

**(1987) 01 KL CK 0039**

**High Court Of Kerala**

**Case No:** T.R.C. No. 6 of 1982

Deputy Commissioner of Sales  
Tax (Law), Board of Revenue  
(Taxes)

APPELLANT

Vs

Sundaram Industries Ltd.

RESPONDENT

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**Date of Decision:** Jan. 6, 1987

**Citation:** (1988) 68 STC 235

**Hon'ble Judges:** T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

**Bench:** Division Bench

**Advocate:** Government Pleader, for the Appellant; P. Balachandran, for the Respondent

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### **Judgement**

T. Kochu Thommen, J.

The revision petitioner is the Revenue. It challenges the order of the Kerala Sales Tax Appellate Tribunal, Trivandrum in T.A. No. 955 of 1980. The respondent-assessee, which is a limited company, is a registered dealer under the Kerala General Sales Tax Act, 1963 (the "Act"). For the year 1978-79, it purchased raw rubber and also constructed bus bodies. It paid a sum of Rs. 2,91,200 as cess to the Rubber Board in relation to the purchase of raw rubber. This amount was brought to tax under the Act by the assessing authority. The authority further held that a sum of Rs. 34,41,372 representing the sale proceeds of bus bodies supplied by the respondent to the Kerala State Road Transport Corporation was exigible to sales tax under the Act. The appeal by the assessee was allowed by the Deputy Commissioner (Appeals) by his order dated 26th July, 1980. He held that neither the cess paid in respect of raw rubber nor the sale proceeds of the bus bodies could be brought to tax under the Act. The appeal by the Revenue was dismissed by the Tribunal by its impugned order.

2. As regards the cess paid by the assessee to the Rubber Board, it is not disputed that the decision of this Court in Deputy Commissioner of Sales Tax v. Bata India Ltd. [1986] 62 STC 436 and the decision of the Supreme Court in McDowell & Company

Ltd. v. Commercial Tax Officer [1985] 59 STC 277 are squarely applicable. Accordingly the assessing authority has rightly held that the cess was exigible to tax under the Act. The decision of the Tribunal in so far as it related to cess is accordingly set aside.

3. As regards the turnover representing the sale proceeds of the bus bodies, the contention of the assessee, which was rejected by the assessing authority, but upheld by the appellate authorities, has been that the sales were effected in the course of inter-State sales and that such turnover was not exigible to sales tax under the Act. In this connection certain facts have to be stated. Pursuant to the tender notice dated 20th September, 1978, published by the K.S.R.T.C, the assessee submitted its quotation on 20th October, 1978. As per the tender notice, each body of the bus had to be built on the chassis supplied by the K.S.R.T.G. It was specifically undertaken by the assessee in submitting the quotation that delivery of the goods would be effected within "40 days from the date of receipt of chassis at our works at Madurai...". The assessee undertook to deliver the completed body at Trivandrum. It clearly indicated that the body would be constructed at its workshop at Madurai. The assessee's offer, as embodied in its quotation dated 20th October, 1978, was accepted by the K.S.R.T.C. by its letter dated 28th October, 1978. The K.S.R.T.C. stated that it reserved its right to inspect the construction of the body at the place of work of the assessee. The assessee was required to telegraphically inform the K.S.R.T.C. of its readiness for inspection by the K.S.R.T.C. representatives. On acceptance of the assessee's offer, a formal agreement, as required by the tender notice, was entered into between the K.S.R.T.C. and the assessee on 22nd December, 1978, whereunder the assessee agreed to construct the bodies in accordance with the terms agreed upon between the parties and subject to the right of the K.S.R.T.C. to conduct inspection at the assessee's place of work. The completed bodies were agreed to be delivered by the assessee to the K.S.R.T.C. at Trivandrum. It was also agreed that payment would be effected only after final inspection by the K.S.R.T.C. at Trivandrum where the completed bodies had to be supplied. Upon completion of the bodies debit notes were prepared at the place of work at Madurai and forwarded to the assessee at Trivandrum. One such note, for example, shows a sum of Rs. 58,600. Adding certain other amounts said to be representing additional expenditure by way of transportation, etc., and the taxes due under the Act, a bill was prepared in that case and forwarded to the K.S.R.T.C. by the assessee at Trivandrum in the sum of Rs. 73,712. On completion of the work by the assessee at its workshop at Madurai, a certificate of ownership was issued by the K.S.R.T.C. in respect of each completed bus for transportation from Madurai to Trivandrum. The certificate dated 8th June, 1979, is one of them showing that the chassis was transported from Trivandrum to Madurai and returned to Trivandrum on completion of the work.

4. These facts indicate that it was agreed between the parties that the body would be constructed by the assessee on the chassis supplied by the K.S.R.T.C. and that the

construction work would be done at its works at Madurai on completion of which the completed vehicle would be sent from Madurai to Trivandrum. The contract of sale between the parties thus postulated movement of the goods from Madurai in Tamil Nadu to Trivandrum in Kerala. The contract was entered into between the assessee at Trivandrum (which is but a branch of M/s. Sundaram Industries Ltd., the head office of which is at Madurai) of the one part and the K.S.R.T.C. at Trivandrum of the other part. The branch at Trivandrum did not have facilities for construction work in Kerala. But it was clearly understood between the parties that the work would be done at the workshop belonging to the assessee's principal at Madurai. With the knowledge and consent of the K.S.R.T.C, the chassis was taken to Madurai solely for the purpose of construction of the body, and on completion of the body it was returned to Trivandrum. Each chassis together with the body is identifiable by the engine number. The intervention of the assessee at Trivandrum in the formation of the contract was for and on behalf of the assessee's principal at Madurai and it was clearly understood that the contract would be principally performed by its principal at Madurai, while the assessee itself acted as the conduit.

5. In [Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others](#), speaking for the court, R.S. Pathak, J., stated:

The law was clarified in [Union of India \(UOI\) and Another Vs. K.G. Khosla and Co. Ltd. and Others](#), where this Court observed that a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to another, provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of that contract....

Referring to the facts of that case, which were almost identical to those in the present case, the Supreme Court stated:

... It is urged that the registered office and the branch office were separately registered as dealers under the sales tax law and transactions effected by the branch office could not be identified with transactions effected by the registered office. The movement of the goods from Hyderabad to the branch office, it is said, was only for the purpose of enabling the sale by the branch office and was not in the course of fulfilment of the contract of sale. We are unable to agree.... In the instant case, the goods were despatched by the branch office situated outside the State of Andhra Pradesh to the buyer and not by the registered office at Hyderabad. In our opinion, that makes no difference at all. The manufacture of the goods at the Hyderabad factory and their movement thereafter from Hyderabad to the branch office outside the State was an incident of the contract entered into with the buyer, for it was intended that the same goods should be delivered by the branch office to the buyer. There was no break in the movement of the goods. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It would have been a different matter if the particular goods had been despatched by the registered office at Hyderabad to the branch office outside the

State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the buyer. The movement of the goods from the registered office at Hyderabad to the branch office outside the State cannot be regarded as an incident of the sale made to the buyer.

See also the principle stated by the Supreme Court in *Oil India Ltd. v. Superintendent of Taxes* [1975] 35 STC 445, *Balabhagas Hulaschand v. State of Orissa* [1976] 37 STC 207, *English Electric Co. of India Ltd. v. Deputy Commercial Tax Officer* [1976] 38 STC 475, *Union of India v. Khosla & Co. Ltd.* [1979] 43 STC 457, *Indian Oil Corporation Ltd. v. Union of India* [1981] 47 STC 1 and *South India Viscose Ltd. v. State of Tamil Nadu* [1981] 48 STC 232.

6. Counsel for the Revenue submits that unlike the cases considered by the Supreme Court, there is no essential link between the goods supplied and the contract entered into between the assessee and the K.S.R.T.C. Counsel further submits that it was not part of the contract that the goods had to move from Tamil Nadu to Kerala. It was only accidental, counsel says, that the goods happened to be constructed in Tamil Nadu and not in Kerala. Counsel further says that the assessee is an independent entity and should not be confused with its principal office at Madurai.

7. From the facts stated above, it is clear what the intention of the parties was. It was at all material times understood that what was agreed to be constructed was the body for the chassis supplied by the K.S.R.T.C. and it would be constructed not in Kerala, but only at Madurai. It was also understood that the assessee being the branch office acted on behalf of its principal office and acted in that capacity only as an agent or as a conduit for the execution of the work by the principal at Madurai. The goods despatched from Madurai to the assessee at Trivandrum were not meant to be sold in the open market, but they were despatched specifically against the orders placed by the K.S.R.T.C. and with reference to the chassis supplied. The goods moved from Madurai pursuant to and as a result of the contract between the parties and as an incident of that contract, The debit note issued by the assessee's main office at Madurai on 5th December, 1978, the delivery note issued by the assessee in favour of the main office at Madurai on the same date and the debit note issued by the assessee to the K.S.R.T.C. all bear the same engine number. This clearly shows that counsel for the Revenue is not correct in contending that the goods did not move from Madurai to Trivandrum against specific orders placed by the K.S.R.T.C.

8. In the circumstances the sale of the bodies of the buses to the K.S.R.T.C. was effected by the assessee for and on behalf of its principal office at Madurai in the course of inter-State trade, and the turnover in respect of such transaction is not exigible to sales tax under the Act.

9. Accordingly we affirm the decision of the Tribunal in so far as the sale of the bus bodies is concerned, and the revision petition to that extent is dismissed. In the circumstances of this case, we make no order as to costs.