

(1976) 07 MAD CK 0033
In the Madras High Court
Case No : T.C. No. 410 of 1971

The Co-Operative Sugars Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 29-07-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1977) 40 STC 195

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : C.S. Chandrasekara Sastri, for the Appellant; K.S. Bakthavathsalam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu, AIR 1994 SC 1456(2) : (1993) 4

SCC 42 Supp : (1993) 90 STC 1

Ismail, J.—Thepetitioner herein is a sugar mill in Kerala State, it applied to the Government of Tamil Nadu for drawing sugarcane from

about 3,000 acres Of land in Coimbatore and Pollachi taluks for crushing at its mills in Kerala. The Government of Tamil Nadu granted the per-

mission subject to certain conditions. Thereafter the petitioner-sugar mill entered into contracts with the growers in Coimbatore and Pollachi taluks

for the purchase of sugarcane. One of the forms of the agreement had been produced before us. According to the terms contained in the agree-

ment, the cane shall be delivered at the factory premises of the petitioner herein and the petitioner shall pay the grower the statutory or controlled

or Government minimum price for the accepted sugarcane after inspection and weighment subject only to deduction of any advance, mutually

agreed to in writing between the grower and the occupier, prior to such delivery. For the purpose of purchasing the sugarcane so contracted for

from the growers, admittedly, the petitioner opened offices at Coimbatore and Pollachi. In those offices, the sugarcane inspectors of the petitioner

were functioning. They visited the fields, inspected the sugarcane and the finding of all the officers is that they also took delivery of the sugarcane

from the fields in Coimbatore district and arranged for the transport of the sugarcane to the factory under the cover of the delivery note in form

XX. The delivery note in form XX produced before us shows the petitioner itself as the seller as well as the buyer. It is admitted that the petitioner

alone figures as the consignor as well as the consignee. On these facts all the authorities came to the conclusion that the sales of the sugarcane took

place in Coimbatore District in Tamil Nadu and consequently the said transactions were liable to sales tax under the provisions of the Tamil Nadu

General Sales Tax Act, 1959, on the purchase value thereon. It is the correctness of this conclusion that is challenged before us in the present

revision petition preferred u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, against the order of the Sales Tax Appellate Tribunal.

2. The Tribunal has also decided the question regarding incentive bonus against the assessee, but no arguments were advanced in respect thereof

and the only point argued before us related to the character of the sales, namely, whether those sales were local sales or inter-State sales.

3. Mr. C. S. Chandrasekara Sastri, the learned counsel for the petitioner, contended that the findings of the authorities in this behalf are opposed

to the facts of this case and the said findings are erroneous. According to the learned counsel, the sales in this case took place in the course of

inter-State trade and did not constitute local sales taking place in Tamil Nadu and, therefore, could not have been taxed under the provisions of the

Tamil Nadu General Sales Tax Act, 1959. In support of this contention, the learned counsel for the petitioner placed reliance on the following

facts:

1. In the agreement entered into between the growers and the petitioner there was a specific stipulation for the delivery of the sugarcane by the

growers at the factory premises of the petitioner at Kerala ;

2. There was the provision for payment of price as fixed by the Government or the controlled rate after inspection and weighment at Kerala and

the said price included the transportation charges which had been deducted by the petitioner before payment was made to the growers ;

3. Since the delivery has been made at the factory premises in Kerala after inspection and weighment, the property in the goods could not have

passed before that event and, consequently, the sale cannot be said to have taken place in Tamil Nadu ; and

4. Form XX of the Tamil Nadu General Sales Tax Rules cannot be relied on to the exclusion of the other documents, particularly the documents

disclosing the facts referred to above and in form XX the petitioner happened to figure both as a seller and a buyer only because the growers who

supplied sugarcane were not dealers and could not get themselves registered as dealers.

4. We are of the opinion that none of these factors pose an insurmountable difficulty to the authorities holding that sales in the present case took

place within the State of Tamil Nadu. As we pointed out already there was no dispute about the fact that the petitioner has opened offices at

Coimbatore and Pollachi and at those offices the cane inspectors of the petitioner were functioning. Equally, it is not disputed that they had visited

the fields and inspected the sugarcane. Mr. Sastri was even prepared to assume that they had taken delivery of the sugarcane from the growers

from the fields themselves. Notwithstanding this, the argument is that taking of such delivery by the cane inspectors of the petitioner must be taken

to have been only on behalf of the growers in view of the terms contained in the contract to the effect that the sugarcane should be delivered only at

the factory site at Kerala. We are of the opinion that the fact that the written contract entered into between the parties provided for the growers

supplying sugarcane at the factory site in Kerala did not in any way preclude them from coming to an understanding that in respect of the very same

sugarcane contracted for, the petitioner can take delivery in the fields themselves and transport them to Kerala at its own cost and deduct the cost

of transportation charges from the price payable to the growers at the rate contracted for. It is exactly this finding which has been arrived at by the

authorities below. None of them has overlooked the fact that the contract did actually provide for the supply of sugarcane at the factory site and

all that they held was that such a stipulation was not observed by the parties and they have followed an altered mode under which the petitioner

itself took delivery of the sugarcane from the fields where they were grown and, subsequently, transported the same to the factory site in Kerala.

We are unable to see anything unnatural in this process either. Naturally, the petitioner who has contracted for obtaining the sugarcane from the

growers under the permission granted by the Government of Tamil Nadu was anxious to secure the required quantity and was equally eager to

see that that quantity was not diverted to other persons. That is the reason why the petitioner took care to take delivery of the sugarcane at the

fields themselves so that once it had taken delivery of the same there would be no chance of the sugarcane escaping its hands and reaching the

hands of other people. Therefore, we are unable to see anything unnatural or artificial in this arrangement arrived at between the parties for the

purpose of the petitioner securing the sugarcane which it bargained for. There is undoubtedly form XX which clearly and indisputably shows that

it was the petitioner who was the consignor as well as the consignee and it was the petitioner who was shown as the seller as well as the buyer.

There is no dispute about the fact that such a form was obtained by the petitioner itself. If the entries contained in that form are wrong it is for the

petitioner to establish the same and, in this case, apart from relying on the terms of the contract and the specimen bills in which the cost of

transportation is deducted from the price of sugarcane payable to the growers, no other material was placed to show that such entries were not

correct. Under these circumstances, we are unable to hold that the sales in the present case constituted inter-State sales and did not constitute local

sales.

5. Mr. Sastri, at one stage, contended that even if the property in the goods passed to the petitioner in Coimbatore District itself, still the sales will

constitute inter-State sales. We are unable to accept this argument for the simple reason that once the property in the goods has passed to the

petitioner in Coimbatore itself and thereafter the petitioner transported the goods from Tamil Nadu to Kerala as its own goods, there was no

question of any stipulation or incident of the contract of sale occasioning the movement of the goods.

6. Mr. Sastri, in support of his contention, relied on two decisions of the Supreme Court, namely, in Hanuman Mining Corporation Ltd. Vs. The

Commissioner of Sales Tax, Madhya Pradesh, Indore, and Commissioner of Sales Tax, Madhya Pradesh, Indore v. Allwyn Cooper [1970] 25

S.T.C. 26. As far as the first case is concerned, in that case, there was a stipulation in the contract that the first weight at Gondia weigh-bridge

should be the weight for the purpose of the contract and Gondia weigh-bridge was outside the State of Madhya Pradesh. In view of this

stipulation, the Supreme Court observed:

This stipulation in the contract necessitated the movement of the wagons from the State of Madhya Pradesh to the Gondia weigh-bridge for the

fulfilment of the terms of the contract as to the payment of the price. Gondia weigh-bridge is outside the State of Madhya Pradesh. On a scrutiny of

the terms of the contract, it is clear that the first weighing at the Gondia weigh-bridge was the basis of the fixation of price of the manganese ore

and therefore the parties necessarily contemplated the movement of the goods to the Gondia weigh-bridge and the weighing of the goods at

Gondia in performance of the terms of the contract. In our opinion, the movement of goods across the frontier was a direct and necessary

consequence of the important covenant with regard to the fixation of price. It follows that the sales under the eight contracts were inter-State sales

within the language of Section 3(a) of the Central Sales Tax Act and were not liable to be taxed under the Madhya Pradesh General Sales Tax

Act.

7. In the second case, in two contracts there was a specific clause that the price would include railway freight from the loading station in Madhya

Pradesh to the port of Vishakhapatnam in the State of Andhra Pradesh and that the balance of 10 per cent of the price was to be paid in the case

of one contract after loading, weighing and despatch of the ore to the port and in the case of the second after acceptance of the goods in the plots

of the buyers at the port. With reference to such clause the Supreme Court held that the performance of each one of the contracts necessarily

involved the movement of the goods from the State of Madhya Pradesh to the

State of Maharashtra or to the State of Andhra Pradesh and the sales under the four contracts were inter-State sales u/s 3(a) of the Central Sales Tax Act, 1956. We are of the opinion that having regard to the facts mentioned by us, the said two decisions have no application to the facts of this case. If the parties had stuck to the original stipulation of the growers themselves taking the sugarcane from Coimbatore to Kerala State for the purpose of delivery at the factory site, the position may be different. But we have held in this case agreeing with the finding of the lower authorities that that stipulation was not stuck to and the parties had altered the mode of delivery by the petitioner taking delivery of the goods at the fields themselves and, thereafter, as a matter of fact, the petitioner moved the goods from Coimbatore District to the factory in Kerala as its own goods. To such a situation, the decisions referred to above do not have any application.

8. Mr. Sastri also contended that under the written contract entered into between the growers and the petitioner, the petitioner has a right of rejection after the delivery of the goods at the factory site and, therefore, till the goods are delivered and accepted In the factory site, there will be no concluded sale between the parties. We are unable to hold that the right of rejection at the factory site will necessarily involve the consequence that at no stage prior thereto, the property in the goods can pass from the seller to the buyer. If even after the property in the goods has passed, certainly it is open to the buyer to reject the goods and if the rejected goods had not been taken back and replaced by the seller, the right to claim compensation therefore is always available to the buyer. Under these circumstances, we are unable to hold that any error of law has been committed by the Sales Tax Appellate Tribunal in the present case. Accordingly, the petition fails and is dismissed with costs. Counsel's fee Rs. 250.