

(1973) 07 MAD CK 0055

In the Madras High Court

Case No : Tax Case No. 406 of 1969 (Revision No. 281 of 1969)

The State of Madras

APPELLANT

Vs

Bramhappa Tavanappanavar (Mysore) Private Ltd.

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

Citation : (1974) 33 STC 601

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, The First Assistant Government Pleader Tax, for the Appellant; K.J. Chandran, for Subbaraya Aiyar, Sethuraman, Padmanabhan and K.J. Chandran, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—For the assessment year 1962-63, the assessee in this case reported a taxable turnover of Rs. 30,55,854.76 under the Madras General Sales Tax Act, 1959. The assessing authority after a check of the books of account and after considering the nature of the transactions of sales effected by the assessee determined the taxable turnover at Rs. 35,14,802.10. This assessment order was however set aside by the appellate authority and the matter was remitted to the assessing authority for making a fresh assessment. Thereafter, the assessing authority determined the taxable turnover at Rs. 34,84,972.10. The assessee disputed their taxability on a part of the said turnover by filing an appeal before the Appellate Assistant Commissioner. That appeal having been failed the assessee went before the Tribunal. At the stage of the Tribunal the disputed turnover was Rs. 2,54,383.28. According to the assessee, this turnover represented inter-State sales and not intra-State sales as has been held by the assessing authority as well as the appellate authority. The Tribunal considered the nature of the disputed transactions in the light of the documents available, and ultimately held that the said turnover represents inter-State sales and not intra-State sales and that, therefore, the assessment on the said turnover under

the Madras General Sales Tax Act cannot be sustained. Aggrieved against the order of the Tribunal the State has filed this revision.

2. According to the revenue, the conclusion of the Tribunal that the transactions in question are inter-State sales cannot at all be sustained and that the materials on record clearly indicate that the turnover can only relate to intra-State sales. It is pointed out by the learned Government Pleader that the assessee's contention that they have sold goods directly to the out-of-State buyers at Calcutta, and that there was privity between them had not been substantiated by producing the relevant contracts and other correspondence, that the materials on record only show that the entire dealing of the assessee was only with the local dealer, M/s. East Asiatic Co. Limited, and that the transport of the goods to Calcutta was only at the instance and on the instructions of the said East Asiatic Co. Ltd. According to the revenue, the transactions are such that it is possible to construe that there are two sales, one from the assessee to the East Asiatic Co. Ltd., and the other from the East Asiatic Co. Ltd. to the Calcutta buyers.

3. It is not in dispute in this case that the goods sold by the assessee ultimately moved from this State to Calcutta. But what is disputed by the revenue is that the movement is not as a term of the contract of sale or as an incident thereto. To appreciate the above contention of the revenue it is necessary to consider the nature of the transactions so far as it could be gathered from the available documents. The assessee has not produced the relevant contracts under which the goods moved from this State to out-of-State destinations. Though the invoices refer to the contracts, the contracts are not forthcoming. The explanation given by the assessee is that all the documents have been taken by the revenue during a surprise inspection of their place of business. But, these documents have not been returned to them so far. But, on behalf of the revenue, it is said that the contracts are not available on the files recovered from the assessee's place of business. Whatever be the reason, the contracts have not been made available and it is not possible to say whether there was any contract of sale between the assessee and the out-of-State buyer and whether such contracts specifically provided as a term thereto, the movement of the goods from this State to Calcutta. But, the invoice and the other correspondence indicate that the goods had been transported by ship from Madras to Calcutta and the assessee collected the sale price by sending the bill of lading and the other relevant documents for collection through banks. The assessee has also got C forms from the out-of-State buyers. The out-of-State buyers would never have issued C forms to the assessee unless there was actual contract to purchase the goods from the assessee. The Tribunal has relied on these materials for taking the view that the movement of the goods to the out-of-State destination can only be as an incident of the contract of sale. We are of the view that the Tribunal has come to the right conclusion in this case. It is true that the actual contracts are not available and we have to consider the nature of the transactions only from the other available documents. It is also true that the onus is on the assessee to prove that the transaction is an inter-State sale and,

as such, not liable to be taxed under the Madras General Sales Tax Act. But, for some reason or other, the assessees say that they are not in a position to produce the contracts of sale. For that reason, we cannot reject other materials made available in this case. As already stated, the invoice and the correspondence between the assesseees and the Calcutta dealers as also the C forms given by the Calcutta dealers, all indicate that the goods should have moved in pursuance of the earlier contracts of sale. The revenue has attempted to show that these documents referred to above cannot be accepted on their face value, for the correspondence between the assesseees and the local dealer M/s. East Asiatic Co. Private Limited throw considerable suspicion that it is the East Asiatic Co., which should have purchased the goods from the assesseees and arranged for the despatch of the goods to their out-of-State buyers through the assesseees in fulfilment of the contracts of sale entered into by them with the Calcutta dealers. But, the revenue has not produced any material to show that there was in fact contracts of sale entered into by the assesseees with the East Asiatic Co. Ltd. An inference of sale by the assesseees to the East Asiatic Co. is sought to be drawn from the fact that the substantial portion of the sale consideration has been paid as advance by that company to the assesseees long before the despatch of the goods to the out-of-State destination and that the goods are despatched as per the instructions of the East Asiatic Co. But in the absence of the actual contract between the assesseees and the East Asiatic Co., if any, to show the relationship between them as sellers and buyers, it is not possible for us to infer the existence of contracts of sale between the assesseees and the East Asiatic Co. merely because a part of the consideration for the sale has been paid as advance and the transport has been done in accordance with their instructions. These acts are also consistent with the East Asiatic Co. acting as agent of the Calcutta buyers. As a matter of fact, the contracts produced for the earlier years which are said to be typical of the contracts entered into by the assesseees with the out-of-State dealers show the East Asiatic Co. as an agent through whom the goods have been purchased by the out-of-State dealers. We are clearly of the view that the materials relied on by the revenue for the purpose of establishing a contract of sale between the assesseees and the East Asiatic Co. are quite inconclusive and it is not possible for us to accept the contention of the revenue that the movement of the goods was only as per the directions of the East Asiatic Co., after they had actually purchased the goods from the assesseees. We have to therefore uphold the view of the Tribunal that the turnover to the extent of Rs. 2,54,383.28 represented inter-State sales.

4. It is however found that though the assesseees claim that this turnover related to inter-State sales, the revenue proceeded on the basis that it represented intra-State sales and, on that account, these sales have not been brought to tax under the Central Sales Tax Act. Now that we have agreed with the Tribunal that the transactions in question are only inter-State sales, these transactions are taxable under the Central Sales Tax Act. The learned counsel for the assesseees concedes this position and states on instructions from his clients that they have no

objection for the disputed turnover being assessed under the Central Sales Tax Act, if the turnover has not already suffered tax. The tax case is, therefore, dismissed and liberty is given to the revenue to proceed to assess the disputed turnover under the Central Sales Tax Act. There will be no order as to costs.