

Tata Engineering and Locomotive Co. Ltd.

Vs

The Assistant Commissioner of Commercial Taxes, and Another

Civil Appeal Nos. 2105 and 2106 of 1969

(A. N. Ray, I. D. Dua, C. A. Vaidialingam, K. S. Hegde, A. N. Grover, J. C. Shah JJ)

02.03.1970

JUDGMENT

GROVER, J. -

1. The only point for determination in these appeals by certificate is whether certain sales of motor vehicles manufactured by the appellant were inter-state sales and were liable to tax under the provisions of the Central Sales Tax Act, 1956, hereinafter called "the Act".
2. The appellant carries on the business of manufacturing inter alia Tata Mercedes Benz trucks and buses, chassis, spare parts and accessories thereof at Jamshedpur in the State of Bihar. These are sold to the Government of India, the State Transport Corporations, commercial and industrial undertakings and other persons. These appeals relate to the assessments made by the Assistant Commissioner of Commercial Taxes, hereinafter called the "Assistant Commissioner", with regard to the assessment periods April 1, 1964 to March 31, 1965 and April 1, 1965 to March 31, 1966. As the points are common to both the appeals we shall deal with the facts relating to second period, namely, April 1, 1965 to March 31, 1966.
3. The appellant did not maintain any stockyard in the State of Bihar but in different States stockyards were being maintained since December 1964. This, it is stated, was done for the purpose of more effective distribution of the vehicles particularly among the net work of dealers. These stockyards were operated by the appellant's own personnel and the sales of the vehicles, it is claimed, were effected to the dealers as well as to the other users in the different States from the stockyards. The dispute relates only to the assessment made in respect of the vehicles which moved from the manufacturing plant in Jamshedpur to the stockyards in different States in the country. The sales tax was duly paid in accordance with the respective State laws on the sales effected from the stockyards there.
4. The Assistant Commissioner has levied tax under the Act on all the vehicles which moved to the stockyards in States other than Bihar from Jamshedpur. Tax amounting to Rs. 173 lakhs was levied on April 1, 1966 for the period April 1, 1965 to September 30, 1965. The appellant moved the Patna High Court under Article 226 of the Constitution in April 1966, challenging the order of assessment but the petition was dismissed in limine in April 1966. This Court was thereafter approached against the order of the High Court and special leave to appeal was granted. The appeal was finally allowed in February 1967 and the High Court was directed to entertain and decide the petition on merits. In November 1967 an agreed order was made by which the previous order of assessment was set aside and fresh assessment was to be made in accordance with law. On January 24, 1968 the appellant addressed a detailed communication giving the entire procedure which was being followed in the

matter of sales of motor vehicles sent to different States from the works at Jamshedpur. It appears that the Assistant Commissioner paid a personal visit to the head officer of the appellant at Bombay and relevant records were shown to him there or later on according to his requisitions. On March 13, 1968 he made the assessment order in which he created a demand for Rs. 2,79,13,599.32 by way of sales tax under the provisions of the Act on the vehicles which had moved from Jamshedpur to the stockyards in the various States and had been disposed of from there. The appellant filed petitions under Article 226 of the Constitution challenging the above order as also the assessment on similar lines for the period April 1, 1964 to March 31, 1965. The petitions were dismissed by a division bench of the High Court.

5. The controversy throughout have centered on the question whether the sales subjected to tax were of the nature which were covered by the provisions of the Act or whether those sales took place in the different States where the stockyards were situate and from where they were disposed of.

Sections 3 and 4 of the Act may be read in this connection :

"3. 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 -

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the good during their movement from one State to another.

Explanation I .....

Explanation II ....."

"4. (1) Subject to the provisions contained in Section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State -

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation ....."

It is also necessary to refer to the definition of "sale" as given in Section 2(g). The substance of that definition is that sale means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration. As observed in *Tata Iron and Steel Co. Ltd., Bombay v. S. C. Sarkar and Others*, ((1961) (1) SCR 379) a transaction of sale is subject to tax under the Act on the completion of the sale. A mere contract of sale is not a sale within the definition of "sale" in Section 2(g). A sale being transfer of property becomes taxable under Section 3(a) "if the movement of goods from one State to another is under a covenant or incident of the

contract of sale". In *Ben Gorm Nilgiri Plantations Co. Coonoor and Others v. Sales Tax Officer, Special Circle, Ernakulam and Others*, ((1964) (7) SCR 706) the provisions of Section 5 of the Act came up for consideration and the principle settled by that decision would indisputably be applicable to Section 3(a) of the Act. It has been laid down that the sale in the course of export predicated connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted without a breach of the contract or the compulsion arising from the nature of the transaction. To occasion export there must exist such a bond between the contract of sale and the actual exportation that each link is inextricably connected with the one immediately preceding it. The principle thus admits of no doubt, according to the decisions of this Court, that the sales to be exigible to tax under the Act must be shown to have occasioned the movement of the goods or articles from one State to another. The movement must be the result of a covenant or incident of the contract of sale.

6. The points which would require determination would be whether the transactions which have been subjected to tax were of sale within the definition of that expression contained in Section 2(g) and whether the movement of goods from Jamshedpur to the stockyards of the appellant in the different States was occasioned by any covenant or incident of the contract of sale.

7. The procedure according to which dealings took place and supply of vehicles was made was outlined in a communication which was addressed by the appellant to the Assistant Commissioner in February 1968. Prior to 1938 each dealer had to place every month what were called "firm orders" for the vehicles which the dealers wanted to purchase. By 1958 Tata Mercedes Benz vehicles are stated to have gained remarkable reputation for quality. The demand exceeded the production. It was no longer necessary to restrict the production to any limited demand or to depend on the number of firm orders for planning of production schedule. Therefore about the year 1958 the appellant stopped insisting on the firm orders from the dealers. It was asserted that the company's records did not contain any firm orders after 1958. It is unnecessary to mention certain circulars issued by the company prior to the promulgation in May 1963 by the Government of India of the Commercial Vehicles (Distribution and Sale) Control Order, 1963, which was valid up to September 1967. The Control Order provided for the general principles of distribution. Pursuant to the Control Order the appellant issued a circular, dated June 14, 1963, asking the dealers to submit the following statements at the end of each month instead of the weekly statements as submitted by them prior to the Control Order : (1) list of applications registered during the month; (2) list of retail sales during the month; (3) list of applications cancelled during the month and (4) stocks and sales report. The appellant explained that this was done to keep itself informed of the market movement and the sale prospects of the vehicles and to avoid any possibility of irregular allotment by the dealer. According to the appellant the extracts of the register kept by the dealer, could not, under any circumstances, be equated to firm orders nor was there any relationship between the actual number of vehicles supplied and the information contained in the extracts.

8. A new form of dealership agreement (Ex. 1) was introduced by the appellant after the promulgation of the Control Order. Clause 1(a) of this agreement provided that "the company agreement to sell and supply from its works at Jamshedpur in the State of Bihar or from its depots and stockyards outside the State of Bihar to the dealer" the vehicles which shall be allotted to the dealer by the company at its discretion for resale in accordance with the provisions of the agreement. Clause 11(b) is reproduced below :

"The dealer shall mail to the Company on the 15th of each month, or so, so that the Company will be in receipt thereof by the 20th of each month, his firm order for

purchases to be effected during the next succeeding month and his estimated requirements of the said vehicles for the two months following the next succeeding month, for the said vehicles."

In the communication which has been referred to before sent to the Assistant Commissioner it had been emphasised that although the above clause regarding the firm order was included in the dealership agreement, in fact no firm orders were called for in view of the Control Order. It was maintained that during the relevant period sales were effected from the stockyards alone, the procedure adopted being as follows : The sales office of the appellant in Bombay, after taking into account the production schedule requirements of individual States, the Government directives and other relevant factors instructed the factory at Jamshedpur to transfer stocks of vehicles to the stockyards in the various States. The instructions for transfer were given by the sales officer by Stock Transfer Authorisation in which the model of the chassis and the number of units were mentioned along with the name of the stockyard to which the same were to be transferred. Pursuant to the Stock Transfer Authorisation the works prepared a Stock Transfer Memo which indicated the quantity of the vehicles to be transferred to the stockyard specified in the memo. This Memo was signed by the transport contractor appointed by the appellant for transportation of the vehicles to the stockyards. On receipt of the vehicles at the stockyard any deficiency in or damage to the vehicles was noted by the stockyard in charge. Unless the damage to the vehicles was set right they were not appropriated to any contract of sale. The stocks available in the stockyards were distributed from time to time to dealers taking care to ensure that the overall supply to the dealers in any State would be in proportion to the number of order pending with the dealer on May 1, 1963 or on the basis of the off-take by the dealer during the year ending September 30, 1962 as required by the Control Order. For this purpose allotments were made to the dealer for each month by an allocation letter by the sales office. It is claimed that the transfer of the vehicles from works to the various stockyards was a continuous process and was not related to the requirement of any particular customer whether a dealer or a corporation or a private individual. These vehicles were transferred by way of stock to the stockyards or depots from where the transactions of sale were effected. It was pointed out that there was no connection between the Stock Transfer Authorisation and the allocation letter. The vehicles were delivered to the dealers as and when they were available in the stockyards irrespective of whether or not allocation for the dealers had been made or notified to them. There had been many instances where the vehicles had been actually delivered from the stockyards prior to the issue of the allocation letter. The vehicles delivered to the dealer from the stockyard were accounted for against the allocation over the period. It was the stockyard in charge who appropriated the required number of vehicles to the contract of sale out of the stocks available with him and put down the vehicle engine and chassis number in the delivery challan. This was done after a delivery order had been addressed by the sales office at Bombay to the stockyard in charge for deliver of stated number of vehicles of specified modal to a particular dealer. Till such appropriation of vehicles through specification of the engine and chassis numbers, it was always open to the company to allot any vehicle to any purchaser or to transfer the vehicles from the stockyard in one State to a stockyard in another State.

9. Now the Assistant Commissioner has not examined each transaction as indeed he ought to have done and has arrived at certain conclusions which appear to be wholly erroneous and are based on a complete misapprehension of the true position. He has firstly treated the allocation or allotment letters together with their confirmation as transactions of sale. According to him once the availability of vehicles for allocation was determined for any particular month allocations were made to individual dealers and Stock Authorisation Memos were issued by the sales office at Bombay to the work at Jamshedpur. The movement of vehicles from the works to the stockyards

was the direct result of the allocations so made. The conclusion on this point was in these words :-

"It was therefore clear that generally the movement of vehicles from works to the stockyards were not completely disassociated from the allocation made to the dealers. Consequently it would not be said that the movement of the vehicles from the works at Jamshedpur was completely unrelated to contract of sale."

It was recognised that in some cases vehicles had been delivered to some dealers in advance against the allocation made for the following months. The appellant further showed and this was accepted that 15 vehicles from the Delhi Stockyard were transferred to Karnal Stockyard. After finding that the allocation letters together with their confirmation constitution transactions of sale the Assistant Commissioner referred to the dealership agreement and stated that on placing of the demand by the dealer a complete contract came into existence. He proceeded to regard the statement which were required to be furnished to the dealers in accordance with the letter, dated June 14, 1963, addressed by the appellant to them as firm orders within the meaning of the relevant clause in the dealership agreement. The final conclusion of the Assistant Commissioner was that as contemplated by clause 11(b) of the dealership agreement every one of the dealers placed his demand or orders for supply which amounted to a contract for the sale of the vehicles demanded and Clause 12 of the dealership agreement under which allocations were made by the appellant to the dealers amounted to fulfilment of orders. The appellant had throughout maintained that firm orders were no longer placed with it by the dealers after 1958. It has not been found or shown that any such orders were in existence relating to the transactions in dispute. Thus on the question that transactions of sale took place the decision of the Assistant Commissioner rested mainly on the allocation letters and the statements furnished by the dealers as required by the circular of June 14, 1963.

10. It is somewhat unfortunate that the High Court fell into the same error as the Assistant Commissioner as it accepted his findings on the ground that they were on questions of fact and could not be re-examined by the High Court. It was said that the terms and covenants of the contract made it clear that since the vehicles were despatched in pursuance of orders irrespective of appropriation or specific vehicles being sent to specific dealers the despatch and supply to the dealers must of necessity be regarded as integral part of a single transaction. It is difficult to see what contracts the High Court had in mind because none have been shown to us even by the learned Advocate General for the State. He also relied largely on the findings of the Assistant Commissioner and urged that they were not open to re-examination.

11. The explanation of the procedure followed by the appellant which prima facie seems to be businesslike and plausible together with the proved absence of any firm orders lends support to the argument pressed on its behalf that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of Section 2(g) of the Act. The Assistant Commissioner himself found that sometimes the vehicles were sent from the works at Jamshedpur even before an allocation letter had been issued. It would appear from the materials placed before us that generally the completion of the sales to the dealers did not take place at Jamshedpur and the final steps in the matter of such completion were taken at the stockyards. Even if the appellant took into account the requirements of the dealers which it naturally was expected to do when the vehicles were moved from the works to the stockyards it was not necessary that the number of vehicles allocated to the dealer should necessarily be delivered to him. The appropriation of the vehicles was done at the stockyards through specification of the engine and the chassis number and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer the vehicles from one stockyard to another. Even the Assistant Commissioner found that on some

occasion vehicles had been moved from stockyard in one State to a stockyard in another State. It is not possible to comprehend how in the above situation it could be held that the movement of the vehicles from the works to the stockyards was occasioned by any covenant or incident of the contract of sale. As regards the so called firm orders it has already been pointed out that none have been shown to have existed in respect of the relevant periods of assessment. Even on the assumption that any such orders had been received by the appellant they could not be regarded as anything but mere offers in view of the specific terms in Exhibit I (the dealership agreement) according to which it was open to the appellant to supply or not to supply the dealer with any vehicle in response to such order. What was, therefore, relevant was the acceptance of firm order occasioning the movement of vehicles out of the State of Bihar.

12. Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an interstate sale exigible to tax under the provisions of the Act.

13. Consequently the appeals and the order of the High Court and that of the Assistant Commissioner is set aside in so far as it relates to the assessments in dispute in the present appeals. It will be open to the Assistant Commissioner to make a fresh assessment in accordance with law. The appellant shall be entitled to costs incurred in this court. One hearing fee.

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