

English Electric Company Of India Ltd vs The Deputy Commercial Tax Officer & Ors on 21 September, 1976

Equivalent citations: 1977 AIR 19, 1977 SCR (1) 631, AIR 1977 SUPREME COURT 19, 1976 4 SCC 460, 1976 TAX. L. R. 2157, 1977 SCC (TAX) 23, 1977 (1) SCR 631, 38 STC 475, 1976 U J (SC) 850, 1976 UPTC 798

Author: A.N. Ray

Bench: A.N. Ray, M. Hameedullah Beg, P.N. Shingal

PETITIONER:

ENGLISH ELECTRIC COMPANY OF INDIA LTD.

Vs.

RESPONDENT:

THE DEPUTY COMMERCIAL TAX OFFICER & ORS.

DATE OF JUDGMENT 21/09/1976

BENCH:

RAY, A.N. (CJ)

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RAY, A.N. (CJ)

BEG, M. HAMEEDULLAH

SHINGAL, P.N.

CITATION:

1977 AIR 19 1977 SCR (1) 631

1976 SCC (4) 460

CITATOR INFO :

R 1981 SC1604 (13,14)

F 1985 SC1754 (8)

ACT:

Sale--Contract for sale of goods, whether inter-State sale or intra-State sale Ingredients--Central Sales Tax Act--Section 3(a).

Privity of contract--When a company has several branches and there is a contract between the buyer and one of the branches, the contract of sale is between the company and the buyer.

HEADNOTE:

The appellant company having its registered office at

Calcutta, with branches at Bombay, Delhi, Lucknow, has a principal factory-Cum-branch at Madras. The registered office and the various branches are registered as dealers both under the Sales Tax Act and the local Sales Tax Acts. The appellant company in respect of the assessment year 1965-66, did not include a sum of Rs. 21,88,540.41 in its turnover in the return filed under the Sales Tax Act. On the ground that the turnover represented sales outside the State of Madras. The said sale related to a Bombay buyer who placed the order with the Bombay branch of the appellant company after it was informed by the said branch in consultation with the Madras branch factory that the price was f.o.r. Madras at the buyer's risk and that the delivery would be ex-works, Madras. The Bombay buyer was also informed by the Bombay branch of all the particulars, condition of sale, the fact that the goods would be manufactured at the Madras branch factory and would be supplied by the Madras Branch etc. as advised by the Madras branch to the Bombay branch. The respondent treated it as inter-State sale under Section 3(1) of the Central Sales Tax Act and issued a notice of demand whereupon the appellant filed an application under Article 226 of the Constitution in the Madras High Court praying for a writ of Prohibition restraining the respondents from taxing and/or including in the turnover for the purposes of assessment for the year 1965-66. The said petition was dismissed.

Dismissing the appeals by certificate, the Court.

HELD: (1) When the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasioned the movement of goods from one State to another. 'the inter-State movement must be the result of a covenant, express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of 2nd incidental to the contract of sale. [634D-E]

(2) Branches have no independent and separate entity. Branches are different agencies. In the instant case, the contract of sale is between the appellant company and the Bombay buyer. [634C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1838 of 1969.

Writ Petition Nos. 483-487 of 1974 (From the Judgment and Order dated 2nd August 1968 of the Madras High Court in Writ Petition No. 416/67).

(From the Judgment and Order dated 11th April 1972 of the Madras High Court in Tax Case No. 44/72).

K.S. Ramamurthi, V. Nataraj, C. Natarajan and D.N. Gupta for the appellant/petitioners.

S.T. Desai for RR. 1 & 2 in CA 1838/69 and Writ petitions. A. V. Rangam and Miss A. Subhashini, for respondents in CA 608/73.

S.N. Prasad, R.N. Sachthey and Girish Chandra, for R. 3 in CA 1838 of 1969 and Writ petitions.

D.N. Mukherjee, G.S. Chatterjee and D.P. Mukherjee, for respondent No. 4 in writ petitions.

S.C. Manchanda and O.P. Rana, for respondent No. 5 in Writ petitions.

M.C. Bhandare and M.N. Shroff, for respondent No. 6 in Writ petitions.

The Judgment of, the Court was delivered by RAY, C.J. These two appeals by certificate and the writ petitions turn on the question whether the contract for sale of goods was an inter-State sale or an intra-State sale. The appellant is a company having its registered office at Calcutta. 'There are branches at Bombay, Delhi, Madras and Lucknow. The main factory is at Madras. In order to appreciate the real controversy it is necessary to refer to the facts of one of the Civil Appeals as a pattern of transaction.

In Civil Appeal No. 1838 of 1969 Asha Metal Works of Bombay referred to as the Bombay buyer wrote to the Bombay branch of the appellant asking for lowest quotation of certain goods. The Madras branch which has the principal factory there for manufacture of goods was written to by the Bombay branch. The Madras branch wrote to the Bombay branch quoting the prices F.O.R. Madras. The Bombay branch then wrote to the Bombay buyer that the price was F.O.R. Madras and delivery would be ex-works Madras. The Bombay buyer thereupon placed the order with the Bombay branch. On these facts counsel for the appellant contended that the sale was at Bombay inasmuch as the Bombay buyer placed the firm order at Bombay, payment was to be made at Bombay, railway receipt was in the name of the Bombay branch and the goods were to be delivered at Bombay. It was emphasised that there was no contract or privity between the Madras branch and the Bombay buyer- but the privity was only with the Bombay branch.

The only question is whether the sale was an inter-State sale or a sale at Bombay. If the movement of the goods from Madras to Bombay was an incident of or occasioned by the sale itself it would be taxable under section 3(a) of the Central Sales Tax Act.

There was not and there could not be any contract of sale between the factory of the seller appellant at Madras branch and the Bombay branch of the appellant. It is obvious that the Bombay branch is

the agent of the seller appellant. The appellant could not be the buyer as well as the seller.

The contention of the appellant is that the goods were sent by the factory at Madras branch to the Bombay branch and thereafter the goods were sold by the Bombay branch to the Bombay buyer.

The sale as well as the movement of the goods from Madras to Bhandup at Bombay was a part of the same transaction. The movement of the goods from Madras to Bhandup was integrated with the contract of sale for the following reasons. The Bombay branch received the Bombay buyer's order and sent the same to the Madras branch factory. When the Bombay buyer asked for quotation of prices the Bombay branch wrote to the Madras branch and gave all the specifications and stated that the 'goods were for the Bombay buyer. The Madras branch in reply referred to the order of the Bombay buyer and gave particulars mentioning that the price was F.O.R. Madras. The Bombay branch thereafter wrote to the Bombay buyer reproducing all the particulars, conditions of sale and mode of despatch as stated by the Madras branch and further stated that the goods would be manufactured at the Madras branch factory.

It is important to note that all prices were shown F.O.R. Madras and it was further stated that all goods would be despatched at the risk of the Bombay buyer. It is in this context that the Bombay buyer on 27 May, 1964 placed an order with the Bombay branch accepting all the terms and conditions. The Bombay branch placed an indent order addressed to the Madras branch giving all the particulars and stated the buyer's name as Asha Metal Works, Bombay and gave the customer's order number and the date viz., 27 May, 1964. The goods were to be invoiced to the Bombay branch and the goods were to be despatched F.O.R. Madras. The Bombay branch wrote to the Bombay buyer on 28 August 1964 that they had received an invoice from the factory at the Madras branch that some of the goods against the order of the Bombay buyer were ready for despatch. The Bombay branch asked the Bombay buyer to give the details of despatch and insurance instructions per return of post. The Bombay branch thereafter wrote to the Madras branch factory stating "Please despatch the equipment covered by our above indent by goods train to Bhandup Railway Station freight to pay. The Railway Receipt and other documents to be sent to us for disposal". The Madras branch factory despatched the goods from Madras to Bombay by goods train and gave intimation to the Bombay branch. The goods were delivered to the Bombay buyer at Bhandup through clearing agents.

The goods were despatched from Madras at the risk of the buyer to Bombay. The goods were insured and insurance charges were collected from the buyer at Bombay. The freight charged from Madras to Bombay was borne by the buyer. The movement of the goods from Madras was an incident of the contract of sale.

Counsel for the appellant contended that there was no privity between the Madras branch and the Bombay buyer but that the privity was only between the Madras branch and the Bombay branch. It was also said that the Bombay branch was an independent and separate entity and the direct contract was between the Bombay branch and the Bombay buyer and the Madras factory were not parties to the contract. The appellant has branches at different places. The appellant company is one entity and it carries on business at different branches. Branches have no independent and separate

entity. Branches are different agencies. The contract of sale is between the appellant company and the Bombay buyer.

The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhand- up, Bombay. The railway receipt was in the name of the Bombay branch to secure payment against delivery. There was no question of diverting the goods which were sent to the Bombay buyer. When the movement of goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the tract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned, such movement. It is also not necessary for a sale to be deemed have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance and incidental to the contract of sale.

When a branch of a company forward a buyer's ,order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between factory and its branch.' If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move. only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have been taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position. The steps taken from the beginning to the end by the Bombay branch in co-ordination with the Madras factory show that the Bombay branch was merely acting as the intermediary between the Madras factory and the buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale caused the movement of the goods from Madras to Bombay. The inter-State movement of the goods was a result of the contract of sale and the fact that the contract emanated from correspondence which passed between the Bombay branch and the company could not make any difference.

For the foregoing reasons the appeals are dismissed. The writ petitions are also dismissed. There will be no order as to costs. It will be open to the appellant to apply for refund, if any, if permissible at law.

S.R.
dismissed.
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Appeals

