IN THE HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

*** * ***

WRIT PETITION Nos.3704 and 7449 of 2009

Between:
M/s. Mahindra & Mahindra Ltd.

…Petitioner

AND

The Assistant Commissioner (CT),
Begumpet Division and 33 Others.

…Respondents

ORDER PRONOUNCED ON: 05.08.2026

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

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THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

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! Counsel for appellants : Mr. Karthik Ramana Puttamreddy, learned counsel representing Mr. V. Siddharth Reddy.

^Counsel for respondent : Mr. Swaroop Oorilla, learned Special Government Pleader for State Tax.

<GIST:

> HEAD NOTE:

? Cases referred

1) (1970) 1 SCC 622
2) (1976) 37 STC 8
3) (1976) 4 SCC 460

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COMMON ORDER: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Karthik Ramana Puttamreddy, learned counsel representing Mr. V. Siddharth Reddy, learned counsel for the petitioner; and Mr. Swaroop Oorilla, learned Special Government Pleader for State Tax appearing on behalf of the respondents.

2. Since the issue raised in the instant Writ Petitions is one and the same and the parties also being the same, they are heard together and are decided by this Common Order.

3. For convenience, the facts in Writ Petition No.3704 of 2009 are discussed hereunder.

4. This Writ Petition No.3704 of 2009 under Article 226 of the Constitution of India has been filed by the petitioner seeking for an appropriate relief to be issued holding the action of respondent No.1 in levying tax by its order dated 03.02.2009 on the inter-state stock transfer of goods being exigible to tax under Section 3(a) of the Central Sales Tax Act, 1956 (for short the 'CST Act, 1956') and the demand raised also being arbitrary, contrary to law, without jurisdiction and also in violation of principles of natural justice.

5. *Vide* the impugned order, respondent No.1 has demanded a tax liability amounting to Rs.43,48,84,477/- from the petitioner on the inter-state stock transfers of vehicles.

6. The facts of the case, in brief, are that the petitioner is a public limited company carrying on the business of manufacture and sale of light commercial vehicles and three wheelers in its factory situated at Zaheerabad, Medak District, Andhra Pradesh. The petitioner is a registered dealer under the Provisions of APGST Act, 1957, CST Act, 1956 and APVAT Act, 2005, and is an assessee on the rolls of the respondent No.1 herein. The petitioner's unit at Zaheerabad, Medak District was established in the year 1985 and has been in continuous production since then. This unit is one of the five manufacturing units of Mahindra & Mahindra Automotive sector. The other units are located in Mumbai, Igatpuri, Nasik of Maharashtra State and Haridwar of Uttaranchal State. That the vehicles produced by the petitioner in Zaheerabad unit are being sold in the State of Andhra Pradesh and also in other States. For that purpose, the petitioner has established branches called Regional Sales Offices (for short 'RSOs') in almost all the States in the country. Each RSO established in the respective States was also attached with the stock yards and the petitioner has appointed authorized dealers in almost all the States for sale of its vehicles.

7. It is submitted that the petitioner through its RSOs would conduct monthly forecast with the assistance of the authorized dealers for the purpose of planning its production. It is also submitted that basing on the forecast conducted, the authorized dealers would send rolling plan to the concerned RSO and the RSO in turn after review prepares an Advance Planning Optimization (for short ‘APO’) and forwards the same to the petitioner’s Sales Support Group, Mumbai. The Sales Support Group at Mumbai would, in turn, review and consolidate all the APOs received from various RSOs and forward the same to the petitioner to plan its manufacturing activity. The Sales Support Group at Mumbai would also recommend the number of vehicles to be dispatched to each RSO after thorough study of trends in the market. The Sales Support Group may or may not agree with the APOs received and may come to its own decision before forwarding the recommendations to the petitioner’s factory at Zaheerabad. It is in the context of such evaluation; the petitioner collects information from its branches, of the probable demand. It has been the trade practice of the petitioner to collect such information relating to the probable demand by gathering Rolling Plans from the prospective customers / dealers.

8. That the vehicles manufactured by the petitioner are always identified with engine and chassis number since it is mandatory on the manufacturer and dealer in motor vehicles to mention these two numbers on the sales invoice in terms of the Motor Vehicles Act, 1988. At the time of dispatch of vehicles from Zaheerabad unit, none of the vehicles were identified to be sold to any particular dealer and the vehicles are dispatched in the most routine fashion for the purpose of sale by RSOs. That there is no appropriation of vehicles in favour of a particular dealer at the time of dispatch of vehicles from the State of Andhra Pradesh. Furthermore, when any customer approaches the authorized dealer for purchase of a vehicle, the authorized dealer in turn approaches the RSOs with the amount of consideration for the purpose of purchase of vehicle and the authorized dealer thereafter conducts a pre-delivery inspection of the identified vehicle at RSO based on the customer's demand and after such pre-delivery inspection, the vehicle is delivered duly mentioning engine number and chassis number.

9. The said sale is concluded at the RSOs in the respective States in favour of the dealer and the respective branches having accounted for the stocks so received from the Zaheerabad factory, also issue declaration in form F confirming and corroborating such accounting of the stock in the Branch Books. The RSO's in others states have been discharging the tax liability in the respective states on their sales of vehicles which were stock transferred from the petitioner factory at Zaheerabad, Andhra Pradesh.

10. The petitioner has effected inter-state sales, export sales and stock transfers of different varieties of motor vehicles manufactured at Zaheerabad Unit, and has been filing returns accordingly by reporting the turnovers scored by it and has been paying the taxes. The petitioner has also been claiming exemptions in respect of the stock transfers and export sales since branch transfers are not taxable in view of Section 6A of the CST Act, 1956 and export sales are not taxable under Section 5(1) of the CST Act, 1956. The branches which effect sales to ultimate customers outside the State are paying on such transactions local tax in the respective States by reason of they being first sale within the respective States. The Commercial Taxes Department of the State of Andhra Pradesh has been accepting the claim of the petitioner with regard to the branch transfers all along.

11. During the assessment year 2007-2008, the petitioner has effected inter-state sales of motor vehicles worth Rs.54,85,74,667/- against furnishing of declarations in Form-C and collected a concessional rate of tax from the other State dealers and remitted the same to the Department along with the monthly returns filed under the CST Act, 1956. Similarly, the petitioner had also effected export sales of motor vehicles to a tune of Rs.24,98,20,975/- and effected stock transfers to a tune of Rs.4,68,58,02,885/- and claimed exemption on the turnover of export sales and branch transfers in terms of the provisions of the CST Act, 1956.

12. Respondent No.1 issued notice dated 05.07.2008, calling for certain information with reference to branch transfers and directed the petitioner to produce declarations with reference to inter-state sales and export sales. In pursuance of the notice issued by respondent No.1, dated 05.07.2008, the petitioner sought for some time for filing the required information on the ground that the petitioner was occupied in finalization of its half yearly accounts. Respondent No.1 issued another revised show cause notice dated 16.10.2008 proposing to disallow the claim of exemption on the turnover of stock transfers falling under Section 6A of the CST Act, 1956 and on export sales falling under Section 5(1) of the CST Act, 1956. The respondent No.1 also proposed levy of higher rate of tax on the turnover of inter-state sales in the absence of filing of declarations in Form-C. In response to the revised show cause notice dated 16.10.2008 though the petitioner requested time for production of declarations in support of its claim of branch transfers, export sales and inter-state sales, respondent No.1 without considering the request of the petitioner has confirmed the levy through order dated 18.12.2008.

13. It is this demand of sales tax liability by respondent No.1 which is under challenge in the instant Writ Petition.

14. Learned counsel for the petitioner, firstly argued on the factual aspect of the transaction that the petitioner is having its plant situated at Telangana State and the respective RSOs across the country which act as its branches, who are in substance, the automobile dealerships operate within an arms-length distance with the petitioner. The RSOs merely send an estimate of predictable amount of sales to the petitioner's 'Sales Support Group', which is located in Mumbai which creates an APO exercise, which further recommends the petitioner in

Telangana State an estimated amount of vehicles which may be required to be manufactured and despatched to the respective RSOs across the country. Respondent No.1's observation and terminology that the APO is a 'purchase order' or 'indent' is highly misconstrued, misleading, perverse and erroneous, but in essence is just a sales prediction / projection.

15. Emphasizing on the factual aspect, the learned counsel of the petitioner submitted that the nature of goods involved in the dispute are automobile vehicles such as Utility Vehicles, Light Commercial Vehicles (Pickup Trucks), and in the context of the present case, they are the vehicles used for wide array of applications primarily involving transportation of goods and passengers. These vehicles are very much in the nature of standard goods and not as against the customized / tailor-made goods. The vehicles come in a standard set of colours and are offered with a distinct set of features according to which variants are marketed across the country. This is a common practice / market reality in the automotive industry and a mere decision of a customer to choose a certain colour or a variant does not imply that the goods are tailor-made or customized.

16. Learned counsel for the petitioner, secondly argued in light of a judgment of the Hon'ble Supreme Court in the case of **TELCO vs. CCT**[1] which held that unless and until the allocation was done *via* identification of engine and chassis number, it cannot be held that there was any confirmed sale. It further held that each transaction must be considered separately and individually on its own and must not be summarized and generalized. The relevant paragraph of the said judgment supporting the petitioner's contention is reproduced below for ready reference, viz.,

> *"**11.** <u>The explanation of the procedure followed by the appellant which prima facie seems to be business-like and plausible together with the proved absence of any firm orders lends support to the argument pressed on its behalf that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of Section 2(g) of the Act.</u> The Assistant Commissioner himself found that sometimes the vehicles were sent from the works at Jamshedpur even before an allocation letter had been issued. It would appear from the materials placed before us that generally the completion of the sales to the dealers did not take place at Jamshedpur and the final steps in the matter of such completion were taken at the stockyards. <u>Even if the appellant took into account the requirements of the dealers which it naturally was expected to do when the vehicles were moved from the works to the stockyards it was not necessary that the number of vehicles allocated to the dealer should necessarily be delivered to him.</u> The*

[1] (1970) 1 SCC 622

appropriation of the vehicles was done at the stockyards through specification of the engine and the chassis number and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer the vehicles from one stockyard to another. Even the Assistant Commissioner found that on some occasion vehicles had been moved from stockyard in one State to a stockyard in another State. It is not possible to comprehend how in the above situation it could be held that the movement of the vehicles from the works to the stockyards was occasioned by any covenant or incident of the contract of sale. As regards the so-called firm orders it has already been pointed out that none have been shown to have existed in respect of the relevant periods of assessment. Even on the assumption that any such orders had been received by the appellant they could not be regarded as anything but mere offers in view of the specific terms in Exhibit I (the dealership agreement) according to which it was open to the appellant to supply or not to supply the dealer with any vehicle in response to such order. What was, therefore, relevant was the acceptance of firm orders occasioning the movement of vehicles out of the State of Bihar".

17. On the contrary, the argument of the learned Special Government Pleader for State Tax is based on the strength of the data made available at the time of audit for the making further probe in respect of the transaction of stock transfers. It was ascertained that the dealers of respective States were placing orders on their respective branches by paying advance amounts, and based on these orders the petitioner prepared the APOs by the 20th of preceding month for the requirement of vehicles for the subsequent month, and the Head Office at Mumbai consolidated all the APOs of the branches in the form of rolling plan and the same was forwarded to the manufacturing unit at Zaheerabad for manufacture and dispatch of vehicles as per the APO to the respective branches. On the basis of this clinching evidence gathered by the undersigned, the claim of exemption towards stock transfer was disallowed and treated as direct inter-state sale. Therefore, the denial of exemption towards stock transfers outside the State is not only for want of statutory forms in Form-F, but also for the reasons mentioned as above.

18. Learned Special Government Pleader for State Tax placed reliance on the decision of the Hon'ble Supreme Court in the case of **Balabhagas Hulaschand vs. State of Orissa**[2] wherein the Hon'ble Supreme Court interpreted as to the conditions to be satisfied for a sale to become inter-state sale. It was held that the following conditions must be satisfied to treat a certain transaction as an inter-state sale, viz.,

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[2](1976) 37 STC 8

a) *There is an agreement to sell which contain a stipulation express or implied regarding the movement of the goods from one State to another.*
b) *In pursuance of that agreement the goods in fact moved from the State to another.*
c) *Ultimately a concluded sale took place in the State where the goods were sent and that State is different from the State from which the goods moved.*

In the said judgment, the Hon'ble Supreme Court also opined that the question as to whether the agreement to sell is in respect of ascertained or unascertained goods, or existing or future goods, makes no difference whatsoever so far as the interpretation of Section 3(a) of the CST Act, 1956 is concerned.

19. Learned Special Government Pleader further placed reliance on the decision of the Hon'ble Supreme Court in the case of **English Electric Co. of India Ltd. vs. Deputy Commercial Tax Officer**[3] wherein it was held that 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. The relevant paragraph supporting this contention, for ready reference is reproduced hereunder, viz.,

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[3](1976) 4 SCC 460

*"**15.** The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhandup, 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 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 and incidental to the contract of sale.*

***16.** When a branch of a company forwards 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 the 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 representatives 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.*

17. *The steps taken from the beginning to the end by the Bombay branch in coordination 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.****"*

20. Having heard the contentions put forth on either side and on perusal of records, the question of law which arises for consideration is, "whether the action of respondent No.1 in demanding tax liability for the transactions made by the petitioner under Section 3(a) of the CST Act, 1956 is illegal and arbitrary in the eyes of law?"

21. Upon a careful examination of the *modus operandi* disclosed by the petitioner's own pleadings and the material relied upon by the respondent No.1, we are unable to accept the petitioner's characterisation of the impugned transactions as a branch stock transfer simpliciter falling within Section 6A of the CST Act, 1956. We are also not persuaded by the submission that this exercise is a mere 'sales prediction' bearing no legal consequence. Whatever nomenclature the petitioner chooses to ascribe to the document, its function and effect for the purposes of Section 3(a) of the CST Act, 1956 and an instrument which originates in dealer-level demand, is aggregated at a central planning stage, and directly triggers the manufacture and despatch of a corresponding quantum of vehicles to the very branch from which the demand emanated is, in substance, indistinguishable from an indent or purchase order. What weighs decisively with us in reaching to this conclusion is the data made available to respondent No.1 at the time of audit, which was neither a matter of surmise or conjecture nor a mere reconstruction of probabilities, but concrete material disclosing that dealers across the respective States had placed firm orders on their branches accompanied by advance payments well before the vehicles were despatched from the Zaheerabad unit. This audit-derived material gathered directly from the petitioner's own branch-level records establishes a clear and unbroken chain commencing with the dealer's order and advance payment, proceeding through consolidation of the APOs at the Sales Support Group and culminating in despatch of the very vehicles ordered to the very branch from which the order emanated, which the petitioner's own pleadings do not, and indeed cannot, dislodge. It is this audit trail, more than the theoretical characterisation of the APO as a mere sales forecast, that persuades us that the impugned transactions bore all the essential incidents of a pre-existing contract of sale occasioning the inter-state movement of goods.

22. It would be a triumph of form over substance to hold otherwise merely because the document is described as a 'rolling plan' or an 'APO' rather than a 'purchase order.' This inference is reinforced, rather than displaced, by the material gathered by respondent No.1 at the stage of audit, which discloses that dealers of the respective States placed orders on their branches accompanied by advance payments, and that it was on the strength of such orders, consolidated into the APOs, that the Zaheerabad unit manufactured and despatched vehicles to the respective RSOs. The advance realisation of the consideration at the branch level, coupled with the direct causal chain running from dealer demand to factory despatch, satisfies the essential requirement that the movement of goods is an incident of a pre-existing contract of sale. It is not necessary, for a transaction to fall within Section 3(a) of the CST Act, 1956 that the contract of sale be reduced to a single formal document bearing that description. It is sufficient that the covenant or incident of sale be discernible from the conduct and correspondence of the parties, read as a whole.

23. Therefore we are of the considered opinion that furnishing of declarations in Form ‘F’ does not, by itself, immunise a transaction from scrutiny where the material on record establishes that the movement of goods was in truth occasioned by a pre-existing contract of sale. The presumption raised by Form ‘F’ is rebuttable, and stands rebutted here by the petitioner’s own admitted business practice, read together with the evidence gathered by respondent No.1 at the stage of audit regarding advance orders and payments at the branch level. The denial of exemption is therefore sustainable not merely for want of compliance with the statutory requirement, but on the independent and more substantial ground that the transactions on their own facts satisfy the ingredients of Section 3(a) of the CST Act, 1956.

24. For the aforementioned reasons, the question of law stands answered against the petitioner and in favour of the respondents. It is held that the transactions impugned herein constitute inter-state sales within the meaning of Section 3(a) of the CST Act, 1956 and are exigible to tax accordingly. The impugned order of assessment passed by respondent No.1 therefore does not suffer from any illegality, arbitrariness, or want of jurisdiction warranting interference under Article 226 of the Constitution of India.

25. In the result, Writ Petition No.3704 of 2009 stands dismissed and the impugned order passed by respondent No.1, dated 03.02.2009, is upheld. Consequently, Writ Petition No.7449 of 2009 also stands dismissed on similar lines.

26. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 05.08.2026
Note: L.R. Copy to be marked.
(B/o) GSD