

(2010) 03 MAD CK 0232

Madras High Court

Case No: Writ Petition No. 9903 of 2002

Indian Rayon and Industries
Limited

APPELLANT

Vs

Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai and Others

RESPONDENT

Date of Decision: March 11, 2010

Acts Referred:

- Central Sales Tax Act, 1956 - Section 3

Citation: (2011) 43 VST 134

Hon'ble Judges: P.P.S. Janarthana Raja, J; D. Murugesan, J

Bench: Division Bench

Advocate: N. Prasad, for the Appellant; Haja Naziruddin, Special Government Pleader (Taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Murugesan J.

1. This writ petition is directed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated October 1, 2001. The brief facts leading to the writ petition are as follows :

2. The petitioner-company (hereinafter referred to as, "the assessee") is incorporated under the Companies Act, 1956 and has its registered office at Gujarat. The assessee is engaged in the manufacturing and marketing of cement under the style of "Rajashree Cement". The assessee also has its place of business for stocking and selling cement at Pondicherry. During the year 1996-97, the assessee transferred cement valued at Rs. 46,57,600 for sales to Pondicherry, which was handled by the clearing and forwarding agents of the assessee at Pondicherry. Hence the assessee, on the ground that the goods moved to Pondicherry where

sold at Pondicherry, submitted the returns claiming exemption of sales tax by reason of stock transfer. The said claim was rejected by the assessing officer, namely, the Commercial Tax Officer, Mylapore Assessment Circle on the ground that the transfers to Pondicherry were occasioned by way of inter-State sale falling u/s 3(a) of the Central Sales Tax Act, 1956. The claim was initially for the alleged stock transfer to three places, namely, Tirupathi branch, Cochin branch and Pondicherry branch. After notice, the assessment was confirmed by the order dated December 31, 1999. Aggrieved by the said order, the assessee approached the Appellate Assistant Commissioner (CT)-IV, Chennai. So far as Tirupathi branch is concerned, the Appellate Assistant Commissioner set aside the disallowance order of the assessing officer and so far as Cochin branch is concerned, the Appellate Assistant Commissioner remanded the matter back to the assessing officer, but confirmed the assessment order regarding the movement of goods to Pondicherry on the ground that it was an inter-State sale. The Appellate Assistant Commissioner also deleted the levy of penalty. Again that order was questioned by way of further appeal before the Tribunal, which confirmed the order of the Appellate Assistant Commissioner. Hence the present writ petition.

3. Mr. N. Prasad, learned counsel appearing for the petitioner, would contend that the assessee had only stock transferred the cement from its branch to Pondicherry and the finding of the authorities below that the transfer of cement to Pondicherry was occasioned by reason of sale is totally unsustainable, particularly in the absence of any contra evidence. In any event, the learned counsel would submit that every transfer should be dealt with independently. When the assessee had filed form F declarations and had discharged its initial burden, levy of sales tax for the entire quantity of 2,242 metric tonnes is totally unsustainable as, even according to the respondents, only 276 metric tonnes of cement were sought to be transferred on the date of inspection conducted on October 27, 1997. For the rest of the quantity, there is neither any material nor individual consideration in the impugned orders. Hence the impugned orders are liable to be set aside.

4. On the other hand, Mr. Haja Naziruddin, learned Special Government Pleader (Taxes), for the respondents would submit that all the authorities have concurrently found on facts that the transactions are inter-State sale and not stock transfer and for arriving at the said conclusion, the authorities have relied upon specific instances and therefore, such findings on fact cannot be interfered with by this court. So far as the contention regarding the failure on the part of the assessing officer in not considering the individual transaction is concerned, the learned Special Government Pleader would submit that the three instances referred to in the impugned orders are only samples and on overall consideration of the records, the assessing officer had come to the conclusion for levying sales tax for the entire quantity of 2,242 metric tonnes of cement. Hence the impugned orders require no interference.

5. We have carefully considered the rival contentions. As far as the first contention is concerned, verification of the records had revealed that the assessee had given instructions to its clearing and forwarding agent, namely, Lalith Enterprises, Chennai, on each occasion of stock transfer of cement to Pondicherry branch specifically mentioning the names and addresses of the dealers/customers to whom the cement were to be delivered. The instructions also relate to the registration number of the concerned dealers/customers and the rate per bag to be charged as well as the details of advance received from the customer/dealer at Pondicherry. It is also noted that the assessee's letter dated August 13, 1997, addressed to its clearing and forwarding agent and the further letters without date have also been relied upon by the authorities. In view of the same, the assessing officer found that the movement of goods to Pondicherry was not occasioned by way of stock transfer and it was only an incident of contract of sale with Pondicherry dealers and consequently it is an inter-State sale. The assessing officer has also relied on the orders placed by Petrogel India Private Limited, Chennai, enclosing the cheque for certain sum towards the supply of cement to their factory at Pondicherry. This is one of the instances for which the records were scrutinised and were relied upon by the assessing officer. This finding, based on the above records, has been confirmed by both the Appellate Assistant Commissioner as well as the Tribunal which, in our considered view, requires no interference. Further, as per section 3(a) of the Central Sales Tax Act, 1956 there is a deeming provision which states 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 another. Accordingly, we reject the first contention of the learned counsel for the petitioner.

6. Coming to the second contention, the assessing officer has relied upon the three instances, where the transactions took place for the entire assessment year, and had treated them as inter-State sale. This procedure adopted by the assessing office is wholly wrong, as the assessing officer is bound to examine each individual transaction and then decide whether it constituted inter-State sale eligible to tax or not under the provisions of the Central Sales Tax Act. In support of the above, we may refer to the judgment of the Supreme Court in Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, where the Supreme Court has observed as follows (page 381 in 26 STC) :

Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate-General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be

examined. In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter-State sale exigible to tax under the provisions of the Act.

7. A reading of the impugned orders does not indicate the consideration of any individual transaction, barring the transaction relating to the 276 metric tonnes, out of 2,242 metric tonnes. To this extent, the contention of the learned counsel for the petitioner must be accepted. Accordingly, the writ petition is disposed of with the following directions :

(i) As regards the payment of sales tax in respect of 276 metric tonnes, the orders impugned in the writ petition are confirmed.

(ii) In respect of the rest of the quantity of cement, i.e., 1,966 metric tonnes, the matter is remitted back to the assessing officer for individual consideration afresh and in accordance with law.

8. There shall be no order as to costs.