

Sruthi Agencies Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Jan-24-2002

Reported in : [2002]127STC429(AP)

Judge : S.R. Nayak and ;S. Ananda Reddy, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 3; Andhra Pradesh General Sales Tax Act 1957 - Sections 20(2)

Appeal No. : Tax Revision Case No. 49 of 2000

Appellant : Sruthi Agencies

Respondent : State of Andhra Pradesh

Advocate for Def. : The Special Government Pleader for Taxes

Advocate for Pet/Ap. : S.R. Ashok, Senior Adv. and ;B. Srinivas, Adv.

Disposition : Petition allowed

Judgement :

S. Ananda Reddy, J.

1. This tax revision case is at the instance of the dealer, aggrieved by the order passed by the Sales Tax Appellate Tribunal in T.A. No. 776 of 1995, dated September 30, 1999 confirming the order passed by the Deputy Commissioner

(CT), Secunderabad Division, Secunderabad, dated October 26, 1995, revising the order of assessment passed by the Commercial Tax Officer.

2. The petitioner is a firm, which was carrying on the business as a dealer in Symphony brand of air-coolers. It was assessed to tax for the year 1993-94 under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to 'the Act' or 'the APGST Act') by the Commercial Tax Officer, Vidyanagar Circle, Hyderabad and by its order the assessing authority exempted Rs. 1,43,05,094, the entire turnover shown by the dealer as second sales in the State. The said assessment order is dated July 8, 1994. However, in the meanwhile, the Commercial Tax Officer (Int.) No. III, Enforcement Wing, Hyderabad, under the administrative control of the Commissioner of Commercial Taxes, inspected the business premises of Darshak Enterprises, S.D. Road, Secunderabad, which is the sole distributor of Symphony air-coolers in Andhra Pradesh from whom the petitioner/dealer purchased the air-coolers. The said inspection revealed that the selling dealers, namely the Darshak Enterprises have purchased the air-coolers in dispute in the course of inter-State transaction from Sanskrut Comfort Systems Limited, Ahmedabad and that the sale was effected in favour of Darshak Enterprises by transfer of documents of title during the course of movement of goods from Ahmedabad, Gujarat State to Andhra Pradesh and before they were taken delivery in Andhra Pradesh. It is also noticed that subsequently Darshak Enterprises also sold the said air-coolers in dispute during the transit of the goods before taking delivery from the transporters at Secunderabad by transferring the documents of title, like Lorry Receipts (LRs), in favour of the petitioner/dealer-Sruthi Agencies, which also happened to be an inter-State sale, which was effected as a transit sale. Therefore, it was realised that the sales effected by the petitioner/dealer in dispute happened to be the first sale in the State coming under the Act and therefore, the entire turnover declared by the petitioner/dealer was not entitled for exemption and was liable to be taxed. Therefore, the Deputy Commissioner (CT) initiated revisional proceedings under Section 20(2) of the Act and after giving opportunity to the petitioner/dealer, assessed the entire sales turnover to tax under the provisions of the Act. Aggrieved by the said order, the petitioner/dealer filed appeal before the Sales Tax Appellate Tribunal. Before the Tribunal also the assessee reiterated the contentions that are advanced before the

Deputy Commissioner (CT). However, the Tribunal after considering the contentions elaborately confirmed the order of the Deputy Commissioner observing that though the dealer was in the custody of the documents, it did not produce them before the authorities and therefore, an adverse inference could be drawn against the dealer and accordingly confirmed the view of the Deputy Commissioner that the sales effected by the dealer are the first sales in the State and are liable to tax under the provisions of the Act. Hence, the present tax revision case.

3. The learned counsel for the dealer contended that the Tribunal as well as the Deputy Commissioner are in error in holding that the sales effected by the petitioner are the first sales in the State, liable to tax under the provisions of the Act. It is contended by the learned counsel that Sanskrut Comfort Systems Limited is the manufacturer of the air-coolers in question. It had its manufacturing unit in Gujarat State. The said company has got its branches all over India and one at Secunderabad, which was registered both under the APGST Act and the [Central Sales Tax Act, 1956](#) (hereinafter referred to 'the CST Act'). It is also the case of the petitioner/dealer that Darshak Enterprises is the sole distributor of the manufacturing company of its products, which is also having its registered office at Ahmedabad in Gujarat, but it had its branch at Secunderabad in Andhra Pradesh, which was also registered both under the APGST and CST Acts and are being assessed to tax. According to the learned counsel, it is the practice of the manufacturing company to send the manufactured goods to various branches including the one at Secunderabad. After receiving the goods by the branch of the manufacturing unit, it transfers the goods to the sole distributor, which is also located in Secunderabad by raising necessary sale documents. After receipt of the goods by the sole distributor the sole distributor, Darshak Enterprises sells the same to its distributors. It is also stated by the learned counsel that the sole distributor, Darshak Enterprises, had six sales distributors in the State of Andhra Pradesh of whom three are located in Hyderabad. It is therefore stated that the petitioner/dealer is a third successive party to receive the goods in the State and therefore, the sale made by the petitioner/dealer could not be considered as a first sale. The learned counsel also contended that the manufacturer with its branch at Secunderabad is a separate and independent legal entity. Similarly, Darshak

Enterprises, the sole distributor is also a separate entity, which is being assessed separately. The petitioner/dealer is yet another independent entity, who purchased the goods manufactured by Sanskrut Comfort Systems Limited from its sole distributor Darshak Enterprises. The learned counsel also contended that certain material was collected by the department behind the petitioner and was relied upon to initiate revisional proceedings. The said procedure adopted by the authorities is contrary to the principles of natural justice and even on that ground also the revision orders passed by the Deputy Commissioner (CT) and the subsequent orders passed by the Tribunal are liable to be set aside. The learned counsel also contended that the department initiated proceedings and in fact framed assessment against the manufacturer under the provisions of the CST Act and in fact an assessment was framed against the manufacturing company holding that the transfer of its manufactured goods from Gujarat State to Andhra Pradesh involves an inter-State transaction, but however, the said assessment was set aside by the appellate authority holding that there was no inter-State transaction and the transfer of the goods from the State to Gujarat to the State of Andhra Pradesh is only by way of branch transfers. The learned counsel also stated that the disputed items have already been assessed to sales tax under the provisions of the APGST Act in the hands of the manufacturer when the sale was effected from its branch at Secunderabad to its sole distributor, which is also located in Secunderabad. When once the said sales are assessed to tax under the provisions of the APGST Act, there is no provision to make another assessment, with reference to the same goods for second time. Therefore, even on that ground also it is contended that in so far as the State Revenue is concerned, no prejudice had been caused, as the disputed turnover had already been assessed/The learned counsel also contended that the claim of the dealer that the disputed turnover is exempted from tax was accepted by the assessing officer, having satisfied with the material produced by the dealer, but when once the Deputy Commissioner (CT) initiated revisional proceedings, the burden is on the revenue to prove that the said turnover is not exempted. But the revenue did not bring on record any material to prove that the turnover in the hands of the petitioner is not an exempted turnover. It is contended that though it was claimed by the department that there was a transfer of title in the goods by making an

endorsement in the document of title, viz., LRs., but there is absolutely no such evidence. On the other hand, it is the case of the petitioner/dealer that the branch office after receiving the goods raised invoices against the sole distributor and delivered the goods, which in turn again raised sale invoice against the petitioner/dealer and effected the delivery of goods. Therefore, the claim made by the department that there was a transfer of title in the goods while the goods was in movement from one State to another is without any material. Similarly, the other claim of the department that there was a second transfer by way of endorsement of the lorry receipts by the sole distributor to the petitioner/dealer is also without any material. The documents that were produced showing the movement of the goods from the manufacturer to its branch including the Central Excise Gate-Pass and the Memo of Stock Transfer shows that the consignor is the manufacturing company at Gujarat and the consignee is its branch office at Secunderabad. Therefore, it is clear that the goods had moved from Gujarat to Andhra Pradesh only by way of stock transfer from the manufacturer to its branch office and no sale or inter-State sale is involved in such transfer. It is only after reaching the destination the sales were effected by the branch office to the sole distributor who in turn sold to the petitioner/dealer. Therefore the petitioner/dealer is the third seller in the State transferring the goods, i.e., air-coolers and such transaction is not liable to tax under the provisions of the APGST Act.

The learned counsel relied upon the following decisions in support of his contention :

Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes, Jamshedpur : [1970]3SCR862 , Arjan Dass Gupta & Bros v. Commissioner of Sales Tax, Delhi Administration, Vikash Bhawan, New Delhi [1980] 45 STC 52 (Delhi), State of A.P. v. Thungabhadra Industries Ltd. , State of Tamil Nadu v. N. Ramu Bros. (Electricals) [1993] 89 STC 481 (Mad.) and Bankatlal Satyanarayana Parikh & Co. v. Commissioner of Commercial Taxes : 2001(2)ALD147 .

4. The learned Special Government Pleader for Taxes, on the other hand, supported the order of the Tribunal. The learned Government Pleader contended

that though the assessing officer accepting the claim of the petitioner/dealer passed the assessment order treating the entire turnover as exempt turnover, but, however, as a result of the search conducted by the Intelligence Wing of the department, it came to light that though the goods were addressed to its branch office by the manufacturing company but before the said goods reached the destination, it was transferred to the sole distributor, Darshak Enterprises, who in turn endorsed the document of title and effected the transfer to the petitioner/dealer, who is the ultimate receiver of the goods in the inter-State transaction. The sales that are effected by the petitioner/dealer are the first sales effected in the State and therefore, the turnover relating to such first sales is not exempt. As this material was available as a result of the inspection, the Deputy Commissioner (CT) having jurisdiction issued notice proposing to revise the assessment order and after giving sufficient opportunity to the dealer and as no satisfactory material was placed before the Deputy Commissioner, he concluded that the sales effected by the petitioner/dealer are the first sales of the goods in question and therefore, the sales are liable to tax under the provisions of the APGST Act. The learned counsel reiterated the contentions that the transfer was effected by the consecutive endorsements on the LRs. and finally the petitioner/dealer is the recipient of the goods from the transporters. The learned counsel also contended that in fact the memo of stock transfer issued by the manufacturer shows that the goods are to be delivered at the petitioner's address, though the petitioner's name was not shown in the said stock transfer. It was therefore, contended that under the guise of stock transfers, the manufacturer had transported the goods, which is destined to the petitioner/dealer. The learned counsel also contended that in fact the modus operandi is that the area manager, who is a common area sales manager for both the manufacturing company and the sales distributor collects the orders as well as the demand drafts from the sole distributors and those orders along with the drafts were sent to the registered office of the sole distributor at Ahmedabad in response to which the goods are being dispatched by the manufacturer. As and when the goods have been dispatched, the same are being collected by the petitioner after obtaining necessary endorsements from the company branch office as well as the sold distributor. It is contended by the learned counsel that though the goods are routed

thorough by the Manager through its branch office and the sole distributor, it is in fact a sale directed to the petitioner, who had placed the purchase order and also paid the consideration by way of demand drafts. The learned counsel also contended that in so far as the other distributing sales dealers are concerned, they have both local and inter-State sales. The learned counsel also contended that the petitioner and its vendors were having all the material relevant to the purchase and sale of those goods in question. But in spite of repeated opportunities given both by the Deputy Commissioner (CT) as well as by the Appellate Tribunal, no material was placed before it. On the other hand, the contention of the dealer was that the burden is on the department, which has initiated the revisional proceedings. According to the learned Government Pleader as sufficient material was placed and the burden is on the dealer, who is in the custody of the entire material, to place before the authorities and satisfy it that what was claimed by it is correct and that was being followed by it. In the absence of producing such material, there is absolutely no justification for the dealer to contend that the sales effected by the petitioner are the second sales in the State and therefore not liable to tax.

The learned Government Pleader relied upon the following decisions in support of his contention :

Vemula Seshaiiah and Gongadi Ramappa v. State of Andhra Pradesh [1963] 14 STC 730 (AP), Minerals and Metals Trading Corporation of India Ltd. v. State of Andhra Pradesh [1998] 110 STC 394 (AP); (1998) 26 APSTJ 215 and Sahney Steel and Press Works Ltd. v. Commercial Tax Officer : AIR 1985 SC1754 .

5. From the above rival contentions the issue to be considered is 'whether the order of the Tribunal confirming the order of the Deputy Commissioner revising the order of assessment and holding that the sales effected by the petitioner are the first sales and liable to tax under the provisions of the APGST Act, suffers from any irregularity warranting interference by this Court, while exercising the revisional jurisdiction under Section 22(1) of the APGST Act?'

6. The facts as stated earlier are not in dispute. As per the notice of revision dated July 17, 1995 issued by the Deputy Commissioner (CT), Secunderabad Division,

Secunderabad the following material facts are recorded :

'The inspection revealed that the selling dealers, namely, Darshak Enterprises (who sold the coolers to the assessee) would make purchases in the course of inter-State transactions from Sanskrut Comfort Systems Limited of Ahmedabad, i.e., out of State of Andhra Pradesh and then such purchases are effected by transfer of documents of title to the goods during their movement from one State to another, the transaction of which falls under Section 6(2) of the CST Act, 1956 corresponding to Section 3(b) of the CST Act. As such Sruthi Agencies, i.e., assessee on the rolls of the Commercial Tax Officer, Vidyanagar effected the purchases (indirectly) in the course of inter-State trade and therefore, they become the ultimate, i.e., last purchasers in the State of Andhra Pradesh and become first seller in the State at the point of first sale in the State. Sruthi Agencies have claimed exemption in the disguise as subsequent dealers in the State of Andhra Pradesh as second sellers by producing purchase bills of Darshak Enterprises of Hyderabad and thus gained the confidence and acceptance of the assessing authority. Of course this aspect was unnoticed by the Commercial Tax Officer, Vidyanagar at the time of assessment as to whether the same goods have been tax suffered previously at the hands of the selling dealers, i.e., Darshak Enterprises. The aspect as to the origin of the goods whether they were imported from the outside State of Andhra Pradesh or manufactured within the State of Andhra Pradesh was not verified resulting in the escape of sales tax in the State either by Darshak Enterprises or Sruthi Agencies. Since necessary action is being initiated against Darshak Enterprises for realisation of tax under the provisions of CST Act, 1956 by Joint Collector (CT), Enforcement Wing, Secunderabad. Now Sruthi Agencies are alone responsible and have liability to discharge under the provisions of the APGST Act for their sales at the point of first sales.'

The petitioner/dealer filed its reply in the following terms :

'We have purchased the air-coolers from Darshak Enterprises, 1-1-37, Diamond Toward, S.D. Road, Secunderabad who is a registered dealers under the APGST and CST Acts, 1957 and 1956 respectively vide registration Nos. of APGST : PJT/02/1/3164/90-91 and CST : PJT/02/01/2895/90-91 under the jurisdiction of the

Assistant Commercial Tax Officer, S.D. Road, Secunderabad and assessee on the rolls of the Commercial Tax Officer, S.D. Road Circle, Secunderabad. That the abovesaid dealers are dealing business in Symphony air-coolers, who is a second seller in the State of Andhra Pradesh. That the first seller of air-coolers at the Sanskrut Comfort Systems Limited, Secunderabad and they are paying the taxes regularly to the Commercial Tax Officer, S.D. Road, Secunderabad. Darshak Enterprises are purchasing the goods from Sanskrut Comfort Systems Limited and sold to the local registered dealers, i.e., Sruthi Agencies, Siva Krishna Marketing and Deepa Agencies. Sruthi Agencies, Siva Krishna Marketing and Deepa Agencies are the third sellers in the State of Andhra Pradesh. 1. First sales of Sanskrut Comfort Rs. 1,81,54,071.32 Systems Limited, Secunderabad (tax paid and the Statement enclosed.) 2. Darshak Enterprises, Secun- Rs. 1,38,72,837.00 derabad 3. Sruthi Agencies, Chikkadapally, Rs. 1,43,05,094.00 Hyderabad

The Deputy Commissioner (CT) after considering the explanation of the petitioner and also referring to the statement of one Mr. B. Louis, who is employed by both the manufacturing company as well as the sole distributor, recorded the modus operandi as under, while revising the assessment order dated July 8, 1994 :

'Sri B. Louis (authorised signatory), Area Manager of both Sanskrut Comfort Systems Limited, Secunderabad and Darshak Enterprises, Secunderabad in his statement recorded on inspection before the department authorities stated that the head office for both the above firms are at Ahmedabad. The assessee placed orders for air-coolers and enclosed demand draft in the name of Darshak Enterprises, Ahmedabad, who in turn instructed Sanskrut Comfort Systems Limited, Ahmedabad to dispatch the goods as per orders placed. In pursuance of the order placed and demand draft sent by the assessee through the local office of the assessee-company the movement of goods from Sanskrut Comfort Systems Limited in the State of Gujarat to the State of Andhra Pradesh on self to Secunderabad through (3) contract carriers, i.e., Patel Roadways Transport Corporation of India and Bafua Transport Company, Hyderabad, Kurnool, Vijayawada and Visakhapatnam take place. Neither Sanskrut Comfort Systems Limited, Secunderabad nor Darshak Enterprises, Secunderabad have ever taken

delivery of the goods in A.P. from the transport companies. They do not have their own godown to stock the goods on arrival of goods in A.P. from the transport companies. On arrival of the goods in A.P. Sanskrut Comfort Systems Limited, Secunderabad raises sale bill in the name of Darshak Enterprises, Secunderabad without taking the delivery of goods. In turn, Darshak Enterprises, Secunderabad without taking the delivery of goods from Sanskrut Comfort Systems Limited, Secunderabad raised another sale invoice for the same quantity of goods in favour of the assessee, who ultimately is taking delivery of the goods from the transport Companies after payment of Hamali and incidental charges. Sanskrut Comfort Systems Limited, Secunderabad endorse the lorry receipts and the actual delivery of goods taken by the assessee in Andhra Pradesh. It is also reported by the assessing authority concerned that neither Sanskrut Comfort Systems Limited nor Darshak Enterprises got any form-F from the department.'

Thereafter by referring to the provisions of Section 3 of the CST Act, concluded as under :--

'I am therefore convinced that the lorry receipts in question were endorsed during the movement of goods from State of Gujarat to the State of Andhra Pradesh. In view of this, the documents filed by the assessee that they are subsequent sellers in the State of Andhra Pradesh is rejected. Of course some of the conditions that should be fulfilled for any sale to be considered as a sale in transit are there should be movement of goods from one State to another State. In this case, there was inter-State movement from State of Gujarat to Andhra Pradesh. The second condition is there should be a transfer of document of title to the goods. There are self lorry receipts issued by the Sanskrut Comfort Systems Limited in all the transactions. The third condition is they must be endorsed during the course of movement of goods from one State to another State. Admittedly, these lorry receipts were endorsed during the course of movement of goods from one State to another within the meaning of explanation 1 under Section 3 of the CST Act. The last condition is that the delivery must be to the endorsee and it is true that the assessee has taken delivery of the goods. It is never claimed before the departmental authorities that the Sanskrut Comfort Systems Limited has taken delivery of the goods in question. Hence, all the conditions that are required to call

the transaction as a sale in transit within the meaning of Section 3(b) of the CST Act are existing in this case.'

Therefore, the Deputy Commissioner (CT) revised the order of assessment and brought to tax the entire turnover under the provisions of the APGST Act, which was originally exempted by the assessing officer.

When this order is assailed before the Appellate Tribunal, the Appellate Tribunal after referring to the rival contentions with reference to Section 3 of the CST Act as to the mode of transfer in the course of inter-State trade recorded the following :

'Therefore in these circumstances, the fact that is required to be established in order to say that there was successive transit sales, or not is as to who has taken the delivery of the goods from transporting authorities at Secunderabad in view of the explanation 1 in Section 3 of the CST Act above extracted, as the goods are deemed to be in movement till they were taken delivery from the transporting authority at destination station.'

7. Thereafter as the dealer failed to produce necessary evidence to prove that who has taken delivery of goods from the transport authorities and though the petitioner/dealer was in possession of such evidence failed to produce the same and therefore, held against the petitioner/dealer and confirmed the order of the Deputy Commissioner (CT). Though the learned counsel disputed the above findings alleging that the burden is on the department as the present proceedings are as a result of the revisional assessment order passed by the Deputy Commissioner. The relevant material showing who has taken delivery from the transporter is available with the petitioner and its transporter. Apart from all other aspects the admitted fact, which was not taken note of by the Tribunal, is that the Area Sales Manager from whom statements are recorded by the department and whose affidavit was also filed before this Court at page 16 of the material papers book, clearly shows that he was collecting the orders from the sales distributors along with demand drafts and used to transit the same to the head office at Ahmedabad. In fact, he did not refer in his affidavit whether these sales orders are being sent to Darshak Enterprises, the sole distributor or to Sanskrut Comfort Systems Limited, the manufacturer. He was the common employee of both the

manufacturer and the sole distributor and in fact both the said entities having a common office even at Secunderabad from where they were operating. The affidavit of the said Area Manager also shows that the said orders placed by the distributors are not communicated by him to Sanskrut Comfort Systems Limited, Secunderabad. Further from the affidavit it is also clear that the manufacturer used to send stocks at periodical intervals and he used to approach as and when the stocks are received from the head office and used to take the entire stock received for the purpose of distribution through the regional distributors. From the affidavit contents, it is also clear that even before the transfer of the stocks by the manufacturer from the manufacturing company, orders were being placed along with sale consideration by transmitting the same to the Head Office at Ahmedabad. Therefore, it may not be even correct that the stock transfer had started without any orders of sale. In fact even before the assessing authorities the said Area Manager, namely B. Louis was representing both the sale distributor, Darshak Enterprises as well as the manufacturing company Sanskrut Comfort Systems Limited. Though, in fact, it was contended by the petitioner that the manufacturing company took delivery of the goods from the transporters after reaching the destination, but no material was in fact placed before this Court whether the branch office of the manufacturer had in fact took physical delivery of the goods. In fact in an earlier proceedings against the manufacturer, when the manufacturer was assessed to Central sales tax, the contention of the manufacturer was that it took constructive delivery, contrary to the present contention of the petitioner that the manufacturer has in fact took delivery and thereafter effected sales in favour of the sole distributor. In fact one of the contention of the department was that neither the branch of the manufacturing company nor the branch of the sole distributor have got any godown of their own. Therefore, it is contended that in the absence of having any godown, the question of taking delivery of the goods would not arise and in fact the transactions were effected in such a way as to avoid the Central sales tax by showing the transaction as if it is a branch transfer and effecting the transfer of the goods without taking delivery from the manufacturer to the distributor and again from the distributor to the regional distributor, who really effects sales locally. Therefore, according to the department, the petitioner is the recipient of the goods directly from the transporter

and in fact one of the sample document produced by the manufacturer itself shows that the destination of the goods though was shown to be the branch office at Secunderabad, but the address where the delivery is to be effected is shown at the address of the present dealer, bearing door No. 1-8-540, Post Office Lane, Chikkadapally, Hyderabad, where the petitioner is having its business, but no evidence was produced showing that either the branch office of the manufacturing company or the sole distributor has got any sales office or godown at the said address.

8. Coming to the decision relied upon by the learned counsel for the petitioner, in the case of Tata Engineering and Locomotive Co. Ltd. [1970] 26 STC 354 the apex Court considered the issue whether the transfer of the vehicles to the stock-yards operated by the appellant-company by its own personnel in other States and supplied them to the dealers whether the same would involve an inter-State sale liable to tax. In this case the appellant-company manufacturing trucks and buses in Jamshedpur in the State of Bihar, transferred the vehicles to stock-yards located in other States and supplied them to various dealers. Though the petitioner did not include in the returns under the CST Act or under the Bihar Sales Tax Act, the sales, which were made by the petitioner stock-yards outside the State of Bihar, as according to it those sales could not be taken to have been made in the course of inter-State trade or commerce. But the Assistant Commissioner of Commercial Taxes negated the said claim and included those sales under the CST Act and assessed to tax. As the appellant-company was unsuccessful in assailing the said assessment before the Patna High Court, carried the matter before the apex Court. The apex Court set aside the orders of the High Court as well as the assessment observing that the movement of the vehicles to various stock-yards located in outside the State of Bihar was not in consequence of a firm purchase orders, the appellant-company was having complete control over the vehicles till they were allotted to the dealers from various stock-yards. The completion of sale to the dealers did not take place at the works at Jemshedpur, appropriation of the vehicles was done at the stockyards and it was open to the appellant-company till then to allot any vehicle to any purchaser and to transfer a vehicle from one stockyard to another. It could not therefore be said that the movement of the vehicles from the works to the stock-yards was occasioned by any covenant or

incident of the contract of sale. Holding so, the order of assessment was set aside leaving open the issue to the Assistant Commissioner to make a fresh assessment in accordance with law.

In the case of *Arjan Dass Gupta & Bros. v. Commissioner of Sales Tax* [1980] 45 STC 52 (Delhi) the dealer was carrying on the business of selling coal, imported from Bihar/Bengal, to retailers in the Union Territory of Delhi. During the assessment year 1964-65, procurement of coal from the collieries outside Delhi and its sale in Delhi was regulated by the Delhi Coal Control Order, 1963. The pattern of importation of coal and its sale within the Union Territory of Delhi followed by the dealer was on these lines: The dealer would place orders on the colliery owners in Bengal/Bihar for the purchase of coal. The railway receipts of the consignments of the coal would be in the name of the dealer as consignee 'freight to pay' and the consignments of coal would be despatched to Delhi. The invoices covering the cost of coal despatched and the sales tax under the Central Act charged by the colliery owners on the consignments of coal despatched to Delhi would also be in the name of the dealer. On arrival of the consignments the dealer would present the railway receipts before the civil supplies authorities for endorsement. The railway receipts so endorsed by the civil supplies authorities (for purposes of importation) would be endorsed by the dealer in favour of the purchasing retailers in Delhi. The actual delivery of the coal wagons in Delhi would be taken by the purchasing retailers on payment of railway freight to the railway authorities. The landed cost of coal would be paid to the dealer by the purchasing retailers which included the cost of coal, the Central sales tax and the dealer's profit. All the sales tax authorities held that the sales in question were intra-State sales liable to sales tax under the Bengal Finance (Sales Tax) Act, 1941, and were not exempt under Section 3(b) of the Central Sales Tax Act. On a reference the issue was considered by the Delhi High Court and held--

'(i) that the sales made by the dealer were first sales by an importer after the goods were imported in Delhi and the words 'at the point of sale by the importer....after import in the said territory' occurring in the notification dated 18th January, 1963, clearly suggested that the physical presence of the goods in the Union Territory of Delhi at the time of the sale was the decisive consideration in

the matter of tax liability. Explanation 1 to Section 3(b) of the Central Act did not permit a purchaser from the dealer to 'expand the movement' of goods beyond the time of the physical landing of the goods in the Union Territory of Delhi. Therefore, where the documents of title were transferred after coal had landed in Delhi all sales thereafter were intra-State sales within Delhi. Accordingly, the first sale by the importer-dealer was an intra-State sale within Delhi liable to sales tax under Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi ;

(ii) that the words cost of freight 'separately charged' in Section 2(h) connote that the intention of the parties as disclosed in the contract of sale must unequivocally be that freight charges would not form part of the sale price- In the absence of any such evidence, the freight charges paid by the coal retailers were liable to be included in the sale price and the turnover of the dealer.'

In the case of Thungabhadra Industries Ltd. [1986] 62 STC 71 this Court held that in order to determine the eligibility of an assessee, a registered dealer, who claimed exemption as a second seller of groundnut oil, taxable at the first point of sale within the State under the APGST Act, the two tests applicable are : (1) that the first seller should be a real and identifiable dealer within the State ; and (2) that mere non-payment of tax by the first seller within the State does not shift the liability to pay tax on the second seller.

In the case of State of Tamil Nadu v. N. Ramu Bros. (Electricals) [1993] 89 STC 481 the Madras High Court while deciding a tax case considered the issue 'whether the purchase and sale of generators would involve an inter-State sale by transfer of the title deeds and would be exempt under Section 6(2) of the Central Sales Tax Act. In this case the assessee sold generators to its various customers in this State of Tamil Nadu. The intending purchasers placed orders for the said generators with the assessee. The assessee, on receiving the purchase orders, placed orders with the outside-State sellers, mostly from Delhi. Those outside-State sellers executed the orders placed by the assessee, despatched the goods through lorries of South Eastern Roadways, who were having their transport offices at the place of those outside-State sellers and also at Coimbatore in Tamil

Nadu. On despatch Of the consignments, those sellers outside the State, advised the assesseees through postal communication, about the transport way-bill number, freight payable, insurance charges, etc. On receiving necessary particulars of the movement of the goods after despatch, the assesseees informed its purchasers. Then the said purchasers paid the necessary transport charges from the place of origin outside the State and took delivery of the goods at their own respective business places in Tamil Nadu. The said purchasers also paid the transit insurance charges and other incidental charges before taking delivery of the consignments by themselves. Since South Eastern Roadways are not having their own transport office in all places of destination, the assesseees gave necessary 'letters of authority' to the lorry office of the said carrier at Coimbatore with instructions to deliver the consignments to the assessee's purchasers in their doorsteps. The assesseees used their own form XX delivery notes for onward transport of the consignments from Coimbatore to various places of the said purchasers in Tamil Nadu. According to the Revenue, there was termination of the abovesaid movement of goods at Coimbatore and the assesseees had taken notional deliveries of the goods at Coimbatore and then the goods were booked covered by those form XX delivery notes. So, the abovesaid subsequent sales by the assesseees were only intra-State sales liable to be taxed under the State Act. Though the said contention was not accepted by the Tribunal, as according to it, the subsequent sales by the dealer to their purchasers were exempt under Section 6(2) of the CST Act, the said view was reversed by the High Court holding as under :

'(i) That although the lorry receipts relating to transport from Delhi and other places to Coimbatore would come under the definition of the term 'document of title to goods' in Section 2(4) of the Sale of Goods Act, 1930, they were not transferred to the purchasers for effecting sales in their favour as contemplated by Section 6(2) of the Central Act. An order from the vendor to the warehouseman to deliver goods to the vendee would come under the abovesaid definition. But the delivery notes in form XX could not be taken as such delivery orders. Form XX only contained certain particulars regarding the consignor and consignee and the goods consigned. It did not contain an order as such by the vendor for delivery of the goods to the vendee. It was meant only to keep track of the movement of the

goods to prevent evasion of tax and by no stretch of imagination could it be held to be a document of title within the meaning of Section 2(4) of the Sale of Goods Act, 1930. Under Section 2(4) of the Sale of Goods Act, only a 'warrant or order for the delivery of the goods' could be a document of title to goods.

(ii) That the authorisation letters were only instructions given by the respondents to the carrier to deliver the goods, stating that the carrier need not deliver the goods at Coimbatore but had to deliver them to the respective purchasers at different places in Tamil Nadu and collect the delivery charges from them on delivery of the goods. However, even though these letters looked like delivery orders, they could not be considered as documents of title to goods, coming within the definition under Section 2(4), because, even a delivery order which had been specifically mentioned in that definition, had to satisfy the requirements mentioned in the latter part of the said definition, namely, that it was used in the ordinary course of business as proof of possession or control of goods, or as authorising its possessor to transfer or receive goods thereby represented. The authorisation letters could not be treated as documents of title to goods within the meaning of the said definition. Therefore, the respondents' sales in favour of the purchasers could not be said to have been effected by transfer of documents of title to goods.

(iii) That the invoices also did not satisfy the requirements contained in the latter part of Section 2(4) of the Sale of Goods Act.

(iv) That there was no obligation on the carrier to take the goods further to any places beyond Coimbatore. The consignee, chose not to take physical delivery of the goods at Coimbatore either by itself or through its purchasers, but entered into a fresh contract for transportation of goods from Coimbatore to certain other places of the purchasers. Though physical delivery was not effected by the carrier at Coimbatore, in the above circumstances, it had to be held that notional delivery had been effected in Coimbatore pursuant to the original lorry receipts. Therefore, the movement of goods came to an end at Coimbatore at the time when the said notional delivery was effected there and so the subsequent sales by the respondents were only after the termination of such movement. Therefore, the exemption under Section 6(2) could not be granted.'

The learned counsel also relied upon a decision of this Court in the case of *Bankatlal Satyanarayana Parikh & Co. v. Commissioner of Commercial Taxes* : 2001(2)ALD147 where this Court while considering the revisional jurisdiction held 'Judicial dicta have also conditioned the exercise of revisional power under Section 263 of the Income-tax Act by holding that the condition precedent for initiating proceedings under Section 263(1) by the Commissioner is that Commissioner should not only record a finding that the order of the assessing officer was prejudicial to the interests of the Revenue, but he should also mention in the order the material on the basis of which he has arrived at the conclusion and that non-recording the reasons by the Commissioner would vitiate any order that the Commissioner may pass in exercise of his powers under Section 263.'

9. Coming to the decisions relied upon by the Special Government Pleader, in the case of *Vemula Seshiah and Gongadi Ramappa v. State of Andhra Pradesh* [1963] 14 STC 730 a division Bench of this Court considered the issue where the assessee dispatched goods by rail, obtained railway receipts in his own name and when the goods started on their journey to another State endorsed the railway receipts in favour of the buyer after receiving the sale price from him and it was held that as the transfer was effected during the movement of the goods, the sale fell within the purview of Section 3(b) of the [Central Sales Tax Act, 1956](#) and could not be taxed by the department.

In the case of *Sahney Steel and Press Works Ltd. v. Commercial Tax Officer* : AIR 1985 SC1754 the petitioner-company, engaged in the manufacture and sale of stampings and laminations made out of steel sheets which were utilised as raw material for making electric motors, transformers, etc., had its registered office and its factory in Hyderabad. Its branches at Bombay, Calcutta and Coimbatore were mainly engaged in effecting sales and looking after sales promotion and liaison work. Those branches received orders from customers within and outside their respective States for the supply of goods conforming to definite specifications and drawings and advised the registered office at Hyderabad. The company manufactured the goods according to the designs and specifications supplied by customers at its factory at Hyderabad and despatched them to the respective branches by way of transfer of stock. Such goods were booked to 'self' and sent

by lorries. The goods received by the branches were entered in the stock accounts of the branches and kept in stock for ultimate delivery to the customers. On the goods reaching the branches, they were inspected by the customers and accepted by them where the customers were local parties. Where the customers were outside the State the branch despatched the goods to them. The branches raised the bills and received the sale price. They also furnished form F to the registered office at Hyderabad under Section 6A of the [Central Sales Tax Act, 1956](#) in the case of stock transfers to the branches. The petitioner-company was assessed to State sales tax in Maharashtra, West Bengal and Tamil Nadu in respect of those goods. The petitioner claimed that there was only a transfer of stock from Hyderabad to the branches outside the State of A.P. and that the sales effected to the customers by the branches were local sales in the respective States. The Commercial Tax Officer, Hyderabad, held the sales to be sales in the course of inter-State trade and made an assessment accordingly for the year 1979-80 and also issued notices for reopening the assessments for the two earlier years 1977-78 and 1978-79 to include such sales. The petitioner-company filed a writ petition in the Supreme Court claiming that the sales were not sales in the course of inter-State trade and praying that, in the event of the transactions being held to be inter-State sales, the petitioner be permitted to avail of the concessional rate envisaged by Section 8(1) read with Section 8(4) of the Act; and that, in the alternative, the assessments to local sales tax be quashed in so far as they included the turnover of the stock transferred by the registered office to the branches. The apex Court held :

'(i) that even if the customer placed an order with the branch office and the branch office communicated the terms and specifications of the order to registered office and the branch office itself was concerned with despatching, billing and receiving of the sale price, the order placed by the customer was an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commenced their journey from the registered office in the State of Andhra Pradesh to the branch outside the State for delivery of the goods to the customer. Both the registered office and the branch office were offices of the same company; they did not possess separate juridical personalities. The movement of the goods from the registered office at Hyderabad was occasioned by the order placed by the

customer and was an incident of the contract, and therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-State movement. The sale transactions were inter-State sales under Section 3(a) of the Act;

(ii) that a reasonable opportunity should be given to the petitioner-company to collect C forms from the customers for the purpose of obtaining relief under Section 8(1) read with Section 8(4), since the question whether the transactions could be treated as inter-State sales was all along in doubt and it was only now that the question could be said to be resolved.'

In the case of Minerals and Metals Trading Corporation of India Ltd. v. State of Andhra Pradesh [1998] 110 STC 394 (AP); (1998) 26 APSTJ 215 a division Bench of this Court considered the issue of sale by transfer of documents of title under the provisions of the CST Act and it was held that when once the bill of entry is filed and import duty is assessed then only the goods can be said to have crossed the customs frontiers of India. Any transfer of documents of title before the clearance of the goods by the customs authorities on making the assessment of the goods would amount to a sale in the course of import irrespective of the fact whether duty is paid or not and whether the goods are physically cleared from the harbour or not. Holding so, the matter was remitted to the assessing officer for making fresh assessments, after conducting the necessary enquiry as directed.

10. A perusal of the above decisions shows that in the case of Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes, Jamshedpur [1970] 26 STC 354 the apex Court held that though the vehicles were transferred to its stock-yards located in various other States and though there were purchase orders, the transfer was not in pursuance of a firm order of sale and the company was having full control of the vehicles till they are allotted to the dealers, and hence there was no inter-State sale. In the case of Arjan Dass Gupta & Bros. v. Commissioner of Sales Tax [1980] 45 STC 52 the Delhi High Court held that the transfer of the coal after reaching the destination by endorsing on the documents of title was an intra-State sale liable to local tax. In the case of State of Tamil Nadu v. N. Ramu Bros (Electricals) [1993] 89 STC 481 (Mad.) where the

sale of generators by the assessee obtained from outside the State and gave necessary letters of authority to the lorry office of carriers at Coimbatore to deliver the consignments to the purchasers in their doorsteps, the Madras High Court held that the sales were in the course of intra-State sales liable to local tax.

On the other hand, a division Bench of this Court in the case of *Vemula Seshiah and Gongadi Ramappa v. State of Andhra Pradesh* [1963] 14 STC 730 considered where the assessee despatched the goods by rail obtaining rail receipts in his own name and when goods started on their journey to another State, endorsed the railway receipts in favour of the buyer after receiving the sale price, it was held that as the transfer was effected during the movement of the goods, the same was within the purview of Section 3(b) of the CST Act. In the case of *Sahney Steel and Press Works Ltd. v. Commercial Tax Officer* [1985] 60 STC 301 the apex Court held that though the purchase orders were booked through its branch office and also the goods are delivered through its branch office after effecting the branch transfers, the sales were by the company in the course of inter-State trade within the meaning of Section 3(a) of the CST Act.

11. Applying the principles laid down in the above decisions, the issue in dispute has to be decided. In this case it was admitted by the Area Manager Mr. B. Louis that he had collected orders from the regional distributors, who are six in number, along with the demand drafts and send them to the head office at Ahmedabad. The goods manufactured by the company were dispatched in lump sum at periodical intervals on consignments to its branch office at Secunderabad in Andhra Pradesh. When the goods are received, the Area Manager approaches it and takes the entire stock received by the branch for the purpose of distribution through the regional distributors. The said Area Manager is the common Area Manager to both the manufacturing company and the sole distributor. Though it was claimed that from the common carriers (transporters) the branch Office of the company had received the goods in question, no relevant material was placed by the assessee. The Deputy Commissioner basing on the material, such as the statement of the Area Manager Sri B. Louis, agreement entered into by the manufacturing company with Deepa Agencies, copies of the lorry receipts and statement given by Sri Adisesu, Marketing Director of Sivakrishna Marketing

Limited, Hyderabad and also a copy of the Stock Transfer Memo bearing No. 859, dated June 11, 1993 furnished by the company as a sample, where it was written that the delivery address is 1-8-540, Post Office Lane, Chikkadapally, Hyderabad, where the assessee is carrying on the business, concluded that the present case is a sale to the assessee while the goods were in transit and hence the sale made by the assessee in the State was the first sale liable to the local tax. The Tribunal confirmed the said finding, as the assessee, who is in the custody of the material evidence, did not produce the same. Hence, an adverse inference was drawn. Before us, it is contended by the learned counsel for the petitioner that as the present proceedings are as a result of the revisional order made by the Deputy Commissioner (CT), the burden is on the department to prove its case. Alternatively, it was contended that the assessee may be given an opportunity to produce such material to prove its case that the sale effected by the petitioner is not the first sale liable to the local tax. After considering the above contentions of the learned counsel for the petitioner as all the relevant material was not brought on record to decide the issue one way or other by applying the principles as stated earlier, and in order to give another opportunity to the assessee to produce the necessary material to prove its case, we are inclined to remit the matter to the Sales Tax Appellate Tribunal.

Accordingly we set aside the order of the Sales Tax Appellate Tribunal and restore the matter to its file for fresh consideration after giving an opportunity to the assessee to produce such material as it thinks necessary to prove its case.

12. The tax revision case is accordingly allowed, as indicated above. No costs.

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