

PETITIONER:
THE STATE OF TAMIL NADU

Vs.

RESPONDENT:
SRI SRINIVASA SALES CIRCULATION ETC.

DATE OF JUDGMENT: 04/10/1996

BENCH:
S.P. BHARUCHA, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF OCTOBER, 1996

Presents;

Hon'ble Mr. Justice S.P. Bharucha

Hon'ble Mr. Justice Faizan Uddin

V. Krishnamurthy and A. Mariarputham, Advs. for the appellant.
R. Mohan, Sr. Adv., R. Nedumaran, V. G. Pragasam, R. A. Perumal,
K. R. Choudhary and R. K. Sharma, Advs. with him for the
Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
The State of Tamil Nadu

V.
Sri Srinivasa Sales Circulation
(With Civil Appeal Nos. 12778-84/96, 12785-87/96) Arising out
(WITH C.A.No. 8605/83, 2322-23/80, 4101/84 and SLP (C) Nos.
300-306/81, 6932-34/80, C.A. No. 3328/80)

J U D G M E N T

Faizan Uddin, J.

Leave granted.

Since common questions of law and facts arise for our
consideration in these appeals and special leave petitions,
the same are being disposed of by a common judgment.

The appeals and special leave petitions arise out of an
order passed by the High Court Of Madras in revision
preferred by the respondent herein, under Section 38 of the
Tamil Nadu General Sales Tax Act, 1959 thereafter referred
to as the "Act") relating to certain transactions involved
therein which are sought to be taxed as sale.

Since we have to decide the nature of transaction in
order to determine the liability which is the question
common to all these appeals and the special leave petitions,
we shall state the facts as they emerge out of the Civil
Appeal No. 2348/78.

The respondent assessee floated a scheme as detailed in
the printed pamphlet, which reads as follows:-

"Please get a coupon of our company
from your friend or from the
company by paying rupees five.
Please mark your address and any
one article you require it back to

the company.

After receiving your coupon we will register it and send three coupons by V.P.L. for Rs.15/- plus V.P.L. charges. Now you have to give the coupons to three persons for Rs.5/- each and take the money for yourself and ask them to fill up the coupons with their names and full address and send it to us.

We will send to each of your three parties three coupons each for Rs.15/- plus postal charges V.P.L. As soon as the parties concerned clear the V.P.L s, you will receive from us the article that you have mentioned in your coupon."

Further, clauses 5 and 6 of the terms and conditions of the said scheme, which are also relevant for our purposes, are reproduced hereunder:-

"5. Any person sending M.O. or bank draft for Rs.45/- along with coupon duly filled up will receive the article that is mentioned in the coupon together with three sets of (9) coupons.

6. Coupons should be returned duly filled within three months of their receipt. Coupons received after three months will not be attended to."

The said pamphlet containing the scheme further mentions 20 articles, one of which may be marked in the coupon by the person or party who purchases the coupon by paying Rs.5/-. The coupon referred to in the scheme is a printed order form which is as follows:-

"ORDER FORM"

No. 17435 D. Regd.No.
SRI SRINIVASA SALES CIRCULATION
(Regd.)
No.11, Gandhi Street,
Villivakkam,
Madras- 49.

From

Dear Sirs,

As mentioned in your list of article No..... I request you to kindly send meyour coupon by V.P.L., for the amount of Rs. 16-00 sent by me.

Place:- Yours faithfully,
Date:- Signature

Canvasser's signature "

Thus, on payment of a sum of Rs.5/- to the company and coupon is sent to the individual concerned, and we assume that individual as A for the sake of convenience. Then 'A' sends back the same to the company duly up mentioning the number and name of article in the blank spaces. On receipt of the said coupon / order form, three order forms are sent to A, by V.P.L. for Rs.16/- and when the said V.P.L. is cleared by A. he receives a further letter from the company acknowledging the receipt of Rs.16/-. The said letter reads as follows:-

"We are glad to note that you have cleared the V.P.L. No. by paying Rs.16/- and thank you very much for the same.

You please sell three order forms to three members and take that money. Fill the three forms (IN BLOCK LETTERS) and send them to us by Regd. Post. We will send to each among three members containing three order forms in each V.P.L.s., paying Rs.16/-. If all of them clear the V.P.L.s., paying Rs.16/- each, we will send you the required article item No. by Registered Post."

After receipt of the three order forms / coupons. A delivers them to B, C and D after collecting Rs.5/- from each of them which amount is appropriated by A himself. Then, B, C and D in turn will either forward the coupons themselves to the company or send the same through A after filling the blanks and mentioning the name and description of article which is required by them. On receipt of these three coupons / order forms, as aforesaid, from B, C and D, the company sends three sets of three coupons each to B, C and D under V.P.L. for Rs.16/- and inform A also of that facts in the printed form which reads as under :-

"We have received your three original order forms and the letter dated.....and thank you very much for the same. According to the rules of our firm today we have sent 3 V.P.Ls. containing 3 order forms in each V.P.L., for Rs.16/- to each among three members as addressed in that order forms. As soon as they clear the V.P.Ls. by paying Rs.16/-each, we will send you the required articles item no..... by registered parcel. So, you please encourage them to clear the V.P.Ls.. by paying Rs.16/- each."

If B, C and D honour the V.P.Ls. and pay money, A then becomes entitled to the article which he had chosen in his order form. That article is sent by the company to A with a covering letter. The said letter reads thus :-

"We are very glad to note you have circulated our scheme by a time and thank you very much for the same. According to your request today we have despatched your required article No.....by V.P., insured parcel for Rs. towards the expenses of packing and postal charges of the article. You please receive your article by paying Rs..... and write a letter to us about your opinion."

According to the scheme floated by the company, if any one of B, C and D does not honour the V.P.L. and decline to receive the three coupons sent to them. A loses his right to receive the article, though the other two who had honoured the V.P.L. will have a series in their name if they are again able to sell, say to B1, B2 and B3, C1, C2 and C3

and so on and complete the circle. This way the claim of B and C would go on and if there is no break, the claim goes on endlessly as a chain.

During the Assessment Year 1967-68, the value of articles that were supplied by the respondent company under the aforesaid scheme to various persons and customers was to the tune of Rs. 1,36,655.00 while the purchase value of these articles has been found to be Rs.1,03,709.25. The Assessing Officer took the view that there was a sale of article to every person who had participated in the scheme and as such turnover for the year 1967-68 from the value of articles supplied to various person came to Rs.1,36,665.00 which was liable to be taxed under Section 3(1) of the Act. The Assessing Officer also imposed a penalty of Rs.6,149/- under Section 12(3) of the Act for failure of not filling the return in form A-1. This order of the Assessing Officer found favour with the Appellate Assistant Commissioner as well as the Sales Tax Appellate Tribunal. The respondent assessee then went up in revision before the High Court of Judicature at Madras. The HIGH Court of Madras took the view that the transfer of article by the company was not for money consideration alone and, therefore, it would be a sale at all. Consequently, the High Court held that since the transactions involved in the scheme of the assessee are not sale, the assessee are not liable to be taxed as sales under Section 3(1) of the Act and, therefore, allowed the revision, set aside the order of the Assessing Officer, Appellate Assistant Commissioner and the Tribunal against which these appeals and special leave petitions have been directed as the orders in the connected appeals and the special leave petitions are based on the orders and findings recorded by the High Court in T.C. No. 154 of 1971 (Revision No.85) - Sri Srinivasa Sales Circulation v. State of Tamil Nadu, which is also reported in (1976) 38 S.T.C. 359.

The learned counsel appearing for the appellant State, vehemently urged that in the light of the facts found on record the disputed transactions were sales as defined under Section 4 of the Sale of Goods Act and, therefore, the Assessing Officer had rightly brought the same under the net of taxation under the provisions of the Act. It was submitted that the High Court was not right in holding that the title in the goods that passed to the customers was not right in holding that the title in the goods that passed to the customers was not under any contract or sale between the respondent and their customers and strenuously urged that the tenor of the scheme clearly indicated that the title in the goods passed to the customers pursuant to a contract of sale between the respondent and their customers and the transaction was squarely covered by Section 4 of the Sale of Goods Act. Contrary to this, the learned counsel appearing for the respondent sought to support the impugned order for the reasons assigned by the High Court and submitted that the transactions involved in the scheme of the assessee are not liable to tax as Sales Tax under Section 3(1) of the Act.

If may be stated that in order to constitute a sale under the Sale of Goods Act, it is essential to establish that there is an agreement between the parties for transfer of title to the goods and that such agreement should be supported by money consideration and as a result of the transactions the goods, article or the property must actually pass to the purchaser. It is settled law that the expression "sale" under the Sales Tax Act has to be understood with reference to the definition of "sale of goods" under the Sale of Goods Act. But if the title of the

goods passes without any contract between the parties, express or implied, there is no sale. Similarly if the consideration of the transfer is not money, but some other valuable consideration, it may amount to exchange or barter but not a sale in the strict sense of the law for the purposes of taxation, we shall, therefore, examine whether under the facts and circumstances of the present case the transfer of article by the respondent assessee to its customers under the scheme floated by it constitute a sale against payment of price of that article.

As stated earlier in the foregoing paras of this Judgment, the coupon of the company is sold to the customer A on payment of Rs.5/- . Whereafter, the customer A receives three coupons for Rs. 16/- which he sells to three persons for Rs.5/- each and appropriates the amount so received by himself. When each of the three parties to whom the coupons to others namely B, C and D, one cycle is completed and the customer A in turn receives the article of his choice as mentioned by him in the coupon from the company. In this process, as stated earlier, the company despatches a letter to its customer A advising him sell the three order forms to three members and take that money himself. Not only this, the assessee company further addresses a letter to the customer A in the printed form conveying their thanks to him and that they have received three original order forms and the letter, stating further that as soon as the V.P.Ls. are cleared by paying Rs.16/- each, they will send him the required article by Registered parcel. Thereafter, the company ultimately despatches the article of his choice to the Customer A with a covering letter advising him to receive the article by paying the stated amount. From these facts, it is clear that there may not be a formal contract for sale and purchase of the article in any specific form, but such a contract may be spelt out from the correspondence and interaction between the parties, in the present case an implied contract between the parties is spelt out when the company offers the coupon (s) against payment and the article of the choice is ultimately sent to the customer for payment or price which is accepted by the customer. There is thus offer and acceptance. If the contents of the entire scheme, as reproduced above, are minutely looked in to it substantially amounts to sale. We find that all the attributes, characteristics and requirements of a sale are present in the transaction, in fact the transaction is so designed and framed by the company by adopting a circuitous method for sale of their goods which amounts to nothing out a sale, and the same is liable to assessment under the Act. This view is further strengthened from the fact that during the relevant assessment year the respondent company sent articles to its various customers under the scheme of the value of Rs.1,36,665.00, which were purchased by the respondent company for a sum of Rs.1,03,709.25 and, thus, earned a profit to the tune of Rs.32,955,75. The business so run by the respondent is with a view to earn profit out of the sale by adopting a circuitous device with a view to evade the payment of tax. In our considered opinion, the High Court, therefore: was not justified in taking the view that it was not a sale transaction assessable to tax.

Consequently, we allow the appeals by setting aside the impugned orders passed by the High Court and restore the order of the Assessment Officers and the Sales Tax Appellate Tribunal. But in the facts and circumstances of the case, we make no order as to costs.

JUDIS