State 0f Mysore

Vs

Guduthur Thimmappa & Son, & Anr.

Civil Appeals Nos. 714-724 of 1965

(J. C. Shah, V. Ramaswami-I, V. Bharagava JJ)

30.09.1966

JUDGMENT

BHARGAVA, J.

These appeals arise out of proceedings for assessment of sales-tax under the Madras General Sales Tax Act No. IX of 1939 (hereinafter referred to as "the Act") in respect of certain sales of cotton. The respondents were registered dealers in cotton, including kappas, groundnuts and cotton seeds with their Head Office at Bellary and Branch Offices at a number of places. They were also licensees under s. 8 of the Act in respect of cotton. They made various purchases of cotton at their places of business and subsequently sold them to different parties. Amongst these were a number of persons who were not resident within the area to which the Act applied. The question arose as to who was liable to pay the sales-tax in respect of those transactions of sale of cotton in which the cotton had been sold by the respondents to non-residents. When the case came up before the Mysore Sales Tax Appellate Tribunal, the Tribunal determined the course of transactions and held as follows :

> "The examination of the contracts, the invoices, the railway receipts, insurance policies and other documents relating to the disputed turnovers shows that the non-resident foreigners place orders for the required number of bales of cotton specifying the quality and the rate some times on phone which would be confirmed subsequently by Telegrams or letters and finally by written agreements. Thereupon, the appellants consign the cotton bales in their own name, the consignee being the non-resident foreign buyers (except in respect of a total turnover of Rs. 2,93,567-2-0 which would cover the items 1, 3, 5, 7, 31, 32, 33 and 44 of the typed statement of the account for the year 1954-55 and a total turnover of Rs. 3,71,880-13-0 which would cover the items 6, 10, 11, 12, 13, 14, 15, 16, 24, 25, 26, 29, 30, 31, 35, 36 and 37 of the typed statement of account for the year 1955-56) and send the railway receipts to their bankers at the other end for the collection of the amount. It is seen that notwithstanding the fact that there are specific provisions in the contract that 90 per cent of the invoice amounts should be paid to the bankers when the railway receipts would be delivered to the purchasers, surprisingly the said provision is rendered nugatory by reason of the fact that the appellants despatch the cotton in such a way that the consignee could get cotton bales at the other end even though without any payment to the banker. The moment the appellants consigned the goods, they will have lost complete control and dominion over the cotton thus despatched. Further, non-resident foreign buyers who obtained the necessary transport permit under the Cotton Control Order, 1950, actually insure the cotton bales as the owners

> thereof and transmit the same from Bellary to the destination. This is so even in cases where the appellants themselves have consigned the goods in their own name, the consignees being themselves. All these facts clearly go to show that the sales are completed at Bellary and the non-resident foreign buyers in whose favour the property in the goods had been transferred actually transported the cotton thus purchased. The State Representative does not seriously dispute about the correctness of the modus operandi of the appellants in their dealings with their purchasers during five years of assessments. Bearing these facts in mind, we shall now proceed to examine each of the contentions raised by the learned counsel."

On these facts, the question that fell for determination was whether for purposes of s. 5(2) of the Act read with Rule 4-A(iv)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 (hereinafter referred to as "the Rules"), the respondents were the dealers who bought the cotton in the State and were the last dealers not exempt from taxation under s. 3(3) of the Act on the amount for which the cotton was bought by them. The contention on behalf of the respondents was that the cotton was sold by them within the State of Madras to parties who were residing outside the State of Madras; but the sales having been made by them within the State of Madras, they could not be held to be dealers who bought the cotton in the State and were the last dealers for that purpose not exempt from taxation. According to their contention, the parties, to whom they sold the cotton within the State, were the persons liable to be taxed in accordance with s. 5(2) of the Act and Rule 4-A(iv)(b) of the Rules. The Tribunal accepted this plea of the respondents, allowed the appeals, and set aside the orders of the subordinate authorities directing payment of sales-tax by the respondents. That order was upheld by the High Court of Mysore when the revisions against the orders of the Tribunal came up for decision before it. These appeals before us coming up by special leave are directed against the above order of the High Court. We may mention that the revisions came up before the High Court of Mysore, because the area, in respect of which the dispute arose, was originally within the State of Madras, but, on Reorganisation of States, came within the State of Mysore. The law applicable to sales in the year in question, however, continued to be the Madras Sales Tax Act IX of 1939, and that area came to be designated as Madras Area of the State of Mysore.

In these appeals, two points were canvassed before us by learned counsel for the State of Mysore. At the initial stage, learned counsel for the State indicated that he did not intend to challenge the finding that the situs of the sales in question were all within the Madras area; but at a later stage, he challenged this finding as the second alternative point in support of these appeals. We may deal with this point first.

The course of transactions found by the Tribunal, reproduced above, led the Tribunal and the High Court to the finding that the situs of the sales by the respondents to the non-resident parties was in Bellary where the sales were completed and delivery also took place. The submission by learned counsel for the appellant was that none of those parties themselves came within the State to Bellary either for the purpose of entering into contracts for sale, or for purposes of taking delivery. Delivery was given to common carrier, and consequently, it should be held that the sales were completed not within the State, but outside at the places to which the goods were consigned for delivery to the various parties. We are unable to accept this submission. It has been rightly held by the High Court that the common carrier took delivery as agent of the buyer and that delivery was within the State. There is the further circumstance that, during transit, the goods were insured by the buyers at their own cost, and not by the respondents. The buyers thus recognised that they were already the owners of the cotton bales as soon as they were given for transmission to the common carrier.

In this connection, a question also arose whether the sales by the respondents to those non-resident parties were sales in the course of inter-State trade. What are the sales in the course of inter-State trade was explained by this Court in Tata Iron and Steel Co. Limited, Bombay v. S.R. Sarkar and Others ([1961] 1 S.C.R. 379.), where clauses (a) & (b) of s. 3 of the Central Sales Tax Act, 1956 were interpreted as follows :

> "In our view, therefore, within cl. (b) of s. 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto; cl. (a) of s. 3 covers sales, other than those included in cl. (b), in which the movement of goods from one State to another is the result of a convenant or incident of the contract of sale, and property in the goods passes in either State."

The nature of transactions found by the Tribunal in the cases before us shows that property in the cotton bales sold by the respondents did not pass during the movement of goods from one State to another by transfer of documents of title, and, further, that the movement of goods from the Madras area to places outside the State was not the result of any convenant or incident of the contract of sale. The contract of sale was completely carried through within the Madras area itself, in which area the price was received by the respondents and the cotton bales were delivered to the buyers. The movement of the cotton bales outside the State was by the buyers themselves after property in them had passed to them, so that these sales were not sales in the course of inter-State trade.

We now come to the second and the main point which was urged before us by learned counsel for the appellant. The sub-mission of learned counsel was that a buyer, who was not resident within the area to which the Act applied, could not be held to be the last dealer for purposes of Rule 4-A(iv)(b) of the Rules. According to him, it is the situs of the seller and the buyer which determines the applicability of this Rule, and not the situs of the sale of cotton itself. We are unable to accept this submission. The language of the Rule is clear that the tax is to be levied from the dealer who buys it in the State and is the last dealer not exempt from taxation. The test laid down thus is as to who buys it in the State and not who is in the State for purposes of buying the cotton. The Mills outside the State were no doubt carrying on their main business of manufacture of yarn or cloth outside the State; but so far as the act of purchase of these cotton bales was concerned, it was carried out by them within the State. It is to be noticed that in the Rule the expression used is "the dealer who buys it in the State and is the last dealer not exempt from taxation". If the intention had been that the location of the buyer himself should be the criterion for imposing tax on him, the language used in the Rule would have been quite different. It could easily have been laid down that the tax will be levied from the dealer in the State who buys it as the last dealer not exempt from taxation. The expression as used in the Rule makes it perfectly clear that the location of the dealer himself is immaterial. The liability to be taxed attaches if the purchase itself by the dealer is within the State. In the case of the sales in question, therefore, the buyers who purchased the cotton bales from the respondents were the last dealers who bought those cotton bales in the State and the single point tax under s. 5(2) of the Act had to be levied from them and not from the respondents.

In this connection, an alternative argument was also raised for the first time by learned counsel for the appellant that those outside buyers could not be held to be dealers carrying on the business of purchase in the State, and if they were not dealers, the purchases by them had to be ignored, so that the last buyers in the State would be the respondents, because their purchases would be the last purchases by dealers made when they acquired these cotton bales subsequently sold by them. This contention was not raised at any earlier stage before the Tribunal or the High Court, and it is,

therefore, not open to the appellant to urge it before this Court for the first time. In any case, it is clear that the outside buyers were all mills which were purchasing cotton bales for use in their manufacturing process and such purchases by them would amount to purchases of raw materials for their business. Purchases of this nature have already been held by this Court to constitute the business of purchase by the buyers in The State of Andhra Pradesh v. M/s. H. Abdul Bakshi and Bros. ([1964] 7 S.C.R. 664 : A.I.R. 1965 S.C. 531.). Consequently, this ground raised has also no force. The appeals fail and are dismissed with costs. One hearing fee only.

Y.P.

Appeals dismissed

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