

(1969) 12 AHC CK 0010
In the Allahabad High Court
Case No : S.T.R. No. 611 of 1965

Babu Lal Prakash Chand

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 03-12-1969

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1971) 27 STC 106

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : Hari Swarup, for the Appellant; Standing Counsel, for the Respondent

Judgement

1. u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as "the Act") the Additional Judge (Revisions) Sales Tax, Agra, has submitted this reference with the following three questions for the opinion of this court:--

(1) Whether the seller could, in law, itself act as purchasing agent for ex U.P. buyers?

(2) Whether on the circumstances stated above it could be held that the supplies made by M/s. Prakash Dal Mills to M/s. Babu Lai Prakash Chand were not sales within the meaning of the U.P. Sales Tax Act?

(3) Whether on the circumstances stated above it could be held that the supplies made by M/s. Babu Lal Prakash Chand as purchasing agents to ex U.P. dealers could amount to sales occasioning export taxable under the Central Sales Tax Act?

2. M/s. Babu Lal Prakash Chand (hereinafter referred to as the "assessee") carry on business as commission agents at Hathras. The assessee also runs another business of manufacture of dal in the name and style of M/s. Prakash Dal Mills. In respect of the assessment year 1959-60 the assessee in its capacity as the purchasing agent made certain supplies to ex U.P. dealers. Some of the goods so

supplied were acquired by the assessee from its sister concern M/s. Prakash Dal Mills.

3. The Sales Tax Officer exempted from tax the turnover of the supplies which the assessee had purchased from other dealers, but in respect of the goods belonging to its sister concern, namely, M/s. Prakash Dal Mills, the Sales Tax Officer took the view that such supplies represented the turnover of sales of the assessee's own goods and as such were not entitled to exemption. As the supplies had been made to ex U.P. dealers, the turnover was held liable to tax under the Central Sales Tax Act. This finding of the Sales Tax Officer has been affirmed on appeal by the Judge (Appeals) as also, on revision, by the Judge (Revisions). At the instance of the assessee the Judge (Revisions) has submitted this reference.

4. A person can be said to be acting as a purchasing agent only if he purchases goods on behalf of his principals from other parties and supplies such goods to his principals, but if a person who supplies his own goods, he can do so only in the capacity of a seller. Such a transaction would be a transaction of sale. In law it is not possible for a person to buy his own goods nor can he sell his own goods to himself. The assessee's contention that he purchased the goods from its sister concern in the first instance and thereafter made supplies to ex U.P. dealers as a purchasing agent is, on the face of it, an untenable proposition.

5. The answer to questions Nos. (1) and (2) can, therefore, only be in the negative and we answer the two questions accordingly.

6. Question No. (3) also relates to the goods which the assessee supplied to its ex U.P. principals after acquiring them from its sister concern. It was contended before the Judge (Revisions) that even if such supplies amounted to sales, they were not inter-State sales because the sales in such transactions were completed as soon as the goods were received by the assessee from its sister concern and were appropriated towards the contract of sale when the goods were ascertained and put in gunny bags.

7. Section 3 of the Central Sales Tax Act defines an inter-State sale in the following terms:

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

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

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

Explanation 1....

Explanation 2....

8. In the instant case admittedly the goods were supplied to dealers residing outside U.P. in execution of orders placed by them. The movement of the goods from the State of Uttar Pradesh to other States, therefore, was occasioned directly by the contracts of sale between the parties. Such transactions would be clearly covered by Section 3(a).

9. The further question as to where the property in the goods passed to the buyers is wholly immaterial; and, therefore, assuming that the property in the goods passed to the buyers in Uttar Pradesh itself when the goods were appropriated by putting them in gunny bags, as contended for by the assessee, the sales would nevertheless be inter-State sales, because the goods moved from one State to another as a direct result of such sales. Reference in this connection may be made to Section 5 of the Act which defines as to when a sale or purchase of goods can be said to take place in the course of import or export. According to Sub-section (1) of Section 5 a sale shall be deemed to take place in the course of export of the goods...only if the sale...either occasions such export or is effected by transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

10. It is obvious that Sections 3 and 5 have been cast in identical terminology and the expression "occasions the movement of goods" occurring in Section 3(a) and Section 5(1) has the same meaning. It was so held by the Supreme Court in K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, . In that case the Supreme Court relying on its earlier decision in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, , also held that for the purpose of determining as to whether a sale was in the course of export or import, all that was necessary to see was as to whether the movement of the goods from one State to another was occasioned by the contract of sale and it did not matter whether the property passed in one State or the other. The same view has been expressed by a Full Bench of this court in National Carbon Co. v. Commissioner of Sales Tax, U.P. [1969] 23 S.T.C. 388, where this court held that in order that a sale should be a sale during the course of export, all that was necessary to show was that the sale occasioned the export and the further consideration as to whether the sale was completed or where the property in the goods passed from the seller to the buyer was wholly immaterial.

11. That being the legal position we have no hesitation in saying that under the circumstances of this case, the sales in question were inter-State sales and were liable to Central sales tax. We, therefore, answer question No. (3) in the affirmative.

12. As all the questions have been answered against the assessee, the Commissioner of Sales Tax is entitled to the costs of this reference which we assess at Rs. 100. The fee of the learned counsel is also assessed at the same figure.