South India Viscose Ltd.

Vs

State of Tamil Nadu

Civil Appeals Nos. 1192-94 of 1978

(R.S. Pathak, E.S. Venkataramiah JJ)

22.07.1981

JUDGMENT

VENKATARAMIAH, J. –

1. The appellant in these three appeals by special leave is a company engaged in the business of manufacture and sale of art silk yarn. It has its factory at Sirumughai in the District of Coimbatore in the State of Tamil Nadu. The appellant is registered as a dealer carrying on business at Coimbatore. In the course of its business, it sold during the relevant period large quantities of art silk yarn to various purchasers some of whom were weavers residing in the States of Maharashtra and Gujarat who had been issued cards under a scheme called 'Export Promotion Scheme' entitling them to buy specified quantities of art silk yarn from specified manufacturers. The question involved in these appeals relates to the exigibility of the sales effected in favour of Export Promotion Scheme card holders belonging to the States of Maharashtra and Gujarat to tax under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Act').

2. The assessment years are 1962-63, 1963-64 and 1964-65.

3. The details of the Export Promotion Scheme for distribution of art silk yarn referred to above were these : There were certain weavers in India who were entitled to an incentive in the form of import licences to import art silk yarn from abroad. The said import entitlement was cut to a certain extent and indigenous art silk yarn at concessional price was allotted to them. To regulate the scheme of allotment, a committee called the 'Art Silk Yarn Distribution Committee' was constituted by the Government of India. The Committee made allotments to different weavers by issuing allotment cards. These allotment cards contained details of the quantity of allotment and the rayon yarn manufacturer from whom the allotted quantity of yarn could be drawn. As per the terms of the card, the yarn manufacturer should offer to the allottee rayon yarn within seven days of the date of allocation of the card without waiting for the allottee to approach him. A firm contract for the supply of yarn should be completed within a period of twenty-one days from the date of allocation of the card. If a firm commitment was not entered into by the allottee with the yarn manufacturer within twenty-one days from the date of allocation of the card, the yarn manufacturer should return the allocation card to the Distribution Committee with suitable remarks on the card and a covering letter explaining the reasons for the return of the card. Even in the case of actual fulfilment to the quota covered by the allocation card, the said card should be returned to the Distribution Committee after the delivery of the yarn was completed. This in brief was the Scheme.

4. In the instant case, the appellant had supplied art silk yarn to certain card holders who were residing, as stated earlier, outside the State of Tamil Nadu. It is stated that the appellant had a selling

agent and distributor by the name M/s. Rayon-yarns Import Company Ltd. at Bombay and the case of the appellant was that it had supplied art silk yarn to the card holders in the States of Maharashtra and Gujarat through the said agent and the delivery of the goods was effected at Bombay. In the assessment proceedings before the Joint Commercial Tax Officer, Coimbatore for the year 1964-65, the appellant claimed that the sales of art silk yarn through its agent at Bombay were not inter-State sales as defined by Section 3(a) of the Act as the movement of the goods in question from the State of Tamil Nadu to the State of Maharashtra or the State of Gujarat was not occasioned by the sales in question and that they were in fact sales which had taken place outside the State of Tamil Nadu. The Joint Commercial Tax Officer rejected the contention of the appellant and treated the sales effected in favour of the Export Promotion Scheme card holders through the appellant's agent at Bombay as inter-State sales and levied tax under the Act accordingly. He also revised the orders of assessment for the years 1962-63 and 1963-64 bringing to tax the turnover relating to transactions of similar nature during those years. In the appeals filed by the appellant against the order of assessment for the year 1964-65 and of revised assessment for the years 1962-63 and 1963-64 before the Appellate Assistant Commissioner, (Commercial Taxes), Coimbatore, the orders passed by the Joint Commercial Tax Officer were affirmed. The appellant then filed three appeals before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Coimbatore against the orders passed in appeal by the Appellate Assistant Commissioner. The Tribunal also held that the sales in favour of the Export Promotion Scheme card holders outside the State of Tamil Nadu were inter-State sales and were liable to be taxed under the Act. Aggrieved by the orders of the Tribunal, the appellant preferred three revision petitions before the High Court of Madras. These petitions were dismissed. Thereafter the appellant has come up in appeal to this Court by special leave.

5. Section 3(a) of the Act provides that 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 occasions the movement of goods from one State to the other. In order to substantiate its case, the appellant has placed before us the documents relating to one transaction stating that the decision on the true nature of the said transaction would govern all other transactions of sale in dispute as they were all of a similar kind. Those documents relate to the supply of art silk yarn to a firm known as M/s. Ramesh Silk Fabrics at Surat in the State of Gujarat made in June, 1964. The purchaser was issued an allocation card on November 7, 1963 bearing No. 3124. Under the card, M/s. Ramesh Silk Fabrics was entitled to purchase 273 kgs. of indigenous art silk yarn from the appellant. The following were the relevant terms of the card :

> 1. The rayon manufacturers and/or our approved dealers shall ensure that the quantity sold is not more than the quantity allocated as indicated in column 4(b) on the reverse of the card.
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> 2. The rayon manufacturer shall offer yarn to the allottee within seven days from the date of allocation card without waiting for the allottee to approach him. Contract for the supply of yarn shall be concluded within 21 days from the date of the allocation card.
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> 3. Particulars of the quantity of yarn sold by the rayon yarn manufacturer or his approved dealer with the date of sale shall be entered and signed by the seller in column 5 on the card.
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> 4. No supply shall be made on allotment card on which corrections have not been attested by the Secretary or the Manager.

> 5. If firm commitment is not entered into by the allottee with the yarn manufacturer, the yarn manufacturer shall return the allocation card to the Distribution Committee, with suitable remarks on the card and a covering letter explaining the reasons for returning the card.
>
> 6. Allocation cards shall be returned to the Distribution Committee after the delivery of yarn has been completed.

6. At the back of his allocation card, in column 4(a) the appellant is shown as the manufacturer and in column 4(b) the quantity allotted is shown as 273 Kgs. Column 5 of the allocation card shows that a quantity of 268 Kgs. had been supplied as per Invoice No. BC/132. Then we have the Invoice No. BC 132 prepared in the name of the appellant by its agent, Rayon-yarn Import Co. Pvt. Ltd. and signed by the agent for and on behalf of the appellant. The cases containing goods sold had been marked as 5829, 8479 and 8505. The invoice contains a note which reads as follows :

> We have charged you 2 per cent Central Sales Tax for which purpose you are required to send us immediately your regular 'C' form correct in all respects as required by the law in force for the time being in the absence of which you are required to remit us balance sum of Rs.... being the difference between the rate charged and the revised rate at 10 per cent applicable in such case.

7. But actually 2 per cent tax was added and it was shown in the invoice as local sales tax of Maharashtra at 2 per cent of the price. A delivery order dated June 3, 1964 prepared by the agent at Bombay on behalf of the appellant also refers to the numbers of the cases containing goods as 5829, 8479 and 8505. What is of significance is a letter dated May 23, 1964 written by the agent at Bombay to the appellant. By that letter, the agent requested the appellant to send from the factory 69 cases of yarn bearing specific numbers including cases Nos. 5829, 8479 and 8505. The said letter further stated that the invoices of sale would be sent after the goods were sold by the agent. What is attempted to be made out by the appellant is that the appellant was informing its agent at Bombay from time to time as and when goods were manufactured the number of the cases in which the goods had been packed and at the request of its agent it had despatched the goods to Bombay but not as a result of any sale of the said goods in favour of a purchaser. According to the appellant, the sale had taken place at Bombay and the movement of goods to Bombay from the State of Tamil Nadu was not connected with the sale in question.

8. In order to constitute an inter-State sale as defined in Section 3(a) of the Act, two factors should co-exist - (i) a sale of goods and (ii) movement of goods from one State to another under the contract of sale. If there is a conceivable link between a contract of sale and the movement of goods from one State to the other in order to discharge the obligation under the contract of sale, the inter-position of an agent of the seller who may temporarily intercept the movement ought not to alter the inter-State character of the sale. The facts which are glaring in this case are :

> (1) the allotment of a certain quantity of art silk yarn produced by the appellant in favour of the allocation card holder;
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> (2) the requirement that the appellant should offer to sell the quantity of goods allotted to the card holder within seven days;
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> (3) the requirement that contract of sale should be completed within twenty-one days

> of the date of the allocation card;
>
> (4) the requirement that the card should be returned to the Committee if no contract of sale was concluded as stated above; and
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> (5) the fact that the goods have been supplied expressly against the quota allotted under the allocation card.

9. Admittedly the allocation card bearing No. 3124 was issued on November 7, 1963 and it required the appellant to offer to sell the quantity of art silk yarn mentioned in it to the purchaser within seven days without even waiting for the purchaser approaching the appellant with a request to supply the goods in question. The card contemplated a contract of sale to be completed within twenty-one days of the date of its issue. The invoice in question contained the number of the allocation card. In the letter dated May 23, 1964 the agent requested the appellant to send the cases bearing Nos. 5829, 8479 and 8505 by lorry from Sirumughai and the said boxes were later on admittedly delivered to the purchaser on June 3, 1964. These facts cumulatively suggest that the goods in question had been transported from the factory site of the appellant to Bombay for delivery to the purchaser as a result of the contract of sale established in accordance with the terms of the allocation card.

10. It is, however, argued on behalf of the appellant relying upon the decision of this Court in Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes ((1970) 26 STC 354 : (1970) 1 SCC 622 : (1970) 3 SCR 862 : AIR 1970 SC 1281) that the sale effected by the appellant's agent at Bombay could not be treated as the immediate cause of movement of goods from the State of Tamil Nadu to the State of Maharashtra or the State of Gujarat, as the case may be. The facts in the aforesaid case are distinguishable from the facts in the present case since it was held in that case that the procedure followed by the manufacturer, the appellant in that case together with the absence of any firm orders placed by the purchasers indicated that there were no transactions of sale within the meaning of Section 2(g) of the Act and assuming that any firm orders had been received by the appellant therein, they could not be regarded as anything but mere offers. This Court further held in that case that the appropriation of goods was done at the appellant's stockyard situated in the State where the vehicles were delivered to purchasers and it was open to the appellant till then to allot any vehicle to any purchaser or to transfer a vehicle from one stockyard to another. One strong circumstance which existed in that case was the absence of the firm orders which occasioned the movement of goods from the State of Bihar to other States as can be seen from the following passage in that decision : (SCC p. 628, para 11)

> 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 order had been received by the appellant they could not be regarded as anything but mere offers in view of the specific terms in Ex. 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.

11. In the instant case there is a clear evidence of the existence of a prior contract of sale as per terms of the allocation card. The fact that actual sale pursuant to the said contract of sale had taken place subsequently does not militate against the transaction being treated as an inter-State sale under Section 3(a) of the Act, since the movement of the goods delivered to the buyer was occasioned by the contract of sale brought into existence under the terms of the allocation card. It was, however,

faintly suggested that the evidence of what took place between the appellant and the allottee within twenty-one days of the issue of the allocation card was lacking in this case. Evidence about these facts was within the knowledge of the appellant and the appellant had not placed it before the assessing authority. It is likely that if such evidence had been produced it would have gone against the appellant. Even apart from that the finding recorded by the assessing authority, the appellate authority, the Tribunal and the High Court on the basis of the terms of the allocation card and other material on record that there was a contract of sale within the stipulated time between the appellant and the allottee of art silk yarn is unassailable. In the circumstances no assistance can be derived by the appellant from the case of Tata Engineering and Locomotive Co. Ltd. ((1970) 26 STC 354 : (1970) 1 SCC 622 : (1970) 3 SCR 862 : AIR 1970 SC 1281)

12. The decision of this Court in Kelvinator of India Ltd. v. The State of Haryana ((1973) 32 STC 629 : (1973) 2 SCC 551 : 1973 SCC (Tax) 553 : (1974) 1 SCR 463 : AIR 1973 SC 2526) relied on by the appellant has also no bearing on this case. The assessee in that case had its factory where it manufactured refrigerators at Faridabad in the State of Haryana and it moved the goods manufactured by it to its godown at Delhi. The excise pass utilised for such movement was always in favour of self. During the transport of goods, the assessee paid octroi payable for bringing goods into Delhi. At Delhi, the assessee sold the goods to its distributors. The Court on a consideration of the material before it held that even though there were prior distribution agreements entered into between the assessee and its distributors, the goods in question had not been moved pursuant to the said agreements from Faridabad to Delhi, and hence there was no inter-State sale.

13. The facts of this case are, however, close to the facts in English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer ((1976) 38 STC 475 : (1976) 4 SCC 460 : 1977 SCC (Tax) 23 : (1977) 1 SCR 631 : AIR 1977 SC 19). Here also the assessee had its factory in the State of Tamil Nadu. Its registered office was at Calcutta but it had branch offices at Madras, Bombay and other places. A Bombay buyer wrote to the Bombay branch of the appellant in that case asking for lowest quotation in respect of the goods which were being manufactured in the factory in Tamil Nadu. After some correspondence between the Bombay branch and the Madras branch, the Bombay branch wrote to the Bombay buyer giving all the required particulars. The Bombay buyer thereafter placed an order with the Bombay branch for certain goods. The Bombay branch informed the Madras branch about the order placed by the Bombay buyer. On receipt of the invoice from the Madras branch the Bombay branch wrote to the Bombay buyer that some of the goods indented by him were ready for despatch and asked for despatch instructions. On receipt of such instructions, the Bombay branch asked the Madras branch to send goods to Bombay. The railway receipts were sent through the Bombay branch. The goods were delivered to the Bombay buyer through clearing agents and the insurance charges were collected from the Bombay buyer. The assessee claimed in the assessment proceedings that the sale was not an inter-State sale but one which had taken place at Bombay between the Bombay branch and the Bombay buyer. The said contention was rejected by this Court with the following observations : (SCC pp. 463, 464 : SCC (Tax) pp. 26, 27, paras 15, 16)

> The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhandup, Bombay. The railway receipt was in the name of the Bombay branch to secure payment against delivery. There was no question of diverting the goods which were sent to the Bombay buyer. When the movement of goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the

> movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have been taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representatives or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position.

14. In the instant case, the allocation card was first sent in November, 1963 asking the appellant directly to make an offer of the goods to the allottee. The allottee was expected to communicate his desire to purchase the goods within twenty-one days of the date of the allocation card. Such communication brought into existence a contract of sale directly between the appellant and the buyer. The goods were admittedly sent pursuant to the said contract of sale. The interposition at a later stage of the selling agent who acted on behalf of the appellant in the preparation of the invoice and the delivery of the goods would not alter the true character of the sale as the selling agent was just a conduit pipe. The goods having been despatched from one State to another State pursuant to a contract of sale which came into existence directly between the appellant and the buyer within a few days after the date of the allocation card, the sale was an inter-State sale. The Tribunal and the High Court were therefore, right in upholding the orders of the assessing authority levying tax under the Act on all sales which had taken place in favour of the Export Promotion Scheme card holders in Gujarat and Maharashtra even though the selling agent of the appellant at Bombay had on behalf of the appellant also dealt with such card holders at Bombay, as the transactions in question satisfied the tests laid down in the case of English Electric Company of India Ltd. ((1976) 38 STC 475 : (1976) 4 SCC 460 : 1977 SCC (Tax) 23 : (1977) 1 SCR 631 : AIR 1977 SC 19)

15. In the result, the appeals fail and are dismissed with costs.

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