

CASE NO.:
Appeal (civil) 8335-8336 of 2002

PETITIONER:
M/S. MADRAS CREDIT & INVESTMENT LTD

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 30/04/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.8335-8336 OF 2002

M/S. MADRAS CREDIT & INVESTMENT LTD.

Appellant (s)

VERSUS

STATE OF KERALA

Respondent(s)

ORDER

The assessee has filed the present Appeals by special leave.

The assessee is a financier, providing finance to the customers who wish to purchase of goods, such as equipments, machinery, vehicles, etc., both from within Kerla and from outside the State of Kerala, and delivery of the goods in the State of Kerala, under hire purchase agreement executed between the assessee and the customers/parties.

The modus operandi followed by the assessee is as under:

The intending customers would approach the supplier for purchasing equipment, machinery, etc. and obtain a proforma invoice from the supplier for the purchase of the goods.

The customers then approach the assessee with an application in the prescribed form, stating the

amount required to be financed for purchase of goods and enclosing therewith the proforma invoice obtained by the customer from the supplier. The assessee after being satisfied itself

about the bona fides and credit worthiness of the customers, sanctions the amount of advance

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Upon the terms of financing, viz., the extent of finance, rate of interest, period of hire purchase,

etc. being settled between the assessee and the customers in Kerala, hire purchase agreement is

executed. Under the Agreement, the purchase order is placed by the assessee to the supplier outside Kerala, directing the supplier to deliver the goods to the customer in Kerala. The invoice is raised in the name of the assessee and the payment thereof is made by the assessee to

the supplier. The assessee thus retains the title of the goods until the last instalment under the

Hire Purchase Agreement is paid by the customer. The customer pays to the assessee the amount borrowed in instalments as agreed upon and on payment of the last instalment, the goods become the property of the customer. The ownership is transferred to the customer thereafter. In case of breach in payment of instalment under the agreement, the assessee was free to take back the possession of the goods and deal with it in the manner it likes.

The dispute in the present case pertains to the purchase of goods made from outside the State of Kerala. So far as the goods purchased within the State of Kerala are concerned, no tax had been levied, as the assessee has been treated as the second seller of the goods. The goods purchased from outside the State was treated sale by the appellant to the customers within the State of Kerala. Therefore, the goods purchased from outside the State of Kerala and delivered in the State of Kerala was treated as "sale" of the goods by the assessee and, accordingly the same was taxed. The appellant, inter alia, contended that the sale of the goods took place outside Kerala and, at any rate, it was an inter-State sale not taxable in Kerala. Rejecting the contention of the appellant, the Assessing Officer levied the sales tax on the assessee in respect of the purchase made from outside the State of Kerala. The assessee

challenged the assessment in appeal. The Appellate Assistant Commissioner vide orders dated 21.04.1999 dismissed the appeal. The appellant filed second appeal before the Sales Tax Appellate Tribunal, Kerala (for short "the Tribunal") which also dismissed the appeal.

Aggrieved thereagainst, the appellant thereafter filed Tax Revisions, as provided under the Act,

in the High Court, (being TRC Nos. 318 and 319 of 2000).

By the impugned judgment, the High Court while affirming the decision of the Tribunal, held that the assessee was liable to tax in respect of the hire purchase transaction

which is independent of the inter-State purchase by the assessee. The assessee relied upon two

judgments of this Court in extending the scope of "inter-State sale" falling under Section 3 (a) of

the Central Sales Tax Act.

The same are Builders' Association of India Vs. Union of India 1989 (73) STC 370, and Ganon Bunkerley & Co. Vs. State of Rajasthan 1993 88 STC 204(SC) and contended that sales are outside State sales under Section 4 of the C.S.T. Act or inter-State sales from outside Kerala. It

was contended that the sales being inter-State sales, sales tax could not be levied in the State of

Kerala. Rejecting this contention the High Court held:

"We find that the above decisions have application only in respect of first of the two transactions, that is purchases of goods by the assessee from the outside State suppliers. Therefore, so far as the supplier's sales to the assessee are concerned, they are inter-State sales falling within Section 3(a) of the CST Act, and there is no dispute about the same by the department also. The question is with regard to second transaction between the assessee and the

customer in Kerala, which gives rise to the liability for the disputed tax. We feel, as already observed by us above, there are two transactions, one is the inter-State purchase by the assessee, and the other is the delivery of goods under the hire purchase agreement by the assessee to the customer in Kerala, which is the deemed sale under Explanation 3A to Section 2(xxi) of the KGST Act. Therefore, the decisions referred to above do not affect the assessee's liability for tax in respect of the hire purchase transaction, which is independent of the inter-State purchase by the assessee."

We entirely agree with the view taken by the High Court. Consequently, we find no merit in these appeals and the same are dismissed with no orders as to costs.

.....J.
(ASHOK BHAN)

.....J.
(DALVEER BHANDARI)

NEW DELHI;
April 30, 2008.

