 6(2) of the Central Act. Since the sale had taken place at Bangalore, in so far as the assessee is concerned, the

delivery of the goods to its account at Tuticorin at the doors of SPIC, in accordance with the terms of the contract executed between it and SPIC

would be only a local transaction, i.e., an intra-State transaction and not an inter-State transaction. So far as SPIC is concerned, the Bangalore

manufacturer does not come into the picture except as a consignor under instructions of the assessee. There was no sale which could be said to

have occurred during the movement of the goods. Thus, as between the assessee and SPIC at Tuticorin, the sale cannot be deemed to have taken

place in the course of inter-State trade or commerce. Section 3 of the Central Act clearly postulates a sale or purchase of goods to be deemed to

have taken place in the course of inter-State trade or commerce, if the sale or purchase occasions the movement of goods from one State to

another or has been effected by a transfer of documents of title to the goods during their movement from one State to another. As between the

assessee and SPIC, there had been no such transaction at all. The movement of the goods is deemed to commence at the time of delivery of the

goods and terminate at the time when delivery is taken from the carrier. Since, the movement of goods in the instant case took place from

Bangalore and terminated when delivery was taken at Tuticorin, it was not a case where any sale had taken place during the movement of the goods from one State to another. Actually, the movement of the goods in the instant case, as between assessee and the SPIC commenced and terminated in the same State. The appropriation of the goods was, in the facts and circumstances of the case, at Tuticorin because the goods were subject to inspection, verification and acceptance at the time of delivery at Tuticorin and till the stipulated conditions were satisfied, the property in the goods did not get transferred to SPIC at Tuticorin notwithstanding the endorsement of the documents in the name of SPIC. The situs of sale is determined by section 4 of the Central Act. The place where the goods are at the time when the contract of sale is made in the case of ascertained goods or where the appropriation is made, in the case of unascertained goods, determines both the situs of the sale as well as the character of the sale. In the present case, the transaction as between the assessee and SPIC would, therefore, be a local sale. Simply because, instead of itself first taking delivery of the goods at Madras and then forwarding the same to Tuticorin, it sent the goods to its account from Bangalore to Tuticorin, it cannot be said that the transaction between the assessee in Madras and SPIC at Tuticorin was anything other than local sale. The assessee adopted the mode of delivery of goods to SPIC for its convenience and that would not make the transaction between the assessee and SPIC as an inter-State sale. Had the assessee not been in the picture and the sale had been made directly by the Bangalore manufacturer to SPIC, the sale, indeed, would have been inter-State sale, but since it was done on the instructions of and to the account of the assessee, the sale between the assessee and SPIC was a sale within the State of Tamil Nadu only, executed pursuant to the contract between the parties entered into in Tamil Nadu.

9. In Deputy Commissioner (Commercial Taxes) Vs. The Pudukkottai Textiles Limited, , the assessee entered into a contract with M/s. Rallis India Limited, Coimbatore, within the State of Madras, for the purchase of cotton. Under the terms of the contract executed within the State of Madras, Rallis India agreed to sell 100 bales of cotton in full pressed bales each weighing about 400 lbs. at the price of Rs. 1,080 per candy of

784 lbs. net, for. Namanasamudram, within the State of Madras. The cotton had to be forwarded/delivered through wagons at the earliest possible

despatch. The payment of the price was agreed to be 90 per cent against the railway receipt at Namanasamudram and the balance 10 per cent

and the weight at cent or difference between the sellers' invoice weight at destination to be paid on the presentation of the sellers' final invoice. On

the nature of the transaction covered by the said contract, it was held :

that under the contract there was no term relating to the place wherefrom goods would have to be moved nor was there any indication that the

goods agreed to be sold were expected to be imported from any of the out-of-State places. There was also no evidence to show that the parties

at the time of the contract contemplated that the goods from out-of-State places should be moved and supplied to the purchaser in order to fulfil

the contract. If, in fact, in order to fulfil the contract the seller had moved the goods from out-of-State places, it would not by itself make the

contract as one which contemplated the movement of goods from outside the State. As per the terms of the contract, it was open to the seller

either to procure the goods locally and supply to the purchaser or purchase it or bring it from any outside place. Since neither the contract in terms

contemplated the movement of goods from one State to another nor was there any evidence that the parties contemplated the movement of goods

from one State to another in pursuance of the contract, the transactions were not inter-State in character but were local purchases.

This judgment applies on all fours to the facts of the instant case. The judgments relied upon by the learned counsel for the assessee, reported in

Larsen and Toubro Ltd., Madras and Others Vs. Joint Commercial Tax Officer, Madras and Others, , K.G. Khosla and Co. Pvt. Ltd. Vs. Chief

Commissioner, Delhi and Others, and Fairmacs Trading Company Vs. State of Tamil Nadu, , deal with entirely different fact situations and are

clearly distinguishable. They are of no assistance whatsoever to the assessee in so far as the facts of the instant case are concerned.

10. Thus, from the facts, as established on the record and found by the final fact-finding authority, it follows that the transaction between the

assessee and SPIC was not an inter-State sale but an intra-State sale in pursuance of a contract executed between the assessee and SPIC. The

assessee could manufacture and supply to SPIC the HDPE bags with the logo strictly adhering to the specifications stipulated under the contract

from its factory but if it decided to bring in the goods from outside the State in order to execute the contract, it could not be permitted to claim any

exemption u/s 6(2) of the Central Act, because, as already noticed, there was no transit sale in the instant case, nor was the sale effected by

transfer of documents of title. Consequently, the assessing authority was justified in assessing the assessee on the transaction in question between

the assessee and SPIC, treating the transaction as local sale, subject to tax under the Tamil Nadu Act and negating the plea of exemption based

on section 6(2) of the Central Act.

11. The alternative submission of the assessee that even if the sale was not exempt u/s 6(2) of the Central Act, the same could not be subjected to

levy under the Tamil Nadu Act is totally misconceived and needs a notice only to be rejected. Since the transaction between the Bangalore

manufacturer and the assessee was an inter-State sale while the transaction between the assessee and SPIC was an intra-State sale, and the

appropriation of goods had taken place within Tamil Nadu as per the terms of the contract, the sale by the assessee, a dealer based in Madras, to

SPIC at Tuticorin would be strictly governed by the provisions of the Tamil Nadu Act and assessable and subject to levy under the State Act only.

12. Thus, for what we have said above, we do not find any cause for interference with the orders of assessment, as upheld by the Sales Tax

Appellate Tribunal. The revisions fail and are dismissed. There shall, however, be no order as to costs.

13. Petition dismissed.