

Jaln Jari Stores Vs. the State of Madras, Represented by the Additional Special Commercial Tax Officer for Appeals and anr.

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SooperKanoon Citation : sooperkanoon.com/809980

Court : Chennai

Decided On : Mar-21-1968

Reported in : (1970)2MLJ147

Appellant : Jaln Jari Stores

Respondent : The State of Madras, Represented by the Additional Special Commercial Tax Officer for Appeals and an

Judgement :

ORDER

T. Ramaprasada Rao, J.

1. The petitioner firm-assessee, a dealer in textiles was. carrying on business of buying and selling such goods in Madras. The assessee was a registered dealer under the Madras General Sales Tax Act, 1939. For the years 1956-57 and 1957-58 the petitioner was assessed to an additional tax on its assessable turnover as per Section 3 (2) of the Act. The assessable turnover represented the price of textile goods purchased by the assessee firm from the local agents of non-resident principals, and, according to the assessee, the goods were subject to a first sale at that point. The petitioner would also state that such purchases were made either through agents as such or through branch offices of the non-resident principals or

through delcredere agents with full rights to deal with the goods. The petitioner's case is that the textile goods were dealt with by such agents, branch offices or delcredere agents of non-resident principals as dealers within the meaning of Section 14(a) of the Act. The petitioner has produced a declared statement giving particulars about the purchases from such local agents, the date of receipt of the railway receipt, the date of collection of the railway receipt and the mode of payment for the value of such goods. In fact the relevant facts in the instant case were noted by this Court in *Jain Jari Stores v. State of Madras* (1962) 13 S.T.C. 220, which related to the year 1956-57. On appeal by Special Leave to the Supreme Court, the order of this Court was set aside and the proceedings remanded to this Court for disposal according to law. Whilst remanding the case, the Supreme Court in *Jain Jari Stores v. State of Madras* (1967) 20 S.T.C. 381, observed as follows:

We are of the view, having regard to the circumstances, that the case should be remanded to the High Court to determine the questions whether the agent of the non-resident supplier was the agent covered by the Explanation to the definition of the word 'dealer' in Section 2 (b), whether the property in the goods purchased by the assessee passed within the State of Madras, whether the sale was effected by a dealer resident within the State of Madras, and whether such sale took place after the goods were imported within the State of Madras. The High Court after determining those questions will proceed to dispose of the claim made by the assessee according to law. The High Court may, if it is necessary, call for a finding from the taxing authorities on those questions.

Before the Supreme Court disposed of the matter as above, Tax Case No. 262 of 1966 which related to the year 1957-58 was summarily dismissed by this Court on 11th October, 1966, as the point involved was then covered by the judgment in *Jain Jari Stores v. State of Madras* (1962) 13 S.T.C. 220. After securing an order of remand from the Supreme Court, the petitioner filed Tax Civil Miscellaneous Petition No. 88 of 1967 to review the order of this Court, dated 11th October, 1966, and sought for a revision of the order of the Sales Tax Appellate Tribunal, Madras, dated 2nd December, 1965 and made in T.A. No. 657 of 1959. This Court, in view of the remit order by the Supreme Court in which certain vital questions have to be

determined, entertained the application for review and directed notice. Incidentally the papers in Tax Case No. 148 of 1959 which has come once over to the file of this Court on remand for determining the correctness of the order passed by the Sales Tax Appellate Tribunal in T.A. No. 1028 of 1958, dated 17th April, 1959, were forwarded to the joint Commercial Tax Officer, Godown division, to record his findings on the questions formulated by the Supreme Court and relating to the years 1956-57 and 1957-58. In accordance with the directions of this Court, given as above on 28th November, 1967, the Joint Commercial Tax Officer, Godown division, has filed a report after raising four questions. The questions and the relative answers are set down below:

(i) Whether the agent of the non- No. As discussed above, it has resident supplier was the agent covered by not been proved by the peti-the explanation to the definition of the word tioner and it has also been dealer in Section 2(b) of the Madras denied by one of the agents General Sales Tax 1939. that, he is not a dealer as defined in Section 2(b) of Madras General Sales Tax Act, 1939.(ii) Whether the property in the goods Yespurchased by the assessee passed within the State of Madras?(iii) Whether the sale was effected by No. The sale was effected only dealer resident within the State of Madras? by the non-resident dealer direct to the buyer in this State (petitioner), who took delivery of the goods in all cases from the carrier(iv) Whether such sale took place after The petitioner is the first dealer the goods were imported within the State of who sold the goods afterMadras import. The sales by the non-resident dealers to the peti-tioner are in the nature ofinter-State sales.

He concluded that the nature of business and the mode of transaction for both the years 1956-57 and 1957-58 are the same. The matter thus comes before us on the report of the Joint Commercial Tax Officer, Godown division.

2. The primordial consideration in the subject under review is to find whether the textile goods in question were sold by the petitioner after the same were subject to a first sale by a dealer who is residing in the State of Madras and after the said goods were imported into the State of Madras from outside. In cases like this it is the petitioner who intends to escape the clutches of the taxing net that should

establish that the sales effected by him in relation to these goods were second sales. This is what is commonly known as the burden of proof. Such onus of proof is essentially on the assessee who is obviously in the know of all things and dealings with reference to the goods in question and it is for him who intends to claim an advantage to prove to the hilt that the textile goods were already subject to the first sale in the manner prescribed under Section 3 (2) of the Act.

3. The statement of dealings, a pattern of which was presented to us in Court, contains the following details:

- (a) the name of the outside-Madras party;
- (b) the date of the invoice;
- (c) the date and number of the railway receipt;
- (d) the date of the receipt of the railway receipt;
- (e) the date of clearance;
- (f) the date of payment and to whom the payment was made; and
- (g) whether the railway receipt was sent through agent or branch office or bank;

Invariably the railway receipts were taken out by the non-resident showing himself as the consigner as well as the consignee. The railway receipts are received by the local agents or the branch offices of the non-resident dealer. All correspondence is between the petitioner and the agents; After payment to the local agents or to the bank, as the case may be, the assessee secures the railway receipts and ultimately collects the goods. Thus, therefore, the local agent plays a prominent role in the integrated activity as above and according to the assessee the goods after importation are sold by the agent who is a resident, and this constitutes the first sale in relation to the goods. The facts as summarised above are not disputed by the department. The petitioner therefore, would state that inasmuch as the local agent books the order and gets the order confirmed, gets seisin of the railway receipt because the goods were despatched to self and as the railway receipt, as a mercantile document, is transferred to the assessee after

payment of price and as indisputably the agent of the non-resident owner of the goods was residing within the State of Madras, the agent is a dealer under the Act and, therefore, the sales of the assessee are beyond the field of taxation as they are second sales.

4. The learned Special Government Pleader, however, would state that as the transaction admittedly involves an inter-State journey of the textile goods in question, the principle in Section 3 (b) of the Central Sales Tax Act, 1956, read with Explanation I thereto would apply. His case is that such inter-State transport of the goods in question, which were admittedly delivered to a carrier for transmission, commences at the time of such delivery and terminates at the time when delivery is taken from such carrier. He would, therefore, urge that the movement of the goods in question terminated only when the assessee took delivery of the goods and, therefore notwithstanding the intermediate, role played, part undertaken and assistance rendered by the agent, there is a conceivable nexus between the non-resident dealer and the assessee as regards the textile goods in question and, therefore, the sale by the assessee should be deemed to be the first sale. Mr. V.K. Thiru-Venkatachari, after tracing the historical development of inter-State trade and commerce resulting in the passing of the Central Sales Tax Act, 1956, would state that the word import appearing in the proviso to Sub-section (2) of Section 3 of the Madras General Sales Tax Act, 1939, was there even prior to the passing of the Central Sales Tax Act and therefore, the word import in this Act has to be understood in its popular sense and not to be interpreted by referring to Section 3 of the Central Sales Tax Act, According to him, the special signification given to the concept of movement of goods by rail, envisaged in the Central Act, cannot be telescoped into the ordinary meaning that has to be given for such movement of goods under the Madras General Sales Tax Act. In fact, the Law Commission in its second report made it clear that it was for a limited purpose it became necessary for them to provide when the movement of the goods is to be regarded as having commenced and terminated in cases where goods are delivered to a carrier for transmission to another State. The learned Counsel, therefore, urges that the cessor of movement of the goods take place when they arrive at the destination and Explanation I to Section 3 (b) of the Central Sales Tax Act is only to provide for certain difficulties

apprehended in such movement and which were not thought of in the case of movements by ship. He referred us in detail to the various cases under Article 28b of the Constitution of India and the various stages that led to the passing of the Central Sales Tax Act, to impress upon us that in all such cases there was no case which covered the transmission of goods by rail and that even if they did, they only point out that the movement terminated at the arrival of the goods in any particular State. He invited our attention to the various cases starting from *United Motors (India) Ltd. v. The State of Bombay* (1953) 4 S.T.C 10, *Bengal Immunity Co. v. The State of Bihar* : [1955]2SCR603 , *Tata Iron and Steel Co., Ltd. v. S.R. Sarkar* : [1961]1SCR379 , *Cement Marketing Co. v. State of Mysore* : [1963]3SCR777 , *S. T. Corporation of India v. State of Mysore* : [1963]3SCR792 , *Kamala Mills v. Bombay State* : [1965]57ITR643(SC) , *Singareni Collieries Co. v. Commissioner of C.T.* : [1966]2SCR190 , and maintained that the word import appearing in Section 3(2) of the 1939 Act should be given the same meaning as that given in the above catena of decisions and the special meaning for a limited purpose given, for the concept of movement of goods by rail in the Central Act cannot prevail. On the merits he would state that the assessee after purchasing the goods from the local agent who is a resident of the State who imported the goods, effected a second sale of the goods, thereby being entitled to the benefit of the exemption set down therein. The learned Government Pleader in any event states that Section 3 of the Central Act having come into effect from January, 1957, the special concept as to movement by rail has to prevail from that date onwards and the assessee's transactions cannot be characterised as second sales on and from that date.

5. Before we analyse the respective contentions, we would briefly state whether in the instant case it is necessary to re-state the crystallised test as summarised by legal decisions in the matter of the appreciation of a sale in the course of import or export or sale in the course of inter-State trade and commerce. The latest pronouncement on the subject, to which my learned brother Veeraswami J., is a party is *Larsen and Toubro Ltd. v. Joint Comml. Tax Officer* : (1967)2MLJ552 . There the Court observed (head note):

The essential tests of a sale or purchase in the course of inter-State trade, commerce and in the course of import into or export out of the territory of India are : (1) whether there is movement of goods from one State to another or into or out of the territory of India, (2) whether such movement is occasioned by the contract of sale or purchase, and (3) alternatively whether, during such movement, the sale or purchase is effected by transfer of documents of title to the goods. The commencement and terminus of such movement should be delimited with reference to the two explanations to Section 3 in respect of a sale of the type under Section 3 (b) or the indicia mentioned in Section 5 in relation to import or export of goods. These tests will only enable to determine the character of the transaction as an inter-State one or in the course of import or export but will not help to fix its situs for jurisdiction to tax it. For that purpose, one has to turn to Section 4. Once the tests under Section 4 (2) are answered in favour of a State, that becomes the appropriate State having jurisdiction to tax the sale or purchase and no other State will have the power to tax the same transaction.

The contract of sale or purchase is given a situs at the dealer's place of business—where he sells. This is manifest from the definition of 'appropriate State' and 'place of business' as amended by the Central Act XXXI of 1958 with effect from 1st October, 1958, and this aspect is woven into the texture of the tests under Section 4 (2).

What is the essence of the inter-State character of a sale or purchase under Section 3 (a) is that the inter-State movement of goods springs from the terms of the contract of sale or purchase or is incidental thereto. The movement of goods need not necessarily be preceded by an agreement of sale or purchase but may be part of or incidental to it, or arises out of it.

The dividing line between the sales or purchases under Section 3 (a) and those under Section 3 (b) is that in the former the movement of goods is under the contract of sale or purchase but in the latter the contract comes into existence after commencement and before termination of the inter-State movement of the goods. In both the classes of inter-State sales or purchases under Section 3 (a) and (b) what is contemplated is completed sales. But how the sales or purchases

under Section 3 (a) or 3 (b) are completed and where, are irrelevant for purposes of Section 3 (a) and (b).

In fact, the learned Judges have instructively summarised the position of taxation on sale of goods prior to the Central Sales Tax Act, 1956. Starting from the State of Bombay v. United Motors Ltd. : [1953]4SCR1069 . they have traced the historical background with such precision and accuracy that it is unnecessary to re-state the same in this judgment. One aspect, however, which has been touched upon and which ground has not been covered is the scope of Explanation 1 to Section 3 (b) of the Central Sales Tax. Act. We have already adverted to the view of the Law Commission that a sale or purchase effected by the transfer of documents during the movement of goods from one State to another, should be regarded as inter-State sales or purchases. But the Commission was confronted with certain suggestions and difficulties in taking that view. For the limited purpose of the principle mentioned above they desired to provide expressly as to when the movement of the goods is to be regarded as having commenced and terminated in cases where goods were delivered to a carrier for transmission to another State. It is to achieve this object in inter-State trade or commerce that Explanation 1 to Section 3 (b) of the Central Act has been incorporated. We are, therefore, unable to accept the contention of the Revenue that the limited and special meaning attributed to such movement by rail under the Central Act should be read into the plain and unambiguous language employed in the Madras General Sales Tax Act, 1939. It has to be remembered that the Central Act is of later origin and ex-facie the provision for movement of goods by rail therein is not in pan materia with a similar provision in the Madras General Sales Tax Act. It is an accepted canon of law that

subsequent legislation on the same subject may be looked into in order to see the proper construction to be put upon the earlier Act, where that earlier Act is ambiguous.

This is not the case here. The Central Sales Tax Act which is subsequent to the Madras General Sales Tax Act, is not on the same subject; even otherwise, there is no ambiguity in the earlier Act so as to look to the later enactment for inspiration

and guidance. On this ground also, we are unable to accept the contention that the movement of the goods by rail should be deemed to have terminated under the proviso to Section 3 (2) of the Madras General Sales Tax Act, 1939, only when the goods were taken delivery. The word import means to bring in or to bring from - abroad. Such bringing is effectuated once the goods arrive. It is not necessary to search and find out some more events in the chain of causation to fix the ultimate terminal of the movement of goods by rail. The concept adopted in this behalf by the Central Act is peculiar to itself and not of general application. Thus considering explanation sales within the meaning of Article 286 of the Constitution as it stood before its amendment, or inter-State sales within the meaning of the judicial precedents which explained inter-State trade, prior to the passing of the Central Sales Tax Act or such sales under the Central Act, we have no hesitation in holding that in so far as the instant transactions are concerned they are sales effected by the assessee after it purchased the textile goods from the resident agent of non-resident dealer. Purchase involves a sale and this sale is the first sale by the agent to the assessee. We are unable to agree with the conclusions arrived at by the joint commercial tax officer that the agent of the non-resident supplier was not an agent within the meaning of Section 2 (6) of the Act read with the Explanation thereto. As pointed out by the Supreme Court in *Sree Meenakshi Mills Ltd. v. Commr. of Income-tax* : [1956]1SCR691 .

Where an ultimate finding on an issue is an inference to be drawn from the facts found, on the application of any principles of law, there is a mixed question of law and fact, and the inference from the facts found is, in such a case, a question of law.

and is open to review by the Court. In this case, the reporting officer instead of examining thoroughly the evidence produced by the assessee, made an independent investigation and examined a partner of Shah and Company whose name was not even suggested to the assessee's partner when he was examined by him. It may be that the facts disclosed by Shah and Company may not collate with that spoken to and substantiated by the assessee. The reporting officer applied negative materials to positive data which by itself is not only erroneous but is obviously arbitrary. The modus operandi adopted by him violates the principles

of natural justice, that the assessee was not given an opportunity to state his view about Shah and Company or to cross-examine the partner of Shah and Company. The ultimate finding given by the reporting officer, which he has to rest after applying the correct law bristles with an error apparent on the face of the record and offends natural justice as well. We have, therefore, examined the record ourselves and we are satisfied that the agent in question of the non-resident supplier thus satisfies the material ingredients constituting the content of the Explanation to the definition of the word dealer in Section 2 (b) of the Act. The goods were consigned by the non-resident dealer to self and his agent who is admittedly a resident in Madras takes control over the goods by dealing with the railway receipt. The reporting officer failed to see that the partner whom he examined was not speaking the truth when he said that in no case railway receipts were received by them. The statement filed before us supports the claim of the assessee that on arrival of the goods, it was the agent at Madras who dealt with and sold the goods to them. In accepting this and finding it as the fact in this case, after applying the correct law thereto, we must confess that the Revenue has not laid before us any evidence to the contrary or prompted us by materials aliunde that such is not the normal inference. Even viewing the transactions in a different perspective, the idea that the dealer resident outside who effected the sale through his accredited agent in Madras, still remains as the first seller of the textile goods and the subsequent dealing of such goods, by the assessee is the second sale. Under the proviso to Section 3 (2) of the Madras General Sales Tax Act, 1939, it is only the first sale effected in the State of Madras by a dealer who is residing in the State of Madras which is taxable. We have no situation in holding that the first sale of the textile goods imported into the State of Madras was effected by the agent of non-resident dealer and that the sale by the assessee is a second sale thereof and is not, therefore, a taxable sale liable to pay the additional tax. The ratio in *Gilda Textiles Agency v. State of Andhra Pradesh* (1962) 13 S.T.C. 738, may be usefully referred to in support of our view. In that case the transactions were very similar to that of the agent in the instant case. The Supreme Court was of the view that a non-resident either was a dealer itself or it became a dealer by the fiction created by Section 14 (a) of the Madras General Sales Tax Act, since in any event the non-resident principals had done business in

the State of Madras.

6. In the course of arguments a doubt was raised whether the agent in question is a dealer who is residing in the State of Madras. The proviso as it stood prior to the amending Act (Madras Act XXIII of 1957) contained only the words on the first sale effected in the State of Madras by a dealer. This was sought to be amended as doubts arose as to what constitutes the first sale by a dealer after import of the commodity. By the amending Act, it was proposed to make it clear that the reference is to the first sale by a resident dealer after import. The Act was thus amended so as to levy additional tax on the first sale effected in the State of Madras by a dealer who is residing in the State of Madras. Before the Supreme Court, it was not disputed that the agent of the non-resident owner of the goods was residing in the State of Madras. This aspect, therefore, need not detain us.

7. While therefore, determining the questions formulated by the Supreme Court, we answer that the agent, of the non-resident supplier was the agent covered by the Explanation to the definition of the word 'dealer', in Section 2 (b), that the property in the goods purchased by the assessee passed within the State of Madras, that the sale was effected by a dealer resident within the State of Madras and that such sale took place after the goods were imported within the State of Madras.

8. In conclusion, therefore, we set aside the order of the Sales Tax Appellate Tribunal, dated 17th April, 1959 in T.A. No. 1028 of 1958 and also the order of the Sales Tax Appellate Tribunal, Madras, in T.A. No. 657 of 1959 and allow these two petitions with costs, one set.