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IYANAHALLI BAKKAPPA & SONS.

v.

STATE OF MYSORE

October 29, 1971

[C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND
B K. K. MATHEW, JJ.]

Mysore Sales Tax Act, 1957—Sale of safety matches taxable under s. 5(3)(a) on first or earliest of successive dealers in State of Mysore—On facts of case whether assessee was first of successive dealers in State of Mysore.

The appellant declared for the assessment years 1959-60 a total turnover of Rs. 13,04,097 in respect of the purchase of safety matches and
C claimed exemption on the entire turnover on the ground that it was a subsequent sale from the dealers in the State of Mysore. During the relevant assessment year sale of matches was taxable under s. 5(3)(a) of the Mysore Sales Tax Act, 1957 on the first or earliest of the successive dealers in the State of Mysore. The *modus operandi* of the appellant in purchasing these matches was that it placed orders with the sales depots of the manufacturers inside Mysore. The Managers of the depots forwarded the orders to the principles who has their head office at Sivakasi
D outside the State of Mysore. The matches were thereafter despatched by the principal to the appellant in accordance with the instructions received from the Sales Depots. The Sales Depots sent the appellant detailed invoices of the matches despatched by their factories. The appellant gave credit to the value of the matches after deducting therefrom the amount covered by debit notes in respect of Octroi, lorry freight and other incidental charges incurred by it and at the request of the sales office the appellant remitted the value of the matches direct to the factory by
E means of draft and telegraphic transfer. The appellant's contention was that it purchased the matches from the sales depots inside Mysore State who were the first sellers of the matches in the State of Mysore liable to tax and the appellant being the second dealer in the State was not liable to tax in respect of its sales. The assessing authority came to the conclusion that the transactions were inter-State sales within the meaning of s. 3(a) of the Central Sales Tax Act and since the appellant was the first dealer in matches in Mysore State it was liable to pay sales tax. The
F appellant's appeals to the Deputy Commissioner of Commercial Taxes and to the Tribunal were unsuccessful. The High Court rejected the revision petition filed by the appellant. In appeal to this Court,

HELD : From the facts the sales were made by the respective factories direct to the appellant. The sales price was also sent directly to the factories at Sivakasi. No doubt the orders were routed through the sales depot but on that account it could not be said that the factory sold the
G goods ordered by the appellant to its sales depot. It was inconceivable that there could be a sale between the manufacturer and its Sales Depot. [215 E-G]

The transactions in question under explanation 3(a) to s. 2(t) of the Mysore Act were the first sales in favour of the appellant and they took place in the State of Mysore. The decision in the case of *Ram Narain & Sons*, if applied to the facts of the present case, would indicate that the first sale by the Sivakasi firms was in Mysore. In that view, the question
H of inter State sale not being urged as necessary for consideration, it was rightly held by the High Court that the sales in question fell within cl. (a) of Explanation 3 of s. 2(t) of the Act. As such the appeal must be dismissed. [216 E, 217 D-E]

Ram Narain & Sons v. *Asstt. Commissioner of Sales tax & Ors.*, [1955] 2 S.C.R. 483, discussed. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1175 of 1967.

Appeal from the judgment and order dated September 30, 1966 of the Mysore High Court in S.T.R.P. No. 58 of 1965. B

R. Gopalakrishnan, for the appellant.

A. R. Somanatha Iyer, M. S. Narasimhan and *R. B. Datar,* for the respondent.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J. This Appeal is by certificate against the judgment of the Mysore High Court dismissing the Revision Petition against the order of the Mysore Sales Tax Appellate Tribunal, by and under which the assessment order of the Commercial Tax Officer and the Appellate order of the Deputy Commissioner of Commercial Tax was confirmed. The question of law which arose out of the decision of the Sales Tax authorities for consideration of the High Court was" whether on the facts and circumstances of the case the assessee's turn-over in respect of safety matches is not liable to tax on the ground that the sales effected by the assessee are not the first sales in the State." The appellants declared for the assessment year 1959-60 a total turn-over of Rs. 13,04,097/- in respect of the purchase of safety matches and claimed exemption on the entire turn-over on the ground that it was a subsequent sale from the dealers in the State of Mysore. During the relevant assessment year sale of matches was taxable under sec. 5(3)(a) of the Mysore Sales Tax Act, 1957 (hereinafter called the Act) on the first or earliest of the successive dealers in the State of Mysore. The appellants contention was that it purchases the matches from the Sales Depots of the National Match Works, Lakshmi Match Works and Palaniappa Match Industries at Devangere who were the first sellers of matches in the State of Mysore liable to tax and that the appellant was the second dealer in the State not liable to tax in respect of its sales. C D E F G

The *Modus operandi* of the appellant in purchasing these matches was that it placed orders with the aforesaid Sales Depots of M/s. National Match Works, Lakshmi Match Works and Palaniappa Match Industries at Devangers, which Depots are registered dealers under the Act. On receipt of these orders from the Appellant the respective Managers of the three Sales Depots forward the orders to their Head Offices at Sivakasi and instruct them to despatch the matches ordered direct to the appellant at Devangere. The matches are thereafter despatched by H

A lorry to the Appellant in accordance with the instructions received from the Sales Depots. The Sales Depots send to the appellant detailed invoices of the matches despatched by their factories The Appellant gives credit to the value of the matches after deducting therefrom the amount covered by debit notes in respect of Octroi, lorry freight and other incidental charges B incurred by it and at the request of the sales office the assessee remits the value of the matches direct to the factory by means of draft and telegraphic transfer. On these findings the correctness of which was not disputed the assessing authority came to the conclusion that the transactions were inter-State sales within the meaning of sec. 3(a) of the Central Sales Tax Act and since C the appellant was the first dealer in matches in Mysore State it was liable to pay Sales Tax and accordingly, it was so assessed. Against the said assessment order the appellant filed an appeal to the Deputy Commissioner of Commercial Taxes who dismissed the appeal. The further appeal to the Tribunal was equally unsuccessful.

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Before us it is contended by the learned Advocate for the appellant relying upon the despatch advice, delivery notes and invoices issued in the name of the assessee in which the Sales Tax @ 2% was charged that the sale by the manufacturer at Sivakasi was effected in favour of their respective sales Depots in Mysore and it is only thereafter that the appellants purchased E from these Sales Depots the matches and cannot therefore be treated as the first purchaser in the Mysore State. It appears to us on the facts as set out above which were not in dispute, the sales were made by the respective factories direct to the appellant, the sales price was also sent directly to the factories at Sivakasi. No doubt the orders were routed through the Sales Depot but on F that account it cannot be said that the factory sold the goods ordered by the appellant to its Sales Depot. It does not appear that the contention based on the invoices showing that the Sales Tax was charged by the Sales Depot was urged before any of the authorities or before the High Court nor was there any finding on this aspect as is evident from the facts found by the Sales Tax G authorities which were not in dispute. It is also inconceivable that there can be a sale between the manufacturer and its Sales Depot.

It is not disputed that under the provisions of the Act it is the first sale in the State that is exigible to tax. Sale is defined in sec. 2(t) of the Act as follows:—

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> " 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade

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or business for cash or for deferred payments or other valuable consideration, but does not include a mortgage hypothecation, charge or pledge".

Explanation (3) to this definition which is relevant is given below:—

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"(a) The sale or purchase of goods shall be deemed for the purpose of this Act, to have taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State :

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(I) In the case of specific or ascertained goods, at the time the contract or sale or purchase is made; and

(II) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation".

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It is apparent from the above provisions that the transactions in question under explanation 3(a) are the first sales in favour of the appellant and they took place within the State of Mysore. The learned advocate relies on the decision in *Ram Narain & Sons* v. *The Assistant Commissioner of Sales-Tax & Others*(1), for the contention that in similar circumstances the sale was said to have been affected to the depots and consequently the sale to the assessee was the second sale and is, therefore, not assessable to tax. The High Court, before which this decision was cited, did not rely upon it because it felt that it was not possible to ascertain whether under the statute this Court was called upon to consider the definition of sale similar to that contained in section 2(t) of the Act. It is true that in that case while this Court was considering the question whether the sales were inter-State sales or inside sales, the definition of 'sale' under the Madhya Pradesh Sales Tax Act was not specifically referred to or examined. A perusal of that decision, however, would show that what this Court was considering was whether the transactions fell within the definition of sale contained in explanation II to section 2(g) of the Madhya Pradesh Sales Tax Act and that so far as the post-Constitution period was concerned, whether they were saved from the ban of Article 286(1)(a) and the explanation thereto, by the President's order made under the proviso to Article 286(2). The Advocate General of Madhya Pradesh, no doubt, urged that the

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(1) [1955] (2) S.C.R. 483.

A transactions were pure inside sales entered into by the assessees in Madhya Pradesh on orders received by them from outside the State, and accepted by the petitioners in that State. It was also contended that the goods were appropriated to the contracts, and the property in the goods passed within the State of Madhya Pradesh, as such the sales were inter-State sales or inside sales which, B it was within the competence of the State of Madhya Pradesh to tax. The facts disclosed that the assessees manufactured *beedis* in Madhya Pradesh. They had various sales depots in U.P. and other State and also had selling agents through whom they sold their goods. Apart from affecting sales through the said agencies, they also sold direct to customers who placed orders with them. C The question was whether some or all of those sales took place in Madhya Pradesh or in U.P. and it was held that having regard to the transactions in respect of all the aforesaid categories of sales, they were affected in U.P. We are unable to appreciate how this case really assists the appellants. On the other hand, it would appear that the sale by the assessee was affected in U.P., which if applied to the facts in this case, would indicate that the first D sale by the Sivakasi firms was in Mysore. In that view, the question of inter-State sale not being urged as necessary for consideration, it was rightly held by the High Court that the sales in question fell within clause (a) of explanation (3) of section 2(t) of the Act; as such this appeal is dismissed but in the circumstances, without costs.

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G. C. *Appeal Dismissed.*