Supreme Court of India
Cooperative Sugars (Chittur) ... vs State Of Tamil Nadu on 13 April, 1993
Equivalent citations: AIR 1994 SC 1456 b, 1993 Supp (4) SCC 42, 1993 90 STC 1 SC
Bench: B J Reddy, N Venkatachala
ORDER

1. This appeal arises from the Judgment of the Madras High Court in a Sales Tax Revision Case. The appellant is a co-operative sugar factory having its sugar factory at Chittur in Kerala State. Inasmuch as sufficient quantity of sugarcane was not available within the State of Kerala, the appellant and the Government of Kerala approached the State of Tamil Nadu for supply of sugarcane to the appellant-factory. In pursuance of the understanding arrived at between them, the Government of Tamil Nadu issued an order contained in G.O. M.S. No. 2260 dated July 20, 1963. By virtue of this order, the appellant was permitted to draw sugarcane from not more than 3,000 acres in Coimbatore and Pollachi taluks in Tamil Nadu, subject to the conditions specified therein. Condition No. 5 read thus:

(Clause (5) : The Co-operative Sugar Ltd., Chittur, should remit to this Government the Sales Tax on the cane supplies made from areas in Madras State. The basis for purposes of calculation will be taken as 3% of the purchase price of cane for a recovery of 9.8% (Rs. 1.62 per rnaund)

2. In pursuance of the said order, appellant opened its offices at Coimbatore and Pollachi. The sugarcane inspectors from these offices used to visit the fields, inspect the sugarcane and also take delivery of the sugarcane from the farmers. They also arranged the transport of sugarcane to the factory under the cover of delivery notes in Form XX. In Form XX, the appellant itself was shown both as the seller and the buyer. (The learned Counsel for the appellant denies the correctness of the above statement, which is a statement of fact found in the judgment of the High Court. According to him, Form XX mentions merely that the appellant is both -consigner and consigee -and not as the seller and the purchaser.)

3. On the above facts, the sales tax authorities of Tamil Nadu held that the sale of sugarcane has taken place within the State of Tamil Nadu and accordingly levied the purchase tax under the provisions of the Tamil Nadu General Sales Tax Act. The appellant disputed the levy contending that it was an inter-State sale within the meaning of Clause (a) of Section 3 of the Central Sales Tax Act and, therefore, not eligible to tax under the Tamil Nadu General Sales Tax Act. The matter ultimately reached the High Court of Madras. On a consideration of the above circumstances, the High Court concluded that inasmuch as the sale took place within the State of Tamil Nadu and the property in the goods passed to the appellant in Tamil Nadu, the mere fact of transport of the goods later from Tamil Nadu to Kerala as its own goods makes no difference. In such a case, the High Court held, it cannot be said that the movement of the goods was a stipulation of or an incident of the contract of sale. The correctness of the said view is challenged in this appeal.

4. Section 3 of the Central Sales Tax Act,1956 reads as follows:

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase.

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

5. The scope and content of Section 3 has been explained in several decisions of this Court. It is sufficient for the purpose of this case to refer to the recent decision of this Court in Commr. of Sales Tax, U. P. v. Bakhtawar Lal,1992 AIR SCW 2246. After reviewing the earlier decisions of this Court, it was held paras 7, 15, 16 and 17 of AIR:

...According to Clause (a) of Section 3, an inter-State sale or purchase is one which occasions the movement of goods from one State to another. In other words, the move ment of goods from one State to another must be the necessary incident - the necessary consequence of sale or purchase. A case of cause and effect - the cause being the sale/purchase and the effect being the move ment of the goods to another State....

It is immaterial whether a completed sale precedes the movement of goods or follows the movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected....

Sri Sehgal is equally not right in saying that movement of goods from the State of U. P. to other State(s) is immaterial and that the U. P. Legislature is competent to tax each and every purchase that takes place within that State. Ordinarily, it is so, but where a sale or purchase, though effected within the State of U. P. occasions the movement of goods sold/ purchased thereunder from the State of U. P. to other State, it becomes art inter-State sale. Such a sale cannot be taxed by the Legislature of Uttar Pradesh. It is taxable only under the Central Sales Tax.

Situation could have been different if the respondent-dealer had purchased the goods on behalf of the ex-U.P. principals in the first instance and thereafter in pursuance of subsequent instructions despatched the goods. In such an event the instructions to despatch the goods are independent of the instructions to purchase. There is a break between the purchase and despatch of goods. It would not be an inter-state purchase. An out-State principal may first instruct his commission agent within the State of U. P. to purchase the goods on his behalf and to await his further instructions. Depending upon the market conditions and other circumstances, the ex-State principal may instruct his agent in the State either to sell the goods within the State or to despatch the goods beyond the State. If such were the case, Sri Sehgal would have been right in saying that the State of U. P. was competent to tax the purchase by the respondent-dealer. But that is not the case here on the facts found by the appropriate authorities.

6. If we examine the facts of this case in the light of the above observations, it would be clear that the purchases made by the appellant are inter-State purchases. The appellant was permitted to purchase sugarcane in Coimbatore and Pollachi taluks only with a view to and exclusively for the purpose of transporting to its factory in Kerala. Whatever was purchased was transported to the appellant's factory in Kerala. It must, therefore, be held that this is a case where the movement of goods was occasioned by sale by the farmers or by the purchase by the appellant, whichever way one looks at it. The movement of the sugarcane from Tamil Nadu to Kerala is the incident of, and is inextricably connected with the sale/purchase. The purchase and transport are but parts of one transaction. They cannot be dissociated in this case. There is no break between the purchase and the movement of the goods to another State viz., Kerala. It is immaterial, in such a case whether the sale/purchase takes place within Tamil Nadu or within Kerala. So long as the movement of goods is an incident of the sale/purchase it amounts to an inter-State sale/purchase. It is not also necessary that the contract of sale must expressly provide for movement of goods. It is sufficient if the movement of goods is implicit in the sale. In our opinion, the High Court was not right in the facts and circumstances held established by it in this case that the sale and movement of goods are unconnected and dissociated transactions. They are not.

7. Mr. Poti, learned Counsel for the appellant contended that the sale/purchase did not take place within the State of Tamil Nadu but that it took place only in the State of Kerala, inasmuch as the appellant had reserved to himself the right to reject the goods if they were not in accordance with the appellant's specification. Reliance is placed upon Section 24 of the Sale of Goods Act, 1930 and on . It is not necessary for us to express any opinion on this question because, as stated above, it is really immaterial whether the sale took place within the State of Tamil Nadu or within the State of Kerala, so long as the movement of goods and the sale are indivisibly connected.

8. The stipulation in the G.O. M.S. 2260 cannot also be relied upon by the State of Tamil Nadu for sustaining the levy. A tax can be levied only by a statutory provision. This is not a case where the State of Tamil Nadu is seeking to enforce any agreement between the parties. It was an assessment under the Madras Act. In such a case, the agreement, if any, incorporated in G.O. M.S. 2260 is not relevant. In this view of the matter, it is also not necessary to examine the submission of Sri Poti that the State of Tamil Nadu was not competent to impose such a condition under the Sugarcane (Control) Order, 1966.

9. For the above reasons, the appeal succeeds and is accordingly allowed. The assessment made upon the appellant, which was the subject-matter of the Revision in the High Court is quashed.