

(1980) 09 MAD CK 0025

In the Madras High Court

Case No : T.C. No. 291 of 1977 (Revision No. 103 of 1977)

Thavakkal Agencies

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-09-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1981) 47 STC 179

Hon'ble Judges : V. Ramaswami-II, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : R. Gangadharan for K. Srinivasan, K.C. Rajaappa and R. Janakiraman, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramaswami, J.—The petitioner is a dealer in fertilisers. The dispute related to a turnover of Rs. 34,050 which was sought to be taxed as

inter-State sales in the Central sales tax assessment for the assessment year 1971-72. The turnover of Rs. 34,050 consisted of two items of

transactions, namely, Rs. 18,450 and Rs. 15,600. The turnover of Rs. 15,600 related to a sale at Bangalore.

2. It was the case of the dealer that originally he sold the goods for Rs. 18,000 to one Manjunath Agencies at Bangalore and despatched the same

from Coimbatore to Bangalore. As the goods were not accepted by the buyers they found another buyer, raised a separate bill and arranged the

goods to be delivered to the subsequent buyer, namely, Gurusiddappa & Sons, for Rs. 15,600. The dealer had included this turnover of Rs.

15,600 in his form 1 return for the month of March, 1972, as an inter-State sale. But at the time of final assessment he contended before the

assessing officer that it was neither an inter-State sale assessable under the Central Sales Tax Act in this State nor could it be assessed as a local sale. He contended that it was a local sale at Bangalore and only the State of Karnataka could tax it. The assessing officer initially included both the turnovers, namely, Rs. 18,000 under the cancelled bills, as also Rs. 15,600, as inter-State sales. But, after hearing the parties, he deleted Rs. 18,000 and assessed only Rs. 15,600 under the Central Sales Tax Act. This order was confirmed by the Appellate Assistant Commissioner and the Tribunal.

3. There can be no doubt that this is a case which will come u/s 3(b) of the Central Sales Tax Act, 1956. The original bill dated 1st March, 1972, was in favour of Manjunath Agencies at Bangalore and the goods were transported by the petitioner to the purchaser at Bangalore. On the refusal of Manjunath Agencies to accept the same, fresh bills were prepared in the name of Gurusiddappa & Sons and the goods were delivered at Bangalore to that purchaser. It is, therefore, clearly a case where during the movement of goods from Coimbatore to Bangalore the sale had been effected by raising bills in the name of Gurusiddappa & Sons. Clause (b) of section 3 of the Act provides that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase is effected by a transfer of documents of title to the goods during the movement of the goods from one State to another. Under explanation 1 to this provision, where goods are delivered to a carrier, the movement of goods shall be deemed to commence at the time of such delivery and terminate at the time when the delivery is taken from such carrier. The goods in the present case were not delivered to anybody and the journey had not terminated as provided in the explanation till the sale in favour of Gurusiddappa had taken place and in pursuance of that sale it was delivered to the purchaser. The transaction, therefore, will clearly come u/s 3(b) and is liable to be taxed under the Central Sales Tax Act as an inter-State sale.

4. The other turnover of Rs. 18,450 is covered by three bills - two of them in favour of one Sheik Gulam Dastagir of Mysore and the third in favour of Chalakudi Trading Co., Chalakudi, Kerala. Even in respect of these turnovers, the case of the dealer was that they were all local sales,

that the buyers paid cash in advance at Coimbatore and obtained delivery of the goods at Coimbatore and that the buyers alone had arranged their own carriers for transport of the goods outside the State. In these cases also originally the dealer had reported the turnover in form 1 as inter-State sales, but later took up the position that they are local sales. Though the invoices produced showed that ex-factory price was charged, on the facts the Tribunal came to the conclusion that the sales occasioned the movement of goods from Coimbatore in this State to Kerala State and that, therefore, they are inter-State sales. The names and addresses of the purchasing dealers showed that they are outside the State purchasers. There is no evidence to show that the dealers outside the State had taken delivery of the goods in this State. The only piece of evidence that was available before the Tribunal was that in respect of one transaction the driver of the lorry KLR 3965 gave an acknowledgment of the receipt of the goods for transport. But it is not clear as to whether the driver had any authority to accept the goods on behalf of the buyer or whether he was transporting it at the instance of the carrier. In the other two invoices the endorsement that there was ex-godown delivery was found to be a fabricated one and in effect therefore there was no evidence to show that the goods were delivered to the buyers in this State. On the facts of this case, where the purchaser was an outside State purchaser and he had no place of business in this State, we can safely infer that the parties in fact contemplated even at the time of sale the movement of goods from this State to another State. In fact, the Tribunal held that there was no material to conclude that the movement of the goods to the other State was independent of the contract of sale. As we have already pointed out, in the monthly return in form 1 the dealer had shown these transactions as inter-State sales and his contention that they are local sales is an afterthought. Probably this contention is raised because he was not able to get the C forms. If once we come to the conclusion, as we have stated earlier, that there is an agreement express or implied regarding the movement of goods from one State to another, the transaction can easily be concluded as an inter-State sale. The learned counsel for the petitioner cited the decisions in *Asbestos Cement Ltd., Podanur v. Government of Tamil Nadu*, [1972]30S.T.C.251 *Balabhagas Hulaschand Vs. State of Orissa*, and *The Co-operative Sugars (Chittur) Limited v. State of Tamil Nadu*

[1977]40S.T.C.195, but the decisions in those cases were rendered with reference to the facts in those cases. But one thing is clear that in all

these cases it has been held that if the parties had contemplated or agreed at the time of sale that the goods shall be transported from one State to

another, the transaction is an inter-State sale and cannot be considered to be a local sale. Since, on the facts, we have come to the conclusion that

there was no delivery of goods to the buyer in this State and that the sale had occasioned the movement of goods, necessarily it follows that the

transaction is an inter-State sale liable to tax under the Central Sales Tax Act.

5. The petition accordingly fails and it is dismissed with costs. Counsel's fee Rs. 250.

6. Petition dismissed.