IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.(Revision) Nos.77 to 80 of 2015
and W.P.No.2322 of 2012

J.Thomas & Company (P) Limited,
Coonoor. ... Petitioner in T.C.No.77 of 2015

Forbes & Company (Tea Brokers),
Coonoor. .. Petitioner in T.C.Nos.78 & 80 of 2015

Paramount Tea Marketing (P) Limited,
Coonoor. .. Petitioner in T.C.No.79 of 2015

vs.

The State of Tamil Nadu
Represented by the
Joint Commissioner (CT),
Coonoor. . . Respondents in all T.Cs.

Prayer in all TCs.: These petitions have been filed under Section 38 of the Tamil nadu General Sales Tax Act, 1959 to revise the order of the

Sales Tax Appellate Tribunal (Additional) Bench, Coimbatore-18 dated 03.02.2015 passed in C.T.S.A.Nos.32, 38, 39 & 63 of 2008.

For Petitioners (in all TCs.) : Mr.N.Sriprakash

For Respondent (in all TCs.) : Mr.Haja Nazirudeen
Addl.Advocate General-1
Assisted by
Mr.G.Nanmaran
Spl.Govt.Pleader
Mr.P.Haribabu
Govt.Advocate

W.P.No.2322 of 2012

J.Thomas & Co., Private Limited
represented by its Managing Director
Vijay Shankar ... petitioner

vs.

1. The Assistant Commissioner (CT)
Coonoor,
The Nilgiris.

2.The State of Tamil Nadu,
Rep.by the Secretary,
Commercial Taxes & Registration
(B2) Department,
Fort St.George, Chennai 600 009. .. Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records on the file of the first respondent in CST.No.336211/1999-00 dated 30.09.2011 and quash the same.

For Petitioner : Mr.N.Sriprakash

For Respondents : Mr.Haja Nazirudeen

COMMON ORDER

(Judgment of the Court was delivered by **C.SARAVANAN,J.)**

By this common order, these Tax Cases are being disposed of.

2. These Tax Cases have been filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to reverse the order dated 03.02.2015 of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18 in C.T.S.A.Nos.32, 38, 39 & 63 of 2008.

3. Operative portion of the impugned Order dated 03.02.2015 of the tribunal reads as under :-

> “26. During the course of lengthy arguments by the Id. Counsel for the respondents, it is reiterated that the bids were made in accordance

with the rules framed under Coonoor/Coimbatore Tea Traders Association. It is pertinent to note that rules were amended in the year 1992 only after the pronouncement of judgment reported in 113 STC 53 (Moti & Co., v. State of Tamil Nadu) holding the auction sales as local sales. It is to be noted that rules which defeat the provisions of law is non est and the rules framed must be in consonance with the existing provisions of law. The question of inter- state sale is to be determined in the light of the statutory provisions enumerated in section 3 of the CST Act and amended rule 21(a) of Tea Trade Association stipulates auction by out of State buyers as inter-state sale, which was not in consonance with the express provision of the statutory law. Nothing prevents the buyer from out of State to bid in auction, to take delivery of goods by himself and transport the goods as its own goods from the State or sell it to others within the State or use it within the State. The fact that the broker agreed to issue delivery order with Form XX by itself would not establish an inseverable link between the movement and the sale. Further the goods sold to the buyer agent on auction who in turn dispatch the same to his principals in another State would not characterize as inter-state sale. The self serving rules framed by the Coonoor/Coimbatore Tea Traders Association would at the most be helpful to confirm the sale by the broker and it cannot dictate the terms and supersede the express provision of law to determine the character of the sale.

27. Viewing the fact of the case in the light of the discussions made supra, deciding the same with the ratio of the judicial decision, it is concluded that there was no inter connection between the auction sale and movement of goods. Further the Coonoor/Coimbatore Tea Trade Association rules relied upon by the Id. Appellate

Assistant Commissioner which has an overriding effect loses its legal effect to determine the issue of sale. The property in the goods can pass either before or after the movement of goods. In other words, the property in goods can pass from the seller to the purchaser in either of the two States. What is material is that the sale itself must occasion the movement of goods. When these facts are ignored and the Id. Appellate Assistant Commissioner has considered the case from different angle, the only conclusion that is possible is that the decision of the Id. Appellate Assistant Commissioner is perverse which requires interference by way of appeal. The order of the revisional authority suffers no infirmity and therefore sustained. Consequently. the order of the Id. Appellate Assistant Commissioner is set aside."

4. As far as tax cases are concerned, they arise out of the common order passed by the Sales Tax Appellate Tribunal, (Additional Bench) Coimbatore dated 03.02.2015 in CTSA.Nos.32, 38, 39 and 63 of 2008. These tax cases are confined to the following assesses:-

T.C/W.P.	***Name of the Assessee***	***Impugned Order***
T.C.No.77/2015	J.Thomas & Company (P) Limited, Coonoor.	CTSA.No.32 of 2008 dated 03.02.2015
T.C.Nos.78 & 80/2015	Forbes & Company (Tea Brokers), Coonoor.	CTSA.No.38 & 63 of 2008 dt. 03.02.2015
T.C.No.79/2015	Paramount Tea Marketing (P) Limited, Coonoor.	CTSA.No.39 of 2008 dt.03.02.2015

5. These tax cases were admitted on 26.10.2015 for answering the

following substantial questions of law:-

> "i) Whether the auction sales effected by the appellant in accordance with the Tea Trade Association of Coimbatore, C.S.T Sales Manual for Tea Auctions and the Coonoor Tea Trade Association, C.S.T. Sales Manual for Tea Auctions were inter-State sales taxable under the Central Sales Tax Act, 1956 or local sales taxable under the Tamil Nadu General Sales Tax Act, 1959?
> (ii)Whether the Tribunal has committed an error of law in completely disregarding the evidence before it which established that the auction sales effected by the appellant were only inter-State sales taxable under the Central Sales Tax Act, 1956?
> (iii)Whether the finality attained by the original order of assessment dated 15.11.2001 passed under the CST Act, 1956 constituted a bar of jurisdiction for assessing the auction sales already assessed by that order dated 15.11.2002 under the TNGST Act, 1959?"

6. The dispute in these cases arise on account of the tax liability of the petitioners under the provisions of the Tamil Nadu General Sales Tax Act, 1959. In W.P.No.2322 of 2012, the petitioner in TCA.Nos.78 & 80 of 2015 namely Forbes & Company (Tea Brokers), Coonoor has challenged the impugned Assessment Order dated 30.09.2011 passed by the first respondent in W.P.No.2322 of 2012 whereby taxable turnover of the said Petitioner has been revised.

7. By the impugned order, it has been held that the sale of tea by

auction at auction centres in Ooty and Coimbatore were local sales and therefore liable to be assessed under Tamil Nadu General Sales Tax Act, 1959 only and therefore deducting the Central Sales Tax already paid under Central Sales Tax Act, 1956, the balance was held payable since the proposal for waiver of the balance of tax due was rejected b the government.

8. It is the case of the respective petitioners that without revising the assessments completed under the provisions of Central Sales Tax Act, 1956, the machinery prescribed under Section 32 and/or Section 34 of Tamil Nadu General Sales Tax Act, 1959, as made applicable to assessments under the provisions of the Central Sales Tax Act, 1956 by virtue of Section 9(2) of Central Sales Tax Act 1956 cannot be revised,. It is submitted that the assessments that were completed by the Commercial Tax Officer (CTO) under the provisions of the Central Sales Tax Act, 1956 cannot be whittled down .

9. On this count, the specific case of the petitioners in these tax cases is that the proceedings initiated to revise the assessment were without jurisdiction. In this connection, a reference was made to few

decisions of the Courts. It was submitted that not only assessment under Central Sales Tax Act, 1956 had created a vested righting favour of the respective petitioners but issue estoppal also operated against the defendant.

10. It is submitted that since the assessment were completed under the provisions of the Central Sales Tax Act, 1956 they cannot be disturbed. Therefore, the impugned order of STAT and Assessing Officer sustaining the liability on the respective petitioners under the provisions of the Tamil Nadu General Sales Tax Act, 1959 are liable to be dropped as without jurisdiction.

11. On merits, the learned counsel for the petitioner further submits that the transactions between the respective petitioners and the agents of the buyers were under the agies of the Tea Trade Association of Coimbatore and Coonoor Tea Trade Association.

12. It is submitted that the transaction were indeed Inter-State Sale within the meaning of Section 3 of the Central Sales Tax Act, 1959 and therefore the Commercial Tax Officer, as an Assessing Officer under the

provisions of the Tamil Nadu General Sales Tax Act, 1959 could not treat the same as Intra-State transactions taxable under the provisions of the Tamil Nadu General Sales Tax Act, 1959 . A specific reference was made to the amendments in the above rules of the respective Tea Association.

13. It is submitted that the similar amendments were made to the Rules for the Tea Trade Association of Coimbatore with effect from 24.11.1996. In support of the plea that the transactions were indeed Inter-State Sale and were liable to tax under the provisions of Inter-State sale, the learned counsel for the petitioner drew attention to the following cases :-

> "i) ***Commissioner of Sales Tax vs. Bakhtawar Lal Kailash Chand Arhti,*** (1992) 87 STC 196(SC);
> ii) ***Co-operative Sugars (Chittur) Ltd vs. State of Tamil Nadu,*** (1993) 90 STC 1 (SC);
> iii) ***The State of Bihar and another vs. Tat Engineering and Locomotive Co., Ltd***, (1971) 27 STC 127(SC): (1970) 3 SCC 697.,
> iv) ***Moti & Co. vs. State of Tamil Nadu,*** (1999) 113 STC 53;
> v) ***Carritt Morn & Co., (P) Ltd., vs. Deputy Commissioner (CT), Coimbatore,*** (2003) 131 STC 29 (TNTST);
>
> vi) ***W.A.Shah Enterprises (P) Ltd., vs. District Forest Officer and Others,*** (2003) 129

STC 299(Mad.);

vii) ***Karnataka Soaps and Detergents Ltd vs. District Forest Officer, Sathyamangalam and Others,*** (2005) 140 STC 112(Mad.);

viii)***Consolidated Coffee Ltd., vs. Coffee Board, Bangalore***(and Other cases), (1980) 46 STC 164(SC);

ix) ***Zackria Sons Private Limited vs. State of Madras*** (1964) 16 STC 136 (Mad.);

x) ***Agricultural Market Committee vs. Shalimar Chemical Works Ltd.,*** (1997) 5 SCC 516;

xi) ***Controller of Estate Duty, Gujarat I, Ahmedabad vs. M.A.Merchand,*** 1989 Supp (1) SCC 499 and

xii) ***Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited*** (2015) 1 SCC 1."

14. Learned Additional Advocate General appearing for Respondents submitted that the impugned order is well reasoned and so does not warrant interference.

15. Defending the impugned order, the learned Additional Advocate General for the respondent-Commercial Tax Department submitted that the transaction between the petitioner and their principal, with the agents was that of the local sale. The sale was completed upon the fall of the hammer and thus it was local sale under the provisions of the Central Sales Tax Act, 1956. In this connection, drawn attention to

Section 4 of the Central sales Tax Act, 1956.

16. It was argued by the Petitioner that the sales transactions in question qualify as inter-State sales based on several key factors. First, the goods were purchased by buyers who were inter-State dealers, and there was either an explicit or implied contractual obligation for the goods to be moved out of Tamil Nadu. The petitioner contends that the movement of goods was integral to the sale, inseparable from the transaction itself. Although the auctions were conducted in Tamil Nadu, the buyers intended to transport the goods to their respective States as part of the contractual arrangement. The petitioner emphasizes that the transportation of goods was intrinsic to the sale, thereby rendering the transactions inter-State in nature.

17. Furthermore, the petitioner asserts that amendments to auction rules cannot override statutory provisions or established legal principles concerning inter-State sales. The critical question, according to the petitioner, revolves around whether the movement of goods was an obligation under the contract of sale (indicating an inter-State sale) or whether it was an independent action by the buyer after taking possession

(indicating a local sale). Ultimately, the petitioner argues that the movement of goods formed part of a single, indivisible transaction, making the sale inter-State, with the transportation being a necessary element to fulfill the contractual obligation.

18. On the other hand, the Revenue contends that the sales were completed within Tamil Nadu, as the delivery of goods occurred at the auction site, which they argue renders the transactions local sales. They assert that the movement of goods out of Tamil Nadu was an independent action initiated by the buyers, unrelated to the sale itself. The Revenue highlights the terms of the auction, including the "ex-godown" conditions, as evidence that the sales were local in nature. They further argue that the facilitation of transportation by the petitioner was merely an independent trade accommodation and did not transform local sales into inter-State sales. According to the respondents, the buyers arranged for transportation of the goods after taking delivery within the state, and the seller's responsibility ended with delivery within Tamil Nadu. As such, the subsequent movement of goods was incidental and not integral to the sale. The respondents also contend that the petitioner failed to demonstrate that the movement of goods was an essential part of the

transactions, reinforcing their position that the sales were local in nature.

19. It is submitted that no vested rights or equitable rights can be inferred in favour of the petitioner because merely because the assessment was completed earlier under Central Sales tax, 1956 for the assessment years covered by the respective tax cases. It is further submitted that such vested rights do not extend issuance of documents.

20. It is also further submitted that the tax that has been demanded for the respective assessment years are only exempting the tax already paid under the Central Sales Tax Act and therefore cannot be said there was any right that was vested with the petitioner.

21. That apart, the learned Additional Advocate General submits that the impugned order of the Tribunal is well reasoned and does not warrant any interference and therefore the Tax cases are liable to be dismissed on the same count, and the writ petition is also liable to be dismissed.

22. We have considered the arguments advanced by the learned

counsel for the petitioner and the learned Additional Advocate General representing the respondent in the Commercial Tax Department in these tax cases as well as in the writ petition.

23. The auction sale is governed by Section 64 of the Sale of Goods Act, 1930. Section 64 of the Sale Goods Act, 1930 reads as under:-

> "Section 64: **Auction sale.** —In the case of a sale by auction-
> (1)Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
> (2)**the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid**;
> (3)a right to bid may be reserved expressely by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;
> (4)where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
> (5)the sale may be notified to be subject to a

reserved or upset, price;
(6)if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer".

24. The auction sale was held by the respective petitioners under the aegis of the Coonoor and Coimbatore Tea Trade Association in Tamilnadu. The inter-state buyers purchased tea at the auction held by the respective petitioners in Tamilnadu.

25. The inter-state buyers were represented by their respective Agents/Brokers during the auction by the respective petitioners in Tamilnadu. The Agents/Brokers offered auction bid in Tamilnadu during auction on behalf of their respective inter-state buyers.

26. Amendments were made to Rule 9 and 29 of the Coonoor Tea Trade Association on 04.06.1992, The rules before and after amendment read as under :-

Rule 9 Part IV-Method of concluding a sale: (Existing)	Rule 9 Part IV-Method of concluding a sale: *(As amended*

	on 4-6-1992)
"Subject to the reserve or upset price the highest bidder shall be the buyer. A sale shall be completed when the auctioneer announces its completion by the fall of the hammer."	"Subject to the reserve or upset price the highest bigger shall be the buyer. An offer of the bidder shall stand accepted when the auctioneer announces its acceptance by the fall of the hammer and after call over, an appropriate sale contract is confirmed and issued by the broker in prescribed form for sale on local, Inter-State or export basis as the case may be. Property in auctioned goods will pass to the buyer on delivery of the goods to the common carrier."

2. ADDITIONS TO RULE 21 PART IV: (Adopted at the EGM on 4-6-1992)	
	b. To insert the following Rule immediately at the end of Rule 21
	i. Rule 21 (a): Inter-State Sale:
(a)	The buyers registered with the Coonoor Tea Trade Association shall also be entitled to bid for purchases of auction teas on Inter-State sale basis for and on behalf of their out of State Principal Buyers at the time of auction. For this purpose, a registered buyer shall be required to announce the place of destination for the movement to the Principal Buyer at the time of acceptance of the bid. This shall also be confirmed by him at the time of call over by submitting an Undertaking-cum-Declaration to such effect in the form specified in Appendix "G" the terms of which will form Part of the Sale Contract to be issued by the broker. Such a sale shall stand fumed on satisfaction

of the following terms by the parties concerned.

(i)That a bidding registered buyer intending to represent and act on behalf of a principal buyer situated outside Tamil Nadu, shall arrange to furnish the follow ing document to the broker members and the Coonoor Tra Trade Assiciation and get written approcal from the CTTA before he starts buying for Inter- State Principals. The CTTA shall collect a special subscription of Rs. 400/- per annum from the bidder buyer for each of his principal buyers.

(i)That a bidding registered buyer intending to represent and act on behalf of a principal buyer situated outside Tamil Nadu, shall arrange to furnish the follow ing document to the broker members and the Coonoor Tra Trade Assiciation and get written approcal from the CTTA before he starts buying for Inter- State Principals. The CTTA shall collect a special subscription of Rs. 400/- per annum from the bidder buyer for each of his principal buyers.

(i)(1) An authorisation signed and executed by the Principal Buyer appointing the bidding registered buyer to act as his/her/their agent for purchase of auction tea on Inter-State sale basis.

(2) Duly notarised copy of Salex Tax Registration Certificates of the principal buyer issued to him by the local Sales Tax Act and the Central Sales Tax Act.

(ii)That the bidding registered buyer, after having confirmed (in Appendix 'G') the place of Inter-State, shall be obliged to despatch the goods and produce documentary proof of such movement of auction tea to the declared destination outside Tamil Nadu. On receipt of buyer's written undertaking-cum-Declaration about outside state destination (in Appendix 'G'), the Broker shall arrange to issue a sale contract in the name of the principal buyer, through the bidding registered buyer, naming the destina- tion of movement, charging CST at the rate applicable against 'C' Form.

(iii)The bidding registered buyer shall be liable to pay to the broker the sale contract price, applicable CST and 'C' Form along with payment on or before the prompt date, but in case of difficulty. 'C' Form can be given not later than 20 days from the date of payment.

(iv)On payment of sale contract price by the bidding registered buyer to the broker, the broker will issue a Delivery Order along with Form 'XX' and the auctioned tea shall be delivered to the common carrier arranged / nominated by the buyer for movement to the declared destination of the principal buyer. The bidding registered buyer shall move the auction teas from warehouse to the declared destination of the principal buyer.

(v)That the bidding registered buyer acting for the principal buyer shall undertake due compliance of all the terms and conditions of Inter-State sale by the Principal buyer in respect of payment of sale price, issue of valid 'C' Form, etc. and in the event of noncompliance, the bidding registered buyer shall be responsible and liable to indemnity the broker for all costs, liabilities and consequences thereof.

vi)The sellers and buyers concerned shall furnish

> sufficient security either in the form of Bank Guarantee favouring the broker concerned or cash deposit with the CTTA to adequately safeguard the interest of the broker members of CTTA.

27. As the Agent/ Brokers acted on behalf of their principal for purchase of the goods within the State, it is deemed to be a local sale and would attract levy of tax under the provisions of the Local Sales Tax Act, in the present case the Tamil Nadu General Sales Tax Act, 1959.

28. For instance, if the goods are purchased by a person or his Broker/Agent in an auction sale that was completed in the State of Tamil Nadu, it is deemed to be taxable under the provisions of Tamil Nadu General Sales Tax Act, 1959.

29. There is no dispute that the sale was completed in Tamil Nadu and the delivery was also made by the petitioner to the agents of the Inter-State dealers who placed their bid through their Agents/Dealers in the auction conducted by the petitioner in the state of Tamil Nadu. In these sale transactions, the petitioner is no doubt the dealer therefore is liable to tax.

30. The question that falls for our consideration is whether the transaction between the Petitioner and the Agent/Brokers, acting on behalf of the respective Principals under the aegis of the Coonoor and Coimbatore Tea Association, falls within the purview of the expression "Inter-State Sale" as defined under Section 3 of the Central Sales Tax Act, 1956.

31. As per Section 3 of the Central Sales Tax Act, 1956, 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."*

32. There must be a sale that occasions the movement of goods. A sale or purchase of goods that causes the movement of goods from one State to another, or is effected by a transfer of documents of title to the goods during their movement from one State to another, constitutes an inter-state sale. Clause (b) of Section 3 addresses situations where the

sale or purchase is effected by a transfer of documents of title to the goods during their transit from one State to another. Section 3(b) applies when the sale takes place while the goods are in transit between States.

33. As far as the situation that is contemplated Section 3(a) of Central Sales Tax Act, 1956 is concerned, the sale or purchase has to be integrally connected with the event of movement of goods from one State to another state if one were to go by Coonoor and Coimbatore Manual, the Manual was amended in the year 1992 to treat the auction in favour of the interstate buyers as Inter-State sale as the transaction contract comes under with purview of Section 3 of the Central Sales Tax Act, 1956.

34. In the instant case, the respective petitioners are registered dealers under the provisions of both the Tamil Nadu General Sales Tax Act, 1959, and the Central Sales Tax Act, 1956. These petitioners acted as auctioneers for various principals and sold tea in auctions conducted by them on behalf of their principals, where buyers located outside the State participated in the auctions through their Brokers/Agents. The purchasers from outside the State had appointed local Brokers/Agents to participate in the tea auctions and place bids on their behalf.

35. As per the Agency Agreements between such Broker/Agents and their Principals located outside the State, the Broker/Agents were required to purchase tea at the Tea Auctions conducted in Coonoor and Coimbatore by the respective Petitioners and arrange for their transportation on confirmation of sale in favour of their principals outside the State of Tamil Nadu.

36. The Agency Agreement between the Broker/Agents and their Principals stipulated that the Broker/Agent had to ensure that the purchase of Tea at the auctions held by the petitioners were on Central Sales Tax basis.

37. In fact, the Broker/Agent also had executed an undertaking-cum-Declaration (Appendix-G to the Manual) undertaking that the Tea purchased by them on behalf of their principals would be despatched immediately to their Principals located outside the State by delivery via common carrier.

38. It appears that the petitioners also issued the necessary delivery

orders to the Brokers/Agents of the buyers to facilitate the transportation of the auctioned tea to buyers outside the State. The delivery orders directed the warehouses, where the tea was stored, to release the tea to the person presenting such orders.

39. It further appears that, after the completion of the auctions as per the respective manual, the auctioned tea was transported to buyers outside the State using C-Forms to establish that the sale constituted an inter-state sale, thereby attracting sales tax at a concessional rate under the provisions of the Central Sales Tax Act, 1956.

40. Thus, the assessments were completed by the Assessing Officer namely the Commercial Tax Officer accepting the transaction as an Inter-State Sale attracting Sales tax at concessional rate under the provisions of the Central Sales Tax Act, 1956 which was revised by the same Commercial Tax Officer holding that the petitioners were liable to pay tax under the provisions of TNGST Act, 1956 , as sale had taken place within the State of Tamil Nadu.

41. The Appellate Commissioner reversed the decision of the Commercial Tax Officer for the respective assessment years which

decisions have been subsequently reversed by the Tribunal.

42. Further it was submitted that no additional amount has been demanded from the respective petitioners in the respective assessments that were completed for the assessment year 1999-2000 in W.P.No.2322 of 2022.

43. Under Section 4 of the Central Sales Tax Act, 1956 when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States. Section 4 of the Central Sales Tax Act, 1956 is however subject to Section 3 of the Central Sales Tax Act, 1956. Section 3 and Section 4 of the Central Sales Tax Act, 1956 reads as under :-

Section 3 of the Central Sales Tax Act, 1956	**Section 4 of the Central Sales Tax Act, 1956**
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	1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place

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. **Explanation** – 1. Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause(b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. **Explanation** – 2. Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State. Explanation – 3. Where the gas sold or purchased and transported through a common carrier pipeline or	outside all other States. (2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State— (a)in the case of specific or ascertained goods, at the time the contract of sale is made; and (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation. **Explanation** — Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another.	

44. Any subsequent transportation of goods outside the State by the agent on behalf of the principal is to be considered an independent activity and not part of the sale transaction that was already complete.

45. Thus, prima-facie,it has to be held that the sale has taken place in the State of Tamil Nadu and therefore the petitioners were liable to local sales tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

46. However, body of case laws cited by the learned counsel for the petitioner impels us to hold other wise. In **Controller of Estate**

Duty, Gujarat.I, Ahmedabad vs. M.A.Merchant, 1989 Supp (1) SCC 499 the Hon'ble Supreme Court was held that if an assessment has already been made and completed, the assessee cannot be subjected to re-assessment unless the statute permits that to be done. However, this decision was rendered in the context of subsequent legislation. Thus, the Commercial tax Officer.

47. In **Hope Plantations Ltd. v. Taluk Land Board, Peermade (**1999) 5 SCC 590, the Hon'ble Supreme Court court observed that the principles of ***estoppel*** and ***res judicata*** are based on public policy and justice. It is observed that while res judicata prevents parties from re-litigating the same issue, even if the earlier determination is wrong, it ensures that once proceedings attain finality, the parties are bound by the judgment. The Court further observed that doctrines of "***cause of action estoppel***" and "***issue estoppel"*** prevent re-litigation of issues necessary for the earlier decision.

48. It was noted that these principles, of common law origin, apply in subsequent proceedings or suits between the same parties. The

court referred to Section 11 of the Code of Civil Procedure which codifies ***res judicata***, but its scope extends beyond just this provision. The principles of ***estoppel*** and **r*es judicata*** apply equally to proceedings before administrative authorities. However, assessment under the CST, 1956 will not automatically mean ***issue estoppel*** will operate against the department when it questions assessments under the TNGST Act, 1959.

49. In **Commissioner of Sales Tax v. Bakhtawar Lal Kailash Chand Arhti** (1992) 87 STC 196 (SC), the respondent purchased goods both for his own account and for his principals located outside the State of Uttar Pradesh. The dispute arose over the payment of purchase tax on goods bought from agriculturists who were exempt from tax under the Uttar Pradesh Sales Tax Act. The State sought to levy purchase tax, but the respondent contended that the transaction constituted an inter-State sale under Section 3 of the Central Sales Tax Act, 1956.

50. The Hon'ble Supreme Court ruled that the purchases were

inter-State transactions, as the goods were purchased for principals outside the State of Uttar Pradesh and dispatched to those principals within three days of purchase. The Court held that the movement of goods was an integral part of the transaction, even if not explicitly stated in the contract, as it was implied by the conduct of the parties. The Court referred to the reasoning provided in **Balabhagas Hulaschand v. State of Orissa (**1976) 2 SCC 44 and used the illustrations therein to support its conclusion.

Case No.I-A	***Case No.II-A***	***Case No.III-B***
A is a dealer in goods in State *X* and enters into an agreement to sell his goods to *B* in State *X*. In pursuance of the agreement *A* sends the goods from State *X* to State *Y* by booking the goods in the name of *B*. **In such a case it is obvious that the sale is preceded by the movement of goods and the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be deemed to be occasioned by the sale.**	*A* who is a dealer in State *X* agrees to sell goods to *B* but he books the goods from State *X* to State *Y* in his own name and his agent in State *Y* receives the goods on behalf of *A*. Thereafter the goods are delivered to *B* in State *Y* and if *B* accepts them a sale takes place. **It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller**	*B* a purchaser in State *Y* comes to State *X* and purchases the goods and pays the price thereof. After having purchased the goods he then books the goods from State *X* to State *Y* in his own name. **This is also a case where the sale is purely an internal sale having taken place in State *X* and the movement of goods is not occasioned by the sale but takes place after the property is purchased by *B* and becomes his property.**

The present case clearly falls within this category.	**himself takes the goods to State *Y* and sells the goods there. This is, therefore, purely an internal sale which takes place in State *Y* and falls beyond the purview of Section 3(*a*) of the Central Sales Tax Act not being an inter-State sale.**	

51. In ***Balabhagal vs state of Orissa (1976) 2 SCC 44,*** the court in para 15 observed as under:-

> "***15.****(2) That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce:*
>
> *i.that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another;*
> *ii.that in pursuance of the said contract the goods in fact move from one State to another; and*
> *iii.that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move."*
>
> *If these conditions are satisfied then by virtue of Section 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act. This proposition is not, and cannot, be disputed by the learned Counsel for the parties."*

52. Though the test was laid down by the Hon'ble Supreme Court

in ***Balabhagal vs state of Orissa (1976) 2 SCC 44,*** yet in ***Commissioner of Sales Tax v. Bakhtawar Lal Kailash Chand Arhti,*** court held that the sale through within the state was an inter-state sale.

53. In **Co-operative Sugars (Chittur) Ltd. v. State of Tamil Nadu** (1993) 90 STC 1 (SC), the Tamil Nadu Sales Tax Authority imposed purchase tax under the Tamil Nadu General Sales Tax Act, 1959 on sugarcane purchased by the appellant in Coimbatore and Pollachi Taluks, contending the transactions were intra-state sales. The appellant argued the sales qualified as inter-State transactions under Section 3(a) of the Central Sales Tax Act, 1956 and were thus exempt from Tamil Nadu's tax. The High Court upheld the tax, stating the transactions were local sales as the goods' property passed in Tamil Nadu, and subsequent transport to Kerala was irrelevant.

54. The Hon'ble Supreme Court however overturned this judgment, ruling the purchases were inter-State in nature. It reasoned that the movement of sugarcane from Tamil Nadu to Kerala was integral to the contract, with no break between sales, purchase and transport. The movement of goods being an incident of the sale classified it as an inter-

State transaction, irrespective of where the sale occurred.

55. In **State of Bihar v. TELCO** (1970) 3 SCC 697, the Supreme Court addressed the issue as to whether sales by the respondent, a manufacturer of trucks, bus chassis, and spare parts, to dealers outside Bihar were inter-State sales under Article 286(2) of the Constitution, thereby exempt from taxation under the Bihar Sales Tax Act, 1947.

56. There the respondent had agreements with dealers, assigning them specific territories where they could sell the purchased goods and prohibiting sales outside their assigned areas. Under the agreements, the goods delivered to dealers in Bihar were required to be transported outside the State. The case focused on the issue as to whether these sales constituted inter-State trade or commerce during the specified period.

57. The Hon'ble Supreme Court held as under :-

> *"ii.***13.** *If we apply the principles enunciated by this Court in the decisions referred to above to the facts of this case, it is obvious that the sales with which we are concerned in this case are sales in the course of inter-State trade. The dealers were required to move the trucks, buses chassis and other spare parts purchased by them from the State of Bihar to places outside Bihar. They are so*

required by the terms of the contracts entered into by them with the assessee. They would have committed breach of their contracts and incurred the penalty prescribed in their dealership agreements, if they had failed to abide by the term requiring them to move the goods outside the State of Bihar.

iii.17.............. Herein under the terms of the contracts of sale, the purchasers were required to remove the goods from the State of Bihar to other States. Hence the sales with which we are concerned in this case must be held to be sates in the course of interstate trade or commerce."

58. The Hon'ble Supreme Court examined the role of goods movement in determining the nature of a sale and whether sales to dealers outside Bihar were inter-State sales under Article 286(2) of the Constitution. It was held that the movement of goods as part of a sale was a key determinant for inter-State transactions, and sales were deemed inter-State as the contracts required goods to be moved outside Bihar, making the movement integral to the transaction.

59. In **Moti and Co. v. State of Tamil Nadu** (1999) 113 STC 53 (Mad), the Division Bench of the Madras High Court addressed whether sales of tea purchased in Coonoor auctions and sold through brokers to buyers outside Tamil Nadu qualified as inter-State sales. The appellant claimed the sales were local, asserting that the goods were delivered ex-

godown at Coonoor, the broker issued delivery orders, and transport charges were reimbursed by the out-of-state buyer. The appellant contended that arranging transportation was a trade accommodation, and the sale was completed within Tamil Nadu. The assessing officer, however, treated the transactions as inter-State sales because the appellant paid the lorry freight. While the appellate authority held the sale was complete within the state, the Joint Commissioner restored the assessing officer's order.

60. The Division Bench upheld the finding of the Joint Commissioner, stating:

> *iv."15. The question as to whether a particular sale is an inter-State sale is a question of fact to be determined in the light of the statutory provisions. That question can also be regarded as a mixed question of law and fact in so far as the correct application of the relevant principles of law to these facts are concerned. A consideration of the factual background in which the decisions were rendered in other cases is not of much assistance in determining as to whether a particular sale is an inter-State sale or not. The essential tests to be applied are well-settled. Unless the movement and the sale form an integral whole, the sale cannot be an inter-State sale. A sale which ostensibly takes place within the State can be an inter-State sale if the movement is essential and inevitable, or necessary incidental, part of the sale transaction as held by the Supreme Court in the decision reported in [1993] 90 STC 1 [Co-operative*

> *Sugars (Chittur) Ltd. v. State of Tamil Nadu). In that case, sugar purchased by the agent of the sugar factory situated in Kerala was normally be required to be transported to Kerala in terms of the Government Order, and could not have been diverted within the State. That sale was held to be an inter-State sale as there was an obligation on the buyer to whom the goods had been sold out to take the goods any of the State to its factory in the neighbouring State."*

61. The Court further clarified that if the buyer arranged the movement of goods independently, it would not form part of the sale transaction. Services provided by the seller to facilitate transport would not convert a local sale into an inter-State sale. The Tribunal, relying on this decision, held that the amendments made to the Central Sales Tax Manual for Tea Auctions were **non est** if they conflicted with existing legal provisions.

62. In **DCM Limited v. Commissioner of Sales Tax, Delhi** (2009) 21 VST 417 (SC), the Supreme Court examined whether sales of chemicals by DCM Limited to purchasing dealers were inter-State sales under the Central Sales Tax Act. The Court applied the determinative test: whether the purchasing dealers were contractually obligated to remove the goods from Delhi to their assigned territories outside Delhi

and whether such movement was integral to the contract.

63. Under the contracts, the purchasing dealers were assigned exclusive territories outside Delhi where they were obligated to sell the chemicals. Key clauses established that:

> *i.Movement of goods to assigned territories was an essential condition of the contract.*
> *ii.Dealers were required to pay freight and sales tax if the assessee transported the goods.*
> *iii.Prices for sales in different territories were fixed by DCM Limited.*
> *iv.Dealers submitted monthly sales and market reports to the assessee.*

64. The Court rejected DCM's argument that it had no control over the goods post-delivery, emphasizing that the contractual obligation to transport and sell in specific territories outside Delhi indicated inter-State movement as part of the transaction.

65. In **Carritt Moran & Co. (P) Ltd. v. Deputy Commissioner (CT), Coimbatore** (2003) 131 STC 29 (TNTST), the Hon'ble Tamil

Nadu Sales Tax Tribunal dealt with the classification of transactions under local and central sales tax laws. It was held that transactions involving goods moved to another state were taxed under the Central Sales Tax Act.

66. In **W.A. Shah Enterprises (P) Ltd. v. District Forest Officer** (2003) 129 STC 299 (Mad), the Hon'ble Madras High Court addressed whether the auction sale of timber was an inter-State sale or local sale. It was held that the sale was deemed local, as the transaction concluded within the state upon the fall of the hammer, and there was no contractual obligation linking the sale with the movement of goods out of the state.

67. In **Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam & Others** (1980) 3 SCC 358, the Hon'ble Supreme Court focused on the point of sale and the passing of property in goods sold at auctions. It was held that the property in goods does not pass at the fall of the hammer but upon fulfillment of conditions such as full payment, weighment, and setting apart of goods for delivery.

68. In **Consolidated Coffee Ltd. v. Coffee Board, Bangalore**

(1980) 46 STC 164 (SC), the Hon'ble Supreme Court examined the sale of agricultural products and the nature of their movement for taxation purposes. It was held that transactions involving the movement of goods across states were deemed inter-State. Additionally, the court clarified that property passes to the purchaser upon acceptance of the bid due to Section 20 of the Sale of Goods Act, 1930, and not Section 64(2).

69. In **Zackria Sons Private Limited v. State of Madras** (1964) 16 STC 136 (Mad.), the Hon'ble Madras High Court dealt with the issue of whether an auctioneer can be deemed a "dealer" under the Madras General Sales Tax Act, 1959. It was held that movement of goods due to contractual obligations amounted to inter-State sales. However, auctioneers are not automatically "dealers"; this determination depends on the contract and circumstances. Auctioneers function as agents for the principal, and their actions must demonstrate business activity to attract tax liability.

70. In **Agricultural Market Committee v. Shalimar Chemical Works Ltd.** (1997) 5 SCC 516, the Hon'ble Supreme Court dealt with a dispute over local versus inter-State sales in agricultural goods. It was

held that sales involving movement to another state were treated as inter-State transactions. The transfer of property in goods depends on the intention of the parties as per the Sale of Goods Act, 1930. For specific goods in a deliverable state, the title passes upon the formation of the contract unless there is evidence of a contrary intention.

71. In **K.G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes** (1979) 2 SCC 242, the Hon'ble Supreme Court examined whether goods supplied under a contract involving movement across states qualify as inter-State sales. It was held that sales involving mandatory movement of goods across states as part of contractual terms are inter-State sales.

72. The learned counsel for the petitioner drew attention to the above decisions in support of the above plea and to buttress the point that the impugned assessments completed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 were without jurisdiction.

73. Further, the Respondent herein relied on **Similipahar Forest**

Development Corporation Ltd. v. State of Orissa (1995) 96 STC 627 (Ori), wherein the Hon'ble Orissa High Court dealt with the question of whether the auction sale of timber in Orissa constituted inter-State trade and it was held that the sale was local as the movement of goods out of the state was not a result of a covenant in the sale contract but occurred independently.

74. In **Ashok Leyland Ltd. v. Union of India** (1997) 105 STC 152 (SC), the Hon'ble Supreme Court examined whether the sale of a vehicle was inter-State or local. It was held that the determination depends on facts, such as the nature of the goods, the timing of appropriation, and proof of movement occasioned independently of the sale. The burden of proof lies on the dealer claiming inter-State status.

75. In **McEntire v. Crossley Bros. Ltd. [1895-1899 All ER Reprint 829]**, the Hon'ble Court of Appeal had an occasion to deal with the concept of passing of property and reservation of the right of disposal under English law. It was held that the importance of clear contractual

terms is paramount in determining when property in goods passes, emphasizing that contractual clarity ensures certainty in such transactions.

76. In **Chowringhee Sales Bureau Ltd. v. State of West Bengal** ([1961] 12 S.T.C. 535), the Hon'ble Calcutta High Court examined whether auctioneers are liable for sales tax. It was held that an auctioneer acting solely as an agent for a disclosed principal is not liable for sales tax, as there is no direct sale contract between the auctioneer and the buyer, making the principal the liable party.

77. In **Benton v. Campbell, Parker & Co. Ltd. ([1925] 2 K.B. 410)**, the Hon'ble King's Bench Division dealt with the extent of an auctioneer's authority and liability. It was held that the determination of an auctioneer's authority and liability depends on evidence, including the auctioneer's conduct, declarations, and surrounding circumstances, as these factors establish the scope of their role and responsibilities.

78. In **Hoe Kim Seing v. Maung Ba Chit (AIR 1935 PC 182)**, the

Hon'ble Privy Council had an occasion to address the decisive factor in determining the transfer of property. It was held that the timing of the transfer of property is determined by the intention of the parties, which is inferred from the contract, conduct, and circumstances surrounding the transaction.

79. In the light of the above discussions, we are bound by the decisions of the Hon'ble Supreme Court as the *ratio decendi* of the Hon'ble Supreme Court is the law of the land in terms of Article 141 of the Constitution of India. Therefore, we are inclined to allow these tax cases while answering the substantial questions of law in favour of the petitioner.

80. Consequently, the impugned orders of the Tribunal reversing the order of the Appellate Assistant Commissioner and the impugned order of the Assessing Officer in W.P.No.2322 of 2012 are reversed.

81. In the result, all the tax cases and the writ petition are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.J.,) (C.S.N.J.,)

20.09.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non-Speaking Order
Neutral Citation : Yes/No

kkd

To

1. The Joint Commissioner (CT),
Coonoor.

2. The Sales Tax Appellate Tribunal
(Additional) Bench, Coimbatore-18

R.SURESH KUMAR, J.

AND

C.SARAVANAN, J.

kkd

T.C.(Revision) Nos.77 to 80 of 2015
and W.P.No.2322 of 2012

20.09.2024