

Iyanahalli Bakkappa & Sons

Vs

State of Mysore

Civil Appeal No. 1175 of 1967

(C.A. Vaidialingam, P. Jagmohan Reddy, K.K. Mathew JJ)

29.10.1971

JUDGMENT

P. JAGANMOHAN REDDY, J. -

1. This Appeal is by certificate against the judgment of the Mysore High Court dismissing the Revision petition against the order of the Mysore Sales Tax Appellate Tribunal, by and under which the assessment order of the Commercial Tax Officer and the Appellate order of the Deputy Commissioner of Commercial Tax was confirmed. The question of law which arose out of the decision of the Sales Tax authorities for consideration of the High Court was "whether on the facts and circumstances of the case the assessee's turnover in respect of safety matches is not liable to tax on the ground that the sales effected by the assessee are not the first sales in the State." The appellants declared for the assessment year 1959-60 a total turnover of Rs. 13,04,097/- in respect of the purchase of safety matches and claimed exemption on the entire turnover on the ground that it was a subsequent sale from the dealers in the State of Mysore. During the relevant assessment year sale of matches was taxable under sec. 5(3)(a) of the Mysore Sales Tax Act, 1957 (hereinafter called the Act) on the first or earliest of the successive dealer in the State of Mysore. The appellants' contention was that it purchases the matches from the Sales Depots of the National Match Works, Lakshmi Match Works and Palaniappa Match Industries at Devangers who were the first sellers of matches in the State of Mysore liable to tax and that the appellant was the second dealer in the State not liable to tax in respect of its sales.

2. The Modus Operandi of the appellant in purchasing these matches was that it placed orders with the aforesaid Sales Depots of M/s. National Match Works, Lakshmi Match Works and Palaniappa Match Industries at Devangers which Depots are registered dealers under that Act. On receipt of these orders from the Appellant the respective Manager of the three Sales Depots forward the order to their Head offices at Sivakasi and instruct them to despatch the matches ordered direct to the appellant at Devangers. The matches are thereafter despatched by lorry to the Appellant in accordance with the instructions received from the Sales Depots. The Sales Depots send to the Appellant detailed invoices of the matches despatched by their factories. The Appellant gives credit to the value of the matches after deducting there from the amount covered by debit notes in respects of Octori, lorry freight and other incidental charges incurred by it and at the request of the sales office the assessee remits the value of the matches direct to the factory by means of drafts and telegraphic transfer. On these findings the correctness of which was not disputed the assessing authority came to the conclusion that the transactions were inter- State sales within the meaning of sec. 3(a) of the Central Sales Tax Act, and since the appellant was the first dealer in matches in Mysore State it was liable to pay Sales Tax and accordingly, it was so assessed. Against the said assessment order the appellant filed an appeal to the Deputy Commissioner of Commercial Taxes

who dismissed the Appeal. The further appeal to the Tribunal was equally unsuccessful.

3. Before us it is contended by the learned Advocate for the appellant relying upon the despatch advice, delivery notes and invoices issued in the name of the assessee in which the Sales Tax 2% was charged that the sale by the manufacturer at Sivakasi was effected in favour of their respective sales Depots in Mysore and it is only thereafter that the appellants purchased from these Sales Depots the matches and cannot therefore be treated as the first purchaser in the Mysore State. It appears to us on the facts as set out above which were not in dispute, the sales were made by the respective factories direct to the appellant the sales price was also sent directly to the factories at Sivakasi. No doubt the orders were routed through the Sales Depot but on that account it cannot be said that the factory sold the goods ordered by the appellant to its Sales Depot. It does not appear that the contention based on the invoices showing that the Sales Tax was charged by the Sales Depot was urged before any of the authorities or before the High Court nor was there any finding on this aspect as is evident from the facts found by the Sales Tax authorities which were not in dispute. It is also inconceivable that there can be a sale between the manufacturer and its Sales Depot.

4. It is not disputed that under the provisions of the Act it is the first sale in the State that are exigible to tax. Sale is defined to sec. 2 (t) of the Act as follows :

"Sale with all its grammatical variations and cognate expressions means every transfer of the property in goods by one persons to another in the course of trade or business for cash or for deferred payments or other valuable consideration, but does not include a mortgage hypothecation, charge or pledge".

Explanation to this definition which is relevant is given below :-

(a) The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State :

"(I) In the case of specific or ascertained goods, at the time the contract or purchase is made; and

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

5. It is apparent from the above provisions that the transactions in questions under explanation 3 (a) are the first sales in favour of the appellant and they took place within the State of Mysore. The learned Advocate relies on the decision in *Ram Narain & Sons v. The Assistant Commissioner of Sale Tax & Others* for the contention that in similar circumstances the sale was said to have been affected to the depots and consequently the sale to the assessee was the second sale and is, therefore, not assessable to tax. The High Court, before which this decision was cited, did not really upon it because it felt that it was not possible to ascertain whether under the statute this Court was called upon to consider the definition of sales similar to that contained in section 2 (t) of the Act. It is true that in that case while this Court was considering the question whether the sales were inter-State sales or inside sales, the definition of 'sale' under the Madhya Pradesh Sales Tax Act was not specifically referred to or examined. A perusal of that decision, however, would show that what this Court was considering was whether the transactions fell within the definition of sale contained in

explanation II to section 2(g) of the Madhya Pradesh Sales Tax Act and that so far as the post-Constitution period was concerned, whether they were saved from the ban of Article 286(1)(a) and the explanation thereto, by the President's order made under the proviso to Article 286 (2). The Advocate General of Madhya Pradesh, no doubt, urged that the transactions were pure inside sales entered into by the assesseees in Madhya Pradesh on orders received by them from outside the State, and accepted by the petitioners in that State. It was also contended that the goods were appropriated to the contracts, and the property in the goods passed within the State of Madhya Pradesh, as such the sales were inter-State sales or inside sales which, it was within the competence of the State of Madhya Pradesh to tax. The facts disclosed that the assesseees manufactured beedis in Madhya Pradesh. They had various sales depots in U.P. and other States and also had selling agents through whom they sold their goods. Apart from affecting sales through the said agencies, they also sold direct to customers who placed orders with them. The question was whether some or all of those sales took place in Madhya Pradesh or in U.P. and it was held that having regard to the transactions in respect of all the aforesaid categories of sales they were affected in U.P. we are unable to appreciate how this case really assists the appellants. On the other hand, it would appear that the sale by the assessee was affected in U.P., which if applied to the facts in this case, would indicate that the first sale by the Sivakasi firms was in Mysore. In that view, the question of inter-State sale not being urged as necessary for consideration, it was rightly held by the High Court that the sales in question fell within clause (a) of explanation of section 2 (t) of the Act; as such this appeal is dismissed but in the circumstances, without costs.

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