State Of Tamil Nadu vs Dharangadhara Trading Co. Ltd on 3 May, 1988

Equivalent citations: 1988 SCR (3) 805, 1988 SCC (3) 462, AIRONLINE 1988 SC 110, 1988 (3) SCC 462 (1988) 2 JT 270 (SC), (1988) 2 JT 270 (SC)

Author: M.H. Kania

Bench: M.H. Kania, R.S. Pathak

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
DHARANGADHARA TRADING CO. LTD.

DATE OF JUDGMENT03/05/1988

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
PATHAK, R.S. (CJ)

CITATION:
1988 SCR (3) 805 1988 SCC (3) 462
JT 1988 (2) 270 1988 SCALE (1)852

ACT:
Central Sales Tax Act, 1956 : Section 3-Assessee-Manufacturer-Booked goods to destinations as required by out of State buyers-Only documents of title handed over to Trading Company-Nature of sales by Manufacturer to Trading Company-Whether interstate or intra-state.

HEADNOTE:
An agreement was entered into by Dharangadhara Chemical Works Ltd. (Chemical Company) for the sale of all its products to the respondent (Trading Company). The agreement contained general terms; and the actual quantity sold, the sale price, the booking station and the destination stations were to be determined in the actual contracts for sale in respect of definite or specified quantities. The mode in which sales were effected was that the respondent Trading

Company used to obtain orders from out of State buyers, and enter into agreements of purchase with the Chemical Company for these specified quantities. All the goods sold under these contracts of sale were booked at a particular railway station in the State to the various places outside the State, where buyers from the respondent Trading Company required the goods and then the railway receipts and invoices concerned were endorsed and handed over to the respondent Trading Company.

In the assessment order for the assessment year 1980-81 the assessing authority treated the sales effected by the Chemical Company to the respondent Trading Company as intra-State sales and those by the respondent Trading Company to the out of State buyers as inter-State sales falling under s. 3 of the Central Sales Tax Act, 1956. The assessees, namely, the Chemical Company and the respondent Trading Company filed appeals before the Appellate Assistant Commissioner contending that sales by the Chemical Company to the respondent Trading Company were also inter-State sales as these sales were completed by the delivery of railway receipts and invoices only after the inter-State journey of the goods had commenced. The Appellate Assistant Commissioner dismissed the appeals.

Both the assessees filed appeals to the Tribunal. After considering

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the manner in which the sales were effected and despatches made by the Chemical Company and examining some specimen orders placed by respondent Trading Company with the Chemical Company, the Tribunal came to the conclusion that delivery was effected by the Chemical Company to the respondent Trading Company by delivery of documents of title, namely, the receipts of invoices and the railway receipts and allowed the appeals.

The High Court upheld the views of the Tribunal and dismissed the revision petitions filed by the State.

In the appeals by the State it was contended that the first set of sales by the Chemical Company to the respondent Company were local or intra-State sales, because under the agreement the delivery was to be effected at the booking stations.

Dismissing the appeal,

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HELD: The orders were placed for booking specified goods to out of State buyers and the Chemical Company never gave physical delivery of the goods to the respondent Trading Company but booked the goods to the destinations as required by the out of State buyers and merely handed over documents of title to the respondent Trading Company. The movement of the goods from the State to the outside State was occasioned by the terms of the contract themselves and the sales were inter-State sales falling under-sub-s. (a) of s. 3 of the Central Sales Tax Act, 1956. Alternatively,

since the deliveries of goods sold were effected by the transfer of documents after the movement of the goods from the State to the other States had commenced, the sales could be regarded as covered under sub-s. (b) of s. 3 of the Act. [809GH; 810A-B]

The agreement entered into by the Chemical Company with the respondent Trading Company is merely a general agreement. The actual terms of the contracts of sales as well as the instructions of the out of State buyers have to be taken into account in determining the nature of the sales in question. [810E-F]

The conclusion arrived at by the Tribunal as well as the High Court that the sales by the Chemical Company to the respondent Trading Company were inter-State sales cannot therefore be faulted. [810F]

Union of India & Anr. v. K.G. Khosla & Co. (P) Ltd. & Ors., [1979] 3 S.C.R. 453 at p. 460, relied on.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 619 (NT) of 1975.

From the Judgment and Order dated 11.7.1973 of the High Court of Madras in Tax Case No. 2 of 1970.

R. Mohan for the Appellant.

K. Rajendra Choudhary for the Respondent. The Judgment of the Court was delivered by KANIA, J. This is an appeal against the common judgment of a Division Bench of the High Court of Judicature at Madras in Tax Cases Nos. 2 & 3 of 1970. The appeal has been preferred pursuant to special leave granted by this Court under Article 136 of the Constitution of India.

The facts giving rise to the appeal are as follows:

The Dharangadhara Chemical Works Ltd. is a manufacturer of Caustic Soda and certain other chemicals. Dharangadhara Chemicals Works Ltd. (referred to hereinafter as "the Chemical Company") entered into an agreement dated 9th August, 1957 under which it agreed to sell all its products to Dharangadhara Trading Co. Pvt. Ltd. (referred hereinafter as "the Trading Company"). Under clause 1 of the said agreement, the Chemical Company agreed to confine the sale of all the products manufactured by it at all its works to the Trading Co. for a period of 5 years from the 1st day of March, 1958. Clause 2 of the agreement provided, the Chemical Co. would make the sales directly to the Trading Co. on a principal to principal basis against offers or indents. Clause 3 provided that the selling price would be determined by the Board of Directors of the Chemical Co. on the basis of ex-factory or F.O.R. at booking

or F.O.R. destination stations as decided upon by the Directors. The delivery of the goods would, however, be given F.O.R. at booking stations. The Trading Co. would make payments to the Chemical Co. within one month from the date of supply or sale of goods by the Chemical Co. Pursuant to this agreement, sales were effected by the Chemical Co. to the Trading Co. Although the aforesaid agreement contained the general terms as set out earlier, neither the booking stations, nor the destination stations nor the sale price were given in the said agree-

ment. The Trading Co. used to given directions to the Chemical Co. for despatching specified quantities of goods to the stations named by the Trading Co. and as per these directions, the Chemical Co. booked the goods at the booking station which was invariably Arunuganeri Railway Station in the State of Tamil Nadu, showing themselves as the consignors and the Trading Co. as the consignees of the goods specified in that contract of sale. After booking the goods, the invoices were handed over to the Trading Co. by the Chemical Co. It may be mentioned that the actual quantities sold, the sale price, the booking station and the destination stations were not determined under the aforesaid agreement of 9th August, 1957, but in the actual contracts of sale in respect of definite or specified quantities. The mode in which sales were made was that the Trading Co. obtained orders from out of State buyers and entered into agreement of purchase with the Chemical Co. for these specified quanities. All the goods sold under these contracts of sale were booked at the aforesaid railway station in Tamil Nadu to the various places outside the State of Tamil Nadu where buyers from the Trading Co. required the goods and after the goods were booked as aforesaid on the railway, the railway receipts and the invoices concerned were endorsed and handed over to the Trading Co.

Admittedly, as pointed out by the Tribunal, there were two sets of sales, one by the Chemical Co. to the Trading Co. and the second by the Trading Co. to the various out of State buyers. In the original assessment order for the assessment year 1961-62 made by the Sales Tax Officer, both the sales by the Chemical Co. to the Trading Co. and the sales by the Trading Co. to the out State buyers were treated as inter-State sales. Consequently, Central Sales- tax was levied on the first sale, but not on the second sale. This assessment order was revised and under the revised assessment order the assessing authority treated the sales effected by the Chemical Co. to the Trading Co. as intra-State sales and the sales effected by the Trading Co. to the out of State buyers as inter-state sales falling under Section 3 of the Central Sales Tax Act, 1956. The assessees, namely, the Chemical Co. as well as the Trading Co. filed appeals before the Appellate Assistant Commissioner contending that both the said sales were inter- state sales. It was contended by the assessee that the sales by the Trading Co. to the out of State purchasers were admittedly inter-state sales and as far as sales by the Chemical Co. to the Trading Co. were concerned, these were also inter-state sales as the sales were completed by the delivery of railway receipts and invoices only after the inter-state journey of the goods had commenced. These contentions were rejected by the Appellate Assistant Commissioner, who dismissed the appeals. Both

the assessees filed appeals against the decisions of the Appellate Assistant Commissioner to the Tribunal. The Tribunal allowed both the appeals.

The Tribunal pointed out that there were two sets of sales, the second set of sales by the Trading Co. to out of State buyers was admittedly inter-state in character. The Trading Co. had filed necessary `E-1' forms and 'C' forms in these cases and the transactions, therefore, fell within the scope of Section 6(2)(B) of the Central Sales Tax Act and were exempt from tax under local Sales Tax Act as well as the Central Sales Tax Act. As far as first set of sales, namely, by the Chemical Co. to Trading Co. were concerned, it was pointed out that although under the agreement dated 9th August, 1957 the sales were agreed to be 'F.O.R. Booking Stations' and the booking station was in Tamil Nadu, the delivery of goods could be either by physical delivery or by handing over documents of title. The delivery contemplated in the agreement was not actual physical delivery, as the place of delivery was neither seller's place of business, nor the buyers' place of business. Considering the manner in which the sales were effected and despatches made by the Chemical Co., and after examining some specimen orders placed by the Trading Co. with the Chemical Co., the Tribunal came to conclusion that the delivery was effected by the Chemical Co. to the Trading Co. by delivery of documents of title, namely, the respective invoices and the railway receipts. The nature of sales by the Chemical Co. to the Trading Co. and the question whether they were inter- state sales had to be decided after further taking into account the further instructions given by the buyers. The actual terms of the sales have to be determined not merely under the agreement dated 9th August, 1957 as that agreement was a general agreement which did not specify the quantities to be sold, the sale price, booking stations, the destination stations, and so on, but these actual terms could be determined only by taking into account the terms on which and the manner in which the actual sales were made by the Chemical Co. to the Trading Co. For ascertaining these terms, the Tribunal examined some of the subsequent orders placed by that Trading Co. on the Chemical Co. Taking into account all these, the Tribunal found that as the orders were placed for booking, specified goods to out of station buyers, and the Chemical Co. never give physical delivery of the goods to the Trading Co., but booked the goods to the destinations as required by the out of state buyers and merely handed over documents of title to the Trading Co. It was clear that the movement of the goods from the State of Tamil Nadu to the outside States was occasioned by the terms of the contract themselves and the sales were inter-state sales falling within Section 3, Sub- section (a) of the Central Sales Tax Act, 1956. Alternatively, if a view were taken that the sales did not fall under Sub-section (a) of Section 3, the deliveries of goods sold were effected by the transfer of documents after the movement of the goods from Tamil Nadu to the other States had commenced and the sales could be regarded as covered under Sub-section (b) of Section 3 of the Central Sales Tax Act. From this decision of the Tribunal, Revision Petitions under Section 38 of the Tamil Nadu General Sales Tax Act were preferred by the State of Tamil Nadu to the Madras High Court. The High Court upheld the views of the Tribunal and dismissed both the Revision Petitions which were

numbered as Tax Cases Nos. 2 and 3 respectively. An appeal was preferred by the State in the case of the Trading Co., namely, the case pertaining to the assessment of the sales from Chemical Co. to the Trading Co.

The only submission advanced by Mr. Mohan, learned, counsel for the appellant, was that there were two sets of sales, namely, by the Chemical Co. to the Trading Co. and by the Trading Co. to the out of State buyers. It was submitted by him that the first set of sales, namely, by the Chemical Co. to the Trading Co. were local or intrastate sales because under the agreement dated 9th August, 1957 the delivery was to be effected at the booking station. In our view, as the Tribunal has rightly pointed out, the agreement dated 9th August, 1957 is merely a general agreement and the actual terms of the contracts of sales as well as the instructions of the out of state buyers have to be taken into account in determining the nature of the sales in question. In view of this, the conclusions arrived at by the Tribunal as well as the High Court that the sales by the Chemical Co. to the Trading Co. were inter-state sales cannot be faulted and the learned counsel for the appellant has not advanced a single reason showing how that conclusion is incorrect. In fact, this conclusion finds some support from the observations of this Court in Union of India & Anr. v. K. G. Khosla & Co. (P) Ltd. & Ors., [1979] 3 S.C.R. 453 at p. 460.

In the result, we find that there is no merit in the appeal and it must fail. The appeal is dismissed with costs.

N.P.V. Appeal dismissed.