(1983) 03 MAD CK 0047

In the Madras High Court

Case No : Tax Case (Revision) No. 84 of 1983 (Revision No. 35 of 1983)

The State of Tamil Nadu APPELLANT

Vs

Hercules Rubber Co. RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Citation : (1983) 54 STC 85

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant;

Judgement

Ramanujam, J.—In this tax case filed by the State the decision of the Sales Tax Appellate Tribunal that a turnover of Rs. 1,62,294.30 during

the assessment year 1976-77 did not represent inter-State transactions effected by the assessee has been challenged.

2. The facts relevant for the purpose of this tax revision case may briefly be stated : The assessees manufacture certain goods in Madras. They

have their branch office at Vijayawada and the Vijayawada branch booked orders for supply of goods from the local purchasers. Thereafter it

required the head office in Madras to despatch the goods to Vijayawada. After the goods were received at the branch office at Vijayawada, the

goods were handed over to the purchaser and the price realised. The branch office at Vijayawada had also been taxed on their sales under the

Andhra Pradesh General Sales Tax Act. The assessing authority found that these transactions represented inter-State transactions as the goods

have been moved out of Madras in pursuance of contracts of sale entered into by them with the purchasers. Though these transactions were held to be inter-State sales by the assessing authority and brought to charge under the Central Sales Tax Act, the Appellate Assistant Commissioner has

held that these transactions can only be treated as branch transfers, and therefore, they cannot be taken to be inter-State sales. On a petition filed

before the Tribunal for enhancement by the State, the Tribunal held that the transactions are only in the nature of branch transfers and not inter-

State sales. The decision of the Tribunal has been challenged so far as it related to the transactions aforesaid.

3. The learned Government Pleader appearing for the State contends that the Tribunal has overlooked the fact that the consignments even at the

time of package and despatch, had been marked with the purchaser''s name and that will indicate that the movement of the goods was in respect of

a contract of sale entered into with that particular purchaser. The learned Government Pleader also submits that the facts of this case are more or

less identical with the facts before the Supreme Court in South India Viscose Ltd. Vs. State of Tamil Nadu, , wherein the Supreme Court has held

that the transactions in that case represented only inter-State sales. We are of the view that even if the goods, before despatch from Madras,

contained markings of the names of the individual purchasers in Andhra Pradesh, that cannot be taken to be conclusive of the issue; but such

markings can only indicate that the goods are intended only for a person who has entered into a contract of purchase with the assessee''s branch

office in Andhra Pradesh. The other facts established in this case are quite determinative and conclusive as to the nature of the transactions. It is not

is dispute that the orders had been placed by the various purchasers in Andhra Pradesh with the assessee''s branch office there. Subsequently, at

the instance of the branch office, goods have been despatched by the assessee to the branch office. The branch office took these into their stock

and subsequently delivered them to its purchasers. The goods have been sent mostly by lorries and the lorry receipts were sent to the Vijayawada

branch, who in turn handed over the same to the customers and the sale invoices have been made out by the Vijayawada branch and handed over

to the purchasers. Except that the goods were manufactured in Madras and they were despatched by lorries on the instructions of the branch

office, there is no nexus between the Madras office and the ultimate purchasers in Andhra Pradesh with whom the branch office had entered into contracts of sale. Thus there is no conceivable link between the assessee and the purchasers in Andhra Pradesh. It is not in dispute that orders

were placed by the purchasers in Andhra Pradesh with the assessee''s branch at Vijayawada. For fulfilling those orders, the branch office required

the goods to be sent by the head office on the account of the branch office and the branch office had issued invoices to the purchasers and handed

over either the goods or the lorry receipts which were in their possession. Even if the assessee had put markings on the consignments which have

been sent by lorries in the name of the purchasers, that is not sufficient to bring about a contract of sale between the assessee and the ultimate

buyer in Andhra Pradesh.

4. The principle laid down by the Supreme Court in South India Viscose Ltd. Vs. State of Tamil Nadu, will not apply to the facts of this case. In

that case, there was a direct contract of sale between the Madras dealer and the purchaser in the State of Maharashtra, After the contract of sale

was entered into, the goods had been delivered through the assessee''s agent in Bombay. The question arose whether the intervention of an agent

for delivery will make the transaction a local sale at Bombay. The Supreme Court expressed the view that so long as there is a direct contract of

sale between the assessee and the buyer and the goods were sent pursuant to that contract of sale, the interposition at a later stage of the selling

agent who acted on behalf of the appellant in the preparation of the invoice and the delivery of the goods did not alter the true character of the sale

as the selling agent was just a conduit pipe, that the goods having been despatched from one State to another pursuant to a contract of sale which

came into existence directly between the assessee and the buyer the sales effected by the assessee should be held to be inter-State sales. In this

case there is no direct link established between the assessee in Madras and the buyer in Andhra Pradesh as was the case before the Supreme

Court. The contract of sale had been entered into between the assessee''s Andhra Pradesh branch and the local buyers. In view of the fact that

there is no direct link between the assessee who is in Madras and the dealers of Andhra Pradesh, the despatch of the goods cannot be taken to

have been occasioned by the contract of sale entered into by the assessee''s branch with the local buyers. We are therefore of the view that in this case the Tribunal has come to the right conclusion and no interference with its order is called for.

5. The tax revision case is accordingly dismissed.

