

G. A. Galiakotwala & Co. (P) Ltd., Madras

Vs

The State of Madras

Civil Appeal No. 1191 of 1973

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

22.03.1976

JUDGMENT

RAY C.J. -

1. This appeal by special leave is from the judgment dated November 7, 1972 of the High Court of Madras.
2. The Principal question in this appeal is whether the sales of cotton by the appellant to the mills at Tirunelveli and Karur were inter-State sales under Section 3(a) of the Central Sales Tax Act called the Central Act or are second sales under States sales under Section 3(b) of the Central Act.
3. The appellant has its place of business at Coimbatore. The mills are situated within the State of Madras. The mills entered into an agreement with the appellant for purchase of cotton. The appellant in turn placed orders with its sellers at Bombay for purchase of cotton. The appellant directed its Bombay sellers to despatch the goods to the mills as consignees. The Bombay seller sent the consignment to the mills but the railway receipts were sent by the Bombay seller to the appellant. The appellant then endorsed the same in favour of the mills after collection of the substantial portion of the sale price.
4. The appellant contended that the consignments were sent directly by the Bombay seller to the mills, and, therefore, these were direct inter-State sales by the Bombay seller to the mills and that the property in the goods passed to the mills when the goods were loaded at Bombay. The sales tax authorities found that the mills were the last purchaser and therefore these were inter-State sales between the appellant and the mills.
5. A most significant feature is that the railway receipts were sent by the Bombay seller to the appellant, and the appellant thereafter endorsed the same to the mills. It is, therefore, apparent that there could not be an unconditional appropriation of the goods at Bombay towards the contract entered into between the appellant and the mills. The property in the goods passed only when the mills took delivery of the railway receipts from the appellant. The Bombay seller dealt with the railway receipts in such a way that it is proved that the intention of the appellant to part with the goods in any event is not until substantial payment is made by the mills. The Bombay seller had no privity of contract with the mills. The Bombay seller sold the goods to the appellant. The sale by the Bombay seller to the appellant was an inter-State sale. The sale by the appellant to the mills cannot be said to have caused the inter-State movement of goods. The mere fact that the goods were consigned by the Bombay seller to the mills in accordance with the direction of the appellant will not make to transactions inter-State sales. The sale by the Bombay seller to the appellant occasioned

the movement of goods. The High Court was correct in holding that the sale by the Bombay seller to the appellant is an inter-State sale and the sale by the appellant to the mills is not an inter-State sale. Therefore, the State sales tax authorities and jurisdiction to assess the transaction for sale by the appellant to the mills under Section 3(b) of the Central Act.

6. The appellant raised a second contention that the appellant is entitled to the benefit of Government Order No. 3602 which exempts from sales tax declared goods sold in the course of inter-State trade or commerce where tax has been levied or collected in respect of sales or purchase of such declared goods under Section 4 of the Madras General Sales Tax Act, 1959 called the Madras Act. The Government Order No. 3602 was issued in exercise of powers conferred by Section 8(5) of the Central Act. The appellant contended that the mills paid the tax on their purchases of cotton and the same transaction could not be brought to charge in the hands of the appellant as inter-state sale. If the transaction attracts levy of tax under the Central Act it is not taxable under the Madras Act. If the mills had paid tax under the impression that their purchases are taxable under the Madras Act that will not enable the appellant to claim the benefit of the exemption. The exemption applies only to cases where the claimant has paid tax himself under Section 4 of the Madras Act in respect of local sales preceding the inter-State transaction. The appellant in the present case did not pay tax under Section 4 of the Madras Act. The High Court, therefore, correctly held that the appellant was not entitled to claim exemption under the government order.

7. The third contention of the appellant was that the appellant was entitled to exemption in respect of turnover under Section 6(2) of the Central Act. Section 6(2) of the Central Act lays down that where a sale in the course of inter-State trade or commerce of goods of the description referred to in Section 8(3) of the Central Act has occasioned the movement of goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale to a registered dealer during such movement effected by a transfer of documents of title to such goods shall not be subject to tax under the Act. A dealer claiming exemption for subsequent sale during the movement of goods from one State to another is required by Section 6(2) of the Central Act to furnish to the prescribed authority in the prescribed manner a certificate duly filled and signed by the registered dealer by whom the goods were purchased containing the particulars. In the present case, the appellant would be entitled to exemption on production of appropriate form by the Bombay seller and by showing that the buyer is a registered dealer. The appellant produced the form Bombay seller but did not prove that his buyer was a registered dealer in cotton. Therefore, the tribunal rightly held that the appellant was not entitled to exemption under Section 6(2) of the Act.

8. The appeal is, therefore, dismissed with costs.

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