PETITIONER:
G. A. GALIAKOTWALA & CO. (P) LTD., MADRAS

Vs.

RESPONDENT:
THE STATE OF MADRAS

DATE OF JUDGMENT22/03/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SINGH, JASWANT

CITATION:
1976 AIR 2084 1976 SCR (3) 717
1976 SCC (3) 14

ACT:

Central Sales Tax Act Ss. 3, 6(2), 8(3) and 8(5)-Scope of-Goods despatched by "S" in Bombay to "B" in Madras who has an agreement to purchase with "A" to whom Railway Receipts were sent by "S' as per directions and separate agreement-Transaction is an 'Inter state' sales within S. 3(b) of the C.S.T. between "S" and "A"-Exemption u/s 8(5) applies only to cases where the claimant paid tax himself under the State Act-Exemption u/s 6(2) is applicable on proof that the buyer is a "registered dealer".

HEADNOTE:

As per the directions of the appellant and on receipt of the requisite licence under the cotton Transport Act 1923, for transport of cotton, the Bombay seller despatched cotton to the ultimate buyer mills at Madurai and sent the Railway Receipts to the appellant who endorsed the same in favour of the Mills after collection of the substantial portion of the sale price. The sales Tax authorities treated the transaction as intra sales and assessed the Mills as the last purchaser under the Madras General Sales Tax and assessed the appellant u/s 3(b) of the Central Sales Tax Act 1956. The question is whether in the circumstances the transaction is one of inter state sales falling u/s 3(a) or second sales under state sales u/s 3(b) of the Central Sales Tax Act.

The contentions of the appellant in this court were: (1) The sale of cotton by the appellant assessee to the buyer mill fell within the scope of S. 3(a) of the Central Act as there was movement of goods from Bombay to Madras as a result of covenant in or incidental to the contract of sale and therefore u/s 9(1) of the Central Sales Tax the jurisdiction lay with Bombay state from where the goods moved from and (ii) Since the sale being in respect of declared goods, is exempt by the terms of notification of Order No. 3602 dated 28-12-63 issued u/s 8(5) of the C.S.T. and (ii) the turnover was exempt u/s 6(2) of C.S.T.

Dismissing the appeal the court,

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HELD: (1) The significant feature of the transaction viz. sending of the Railway Receipts by the Bombay seller to the appellant who thereafter endorsed the same to the mills, shows that (a) there could not be any unconditional appropriation of the goods at Bombay towards the contract entered into between the appellant; (b) It was an inter state sales to the appellant and the sale by the appellant to the mills is an intra-state sales in as much as, the mere fact that the goods were consigned by the Bombay seller to the mills in accordance with the direction will not make the transaction inter state sales. [718G-H, 719A-B]

(ii) The State sales Tax authorities, (respondent) had jurisdiction to assess the transaction for sale by the appellant to the mills u/s 3(b) of the Central Act. [719C]

(iii) The exemption u/s 8(5) applies only to cases where the claimant had paid tax himself u/s 4 of the Madras Act in respect of local sales preceding the inter state transactions. In the instant case, as the appellant did not pay tax u/s 4 of the Madras Act, he was not entitled to claim exemption under the Government order. [719 E-F]

(iv) A dealer claiming exemption for subsequent sale during the movement of goods from one state to another is required by s. 6(2) of the Central Act to furnish to the prescribed authority in the prescribed manner a certificate
718
duly filled and signed by the registered dealer by whom the goods were purchased containing the particulars. In the instant case, the appellant produced the form from the Bombay seller but did not prove that his buyer was a registered dealer in cotton which disentitled him to exemption u/s 6(2) of the Act. [720 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1191 of 1973.

Appeal by special leave from the Judgment and Order dated 7-11-72 of the High Court of Madras in T.C. No. 197 of 1968.

C. K. Viswanatha Iyer, Mrs. S. Gopalakrishnan for the Appellant.

S. T. Desai, A. V. Rangam and Miss A. Subhashini for the respondent.

The Judgment of the Court was delivered by

RAY, C. J.-This appeal by special leave is from the judgment dated 7 November, 1972 of the High Court of Madras.

The principal question in this appeal is whether the sales of cotton by the appellant to the mills at Tirunelveli and Karur were inter-State sales under section 3(a) of the Central Sales Tax Act called the Central Act or are second sales under State Sales under section 3(b) of the Central Act.

The appellant has its place of business at Coimbatore. The Mills are situated within the State of Madras. The Mills entered into an agreement with the appellant for purchase of cotton. The appellant in turn placed orders with its sellers at Bombay for purchase of cotton. The appellant directed its Bombay sellers to despatch the goods to the mills as consignees. The Bombay seller sent the consignment to the mills but the railway receipts were sent by the Bombay seller to the appellant. The appellant then endorsed the same in favour of the mills after collection of the substantial portion of the sale price.

The appellant contended that the consignments were sent directly by the Bombay seller to the mills, and, therefore, these were direct inter-State sales by the Bombay seller to the mills and that the property in the goods passed to the mills when the goods were loaded at Bombay. The Sales Tax Authorities found that the Mills were the last purchaser and therefore these were inter-State sales between the Appellant and the Mills.

A most significant feature is that the railway receipts were sent by the Bombay seller to the appellant, and the appellant thereafter endorsed the same to the mills. It is, therefore, apparent that there could not be an unconditional, appropriation of the goods at Bombay towards the contract entered into between the appellant and the mills. The property in the goods passed only when the mills took delivery of the railway receipts from the appellant. The Bombay seller dealt with the railway receipts in such a way that it is proved that the intention of the appellant to part with the goods in any event is not until substantial payment is made by the mills. The Bombay seller had no privity of contract with the Mills. The
719
Bombay seller sold the goods to the appellant. The sale by the Bombay seller to the appellant was an inter-State sale. The sale by the appellant to the mills cannot be said to have caused the interState movement of goods. The mere fact that the goods were consigned by the Bombay seller to the mills in accordance with the direction of the appellant will not make the transactions inter-State sales. The sale by the Bombay seller to the appellant occasioned the movement of goods. The High Court was correct in holding that the sale by the Bombay seller to the appellant is an inter-State sale and the sale by the appellant to the mills is not an inter-State sale. Therefore, the State Sales Tax Authorities had jurisdiction to assess the transaction for sale by the appellant to the mills under section 3(b) of the Central Act.

The appellant raised a second contention that the appellant is entitled to the benefit of Government Order No. 3602 which exempts from sales tax declared goods sold in the course of inter-State trade or commerce where tax has been levied or collected in respect of sales or purchase of such declared goods under section 4 of the Madras General Sales Tax Act, 1959 called the Madras Act. The Government Order No. 3602 was issued in exercise of powers conferred by section 8(5) of the Central Act. The appellant contended that the mills paid the tax on their purchases of cotton and the same transaction could not be brought to charge in the hands of the appellant as inter-State sale. If the transaction attracts levy of tax under the Central Act it is not taxable under the Madras Act. If the mills had paid tax under the impression that their purchases are taxable under the Madras Act that will not enable the appellant to claim the benefit of the exemption. The exemption applies only to cases where the claimant has paid tax himself under section 4 of the Madras Act in respect of local sales preceding the inter-State transactions. The appellant in the present case did not pay tax under section 4 of the Madras Act. The High Court, therefore, correctly held that the appellant was not entitled to claim exemption under the Government Order.

The third contention of the appellant was that the appellant was entitled to exemption in respect of turnover under section 6(2) of the Central Act. Section 6(2) of the Central Act lays down that where a sale in the course of inter-State trade or commerce of goods of the description referred to in section 8(3) of the Central Act has occasioned the movement of goods from one State to another or has been effected by a transfer of documents of title to

such goods during their movement from one State to another, any subsequent
720
sale to a registered dealer during such movement effected by a transfer of documents of title to such goods shall not be subject to tax under the Act. A dealer claiming exemption for subsequent sale during the movement of goods from one State to another is required by section 6(2) of the Central Act to furnish to the prescribed authority in the prescribed manner a certificate duly filled and signed by the registered dealer by whom the goods were purchased containing the particulars. In the present case, the appellant would be entitled to exemption in production of appropriate form by the Bombay seller and by showing that the buyer is a registered dealer. The appellant produced the form from Bombay seller but did not prove that his buyer was a registered dealer in cotton. Therefore, the Tribunal rightly held that the appellant was not entitled to exemption under section 6(2) of the Act.

The appeal is, therefore, dismissed with costs.

S.R. Appeal dismissed.
721