

State of Tamil nadu

Vs

Madurai South India Corporation (P) Ltd.

Civil Appeals Nos. 1845-1847 (NT) of 1969

(H. R. Khanna, K. S. Hedge, P. Jagmohan Reddy JJ)

01.09.1972

JUDGEMENT

P. JAGANMOHAN REDDY, J. -

1. These three appeals by certificate under article 133 (1)(c) of the Constitution are against the Judgment of the Madras High Court which allowed the three Writ Petitions filed by the Respondent under Article 226 of the Constitution of India by which it challenged the proceedings proposed to be taken by the Sales Tax Officer under the Madras General Sales Tax Act, 1959 (hereinafter called the Act) and the rules thereunder in respect of sale transaction in the assessments 1960-61 to 1964-65 and 1966 67 (upto October, 1966).

2. The first petition was for quashing the summons issued under the Act and requiring the respondent to furnish certain vouchers of cotton yarn, branch transfer accounts and particulars relating to the years 1960-61 to 1964-65 and 1966-67 (upto October, 1966). The second petition was for directing the appellant to forbear from taking any steps for verification and in disallowing the exemption for the second and subsequent sales of yarn purchased by the respondent company from the Madurai Mills Limited in respect of the aforesaid period. The third petition prayed for the issue of Mandamus to the appellant to forbear from disallowing the exemption for the second and subsequent sales of yarn estimated at Rs. 5,08,247/- or the assessment year 1965- 66. The High Court of Madras allowed all three petitions and quashed the proceedings as prayed for.

3. The respondent is a registered dealer with its head office at Madras and branches in Madurai, Rajapalayam and Salem inside the State of Tamil Nadu and also in certain places in the States of Kerala and Andhra Pradesh including Hyderabad. During the years 1960-61 to 1964- 65 and 1966-67 upto October, 1965, it was dealing in various goods including cloth, yarn, etc. and was being assessed to tax under the Act on the turnover of the business. The gross turnover of the respondent included sales of yarn by the Madurai Mills Limited to respondent to its head office in Madras and also to its branches. The method which was followed by the head office of the respondent was that it would place orders from Madras on Madurai Mills Limited pursuant to which the supplies would be made by the Madurai Mills Limited either to the respondent's head office or to its branches in accordance with the instructions given by the head office. Where deliveries were made to the respondent inside the State the seller collected the tax due under the Act with reference to item 3 of the second Schedule to the Act. But in respect of deliveries made to the respondent's branches outside the State, the Madurai Mills collected tax under sec. 3 of the Central Sales Tax Act (hereinafter called the Central Act). During the year 1965-66 the respondent transferred to Madras State certain quantities of yarn from the stock so purchased at its branches in the State of Andhra Pradesh and Kerala and sold the same to local dealers. The appellant thereupon called upon the

respondent to produce accounts and certain other documents, on the assumption that the sales so effected were chargeable to tax as first sales in the State. The respondent objected to these proceedings on the ground that the sales were second sales not liable to tax and filed three writ petitions which are subject of these appeals.

4. It was disputed that the sales by the Madurai Mills to the respondent in which deliveries were made to branches in the State of Andhra Pradesh and Kerala have been charged to tax under the provisions of the Central Act. The only question in controversy is whether the sales made locally of yarn transferred to the Madras State from the stocks of yarn in the States of Andhra Pradesh and Kerala in respect of Sales Tax which had already been charged as inter-States sales are again liable to tax as first sales in the State of Madras.

5. In order to resolve this controversy, it would be useful to notice the relevant provisions of the Act and Central Act. Sec. 3 (1) of the Act imposes a multi point tax, while sub-sec. (2) provides that notwithstanding anything contained in sub-sec. (1) in the case of sale of goods mentioned in the first Schedule the tax under the Act shall be payable by a dealer at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever may be the quantum of turnover in that year. Sec. 4 deals with levying of tax in respect of declared goods, while sec. 4-A, which was introduced by Madras Act 6 of 1963, provides for refund of tax in certain cases. Sec. 5 enjoins that the tax under the Act is addition to the tax under the Central Act or any other law.

Sections 4 and 4-A are as under :-

"4. Notwithstanding anything contained in Sec. 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the state of declared goods at the rate and only at point specified against each in the second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year.

4-A. (1) Where a tax has been levied and collected under sec. 4 in respect of the sale or purchase of declared goods and such goods are sold in the cause of interstate trade or commerce the tax so levied and collected shall be refunded to such person in such manner and subject to such conditions as may be prescribed.

(2) Where a tax at the point of last purchase in the State has been levied and collected under this Act in respect of goods liable to tax at such point and where the said purchase ceases to be the last purchase in the State by reason of a subsequent purchase of such goods by another dealer in the State, the tax so levied and collected shall be refunded to the dealer concerned in such manner and subject to such conditions as may be prescribed."

6. The declared goods are specified in the second schedule to the Act to which cotton yarn, excluding cotton, yarn waste, is liable to tax under the Act at the point of first sale in the State at the rate of 2 per cent. The Central Act defines 'declared goods' as those declared under sec. 14 to be of special importance in inter-State trade or commerce. Sec. 3 lays down the principles for determining when a sale or purchase of goods is said to take place. In the course of inter- State trade or commerce under sec. 14 (ii) (b) cotton yarn, but not including cotton yarn waste, has been declared to be of special importance in inter-state trade or commerce. Sec. 15 ensures that in the case declared goods they should in all circumstances bear only a single burden at a specified State at and the prescribed rate. This section as amended in 1958 is as follows :

"Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods be subject to the following restrictions and conditions, namely :

(a) The tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage :

(b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

7. The High Court of Madras on the interpretation of the aforesaid provisions and having regard to the modus operandi of the respondent in respect of the inside sales or inter-State sales of cotton yarn was of the view - "Where the term of a first sale but it bears also the characteristics of an inter-State sale, and, therefore, it has been taxed under the Central Act, that sale being physically a first sale inside the State out of which the inter-State sale must prevail, there will be no tax liability on the same sale under the local Act or the ground that it is an inside sale." In this view it held that when the goods pursuant to the inter-State sale have been delivered outside the State but brought back into the State and then sold, that sale cannot in fact or in law be regarded as the first sale within the meaning of the second schedule to the local Act. It did not, however, think it necessary to consider on the facts of the case "what the position will be when a sale is an inside sale within the meaning of sec. 4 of the Central Act and is also an inter-State sale, because it occasioned the movement of the goods to another State and out of the goods to another State and not of the goods delivered outside the State pursuant to the inter-State sale, a part has been brought into the State and sold again as an inside sale, in the sense that every incident including delivery is in the State." In our view, this question does not arise because what we have to consider is having regard to the course of transactions of sale which has not been traversed by the appellant, whether the sale by the Madurai Mills pursuant to the orders placed by the respondent, the cotton yarn sold to its branches in Andhra Pradesh and Kerala in respect of which the price was paid in the State of Madras, is an inside sale, and also a first sale in the State. It appears to us that when the cotton yarn was sold to the respondent in Madras as the goods were in the State of Madras when the contract of inter-State was entered into, it will be a first sale in the State. Once that sale has taken place, and the goods were delivered in the States of Andhra Pradesh and Kerala, pursuant to that inter-State sale, there was no further sale to the respondent when it transferred to its branches those goods which have already been subject to tax in Madras nor can such sales if they were sold in Madras be subject to tax.

8. Whether the provisions of Section 15 makes an inroad into the texture of the local law, so that section 6 of the local Act will have to be read subject to and in conformity with the provisions of section 15 and the policy underling that section and whether section 6 will be inapplicable to sales of declared goods, need not be considered in this case because we are clearly of the view that the sale of cotton yarn sold to the branches of the respondent in Andhra Pradesh and Kerala though they were inter-state sales of declared goods, were the first sales inside the State of Tamil Nadu and that being so if those goods are transferred to Madras and sold in Madras, they are exempt from being taxed again since they have already been subjected to tax on the first sale inside the State, We are, therefore, in agreement with the conclusion of the Madras High Court.

9. The appeal is, accordingly, dismissed with costs.

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