

(1970) 04 OHC CK 0004
In the Orissa High Court
Case No : S.J.C. No. 41 of 1968

Balabhagas Hyulaschand

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-04-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4

Citation : (1970) 04 OHC CK 0004

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; S.C. Mohapatra, Standing Counsel
S.T., for the Respondent

Judgement

G.K. Misra, C.J.—The Tribunal was called upon to make a statement of the case and refer the following question

"Whether title to the goods passed after approval at the site of the mills or in Orissa".

In the course of hearing we were of opinion that the appropriate question would be:

"Whether, in the facts and circumstances of the case, there was a sale in the course of inter-State trade or whether there was only an internal sale in West Bengal."

Counsel addressed us on the basis of the aforesaid modified question, which of course was not set out in the order sheet.

2. The relevant facts as given in the statement of the case, may be narrated in brief.

The petitioner is a firm which carries on business in jute. It purchases jute in Orissa and sends it outside the State to various jute mills in West Bengal. The headquarters of the firm is at 161/1, Mahatma Gandhi Road, Calcutta-7. For the

quarter ending 30-6-69, jute worth Rs. 2,43,992.71 P. and Rs. 96,759.40 P. was despatched from Cuttack and Dhenkanal railway stations respectively to West Bengal. The transaction was through a licensed broker "East India Jute and Hessian Exchange, Ltd.". The procedure followed was that jute was being despatched to the sidings of the jute mills. It would appear from a letter dated 14th September, 1963, written by the Managing Agents Kettlewellbullen & Co., Ltd., addressed to the petitioner -- in which the terms and conditions of the contract were set out -- that the jute mills had no agents or branch offices in Orissa to make purchases of jute. After arrival of the jute at the mill sidings it is carefully inspected by the mills in respect of quality, moisture, etc. If it is found acceptable, purchase is finally settled. If it is not up to the grade it is rejected. The jute is purchased on the basis of delivery at the mill sidings in Calcutta and accordingly the mills do not pay any railway freight or other charges for bringing it there. The sellers generally book the jute in the name of the mills as the railways do not accept any booking to the mills' sidings unless the goods are booked in the name of the mills. Payment for the value of jute is made in Calcutta. Purchase is made on the basis of weight ascertained at the mills. Every responsibility in respect of quality, moisture, shortage in weight and risk in transit lies upon the seller. This letter was produced before the Tribunal and is a part of the paper book. It is the common case of the parties that the terms and conditions enumerated in this letter governed the terms and conditions under which the transactions were effected during the quarter ending 30-6-1960. The statement of facts has been made on the basis of the terms mentioned in letter dated 1-4-60, addressed to the petitioner by the licensed broker, which are more or less to the same effect. It is mentioned therein that 90 per cent of the payment was to be made in cash against documents and the rest on approval.

3. The assessing authorities upto the stage of the Tribunal were of opinion that there was sale of jute in the course of inter-State. Being aggrieved the petitioner asked for a reference. It was rejected. Thereafter the petitioner moved this Court which in exercise of its jurisdiction u/s 24(3) of the Orissa Sales Tax Act called upon the Tribunal to make a statement of the case. That is how this reference has been made.

4. The points which arise for consideration in this reference are:

(1) Did title to the goods pass in Orissa or in West Bengal?

(2) Even if title in the goods passed in West Bengal whether in the facts and circumstances of this case, the transaction constituted "sale in the course of inter-State trade"?

5. So far as the first question is concerned, there can hardly be any doubt that title to the goods passed in West Bengal and not in Orissa. The jute, at the time of its despatch, was an unascertained goods. As per the terms and conditions of the agreement, the mills retained full liberty to reject the goods if they did not come up to the prescribed specifications. Though, for the sake of convenience

the mills themselves were the consignees, the goods had to be despatched at seller's risk until delivery at the siding of the mills. Weight was to be taken at the siding of the mills and on the basis of that weight final payment was to be made. Until appropriation was made by the mills at the sidings there was no passing of title.

6. To appreciate this point It will be useful to scrutinise the provisions of Sections 3 and 4 of the Central Sales Tax Act, 1956 (Act 74 of 1956).

"3. 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. Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes 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.

4. (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 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:-- Whether 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."

Section 4(1) of the Act lays down the principles as to when a sale of goods can be said to take place outside a State. The prescriptions in Section 4(2) must first be applied, to determine whether a particular sale is inside a State. If it is inside a particular State it must be outside all other States as laid down in Section 4(1).

Section 4(2)(b) deals with unascertained or future goods. In the case of unascertained or future goods the sale shall be deemed to have taken place inside a particular State at the time of their appropriation by the buyer where the buyer retains the condition to give his consent in the matter of such appropriation. In the present case, the buyer reserved his right of appropriation of the unascertained goods and therefore title to the goods passed in West Bengal at the time of appropriation.

Such sale must be held to have taken place outside Orissa,

7. The next question for consideration is whether the completed sale in West Bengal after appropriation was made in the course of inter-State trade.

Section 4(1) lays down that it is subject to the provisions contained in Section 3. In other words, even if title to the property passed in West Bengal, still such sale would not be an internal sale in West Bengal but would be one in the course of inter-State trade if the sale occasioned movement of goods from Orissa to West Bengal.

8. The meaning of the expression "occasions movement of goods from one State to another" in Section 3(a) is now well settled.

In 11 STC 655 : AIR 1961 SC 65, *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar*-- which has been consistently followed in all subsequent Supreme Court decisions-- Justice Shah, speaking for the majority, observed thus:--

"A mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of Section 3(a). That transaction alone in which there is "transfer of goods" on the hire-purchase or other systems of payment by instalments is included in the definition of "sale" (page 666).

"Clause (a) of Section 3 covers sales, other than those included in Clause (b) in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State (page 667).

But Sub-section (1) (of Section 4) having been made subject to the provisions contained in Section 3, it is evident that it is only those sales which were not in the course of inter-State trade or commerce, should be determined under Sub-section (1) of Section 4 as having taken place outside a State. We are unable to hold that any weight can be attached to the argument that if it was the object of the Legislature by enacting Sub-section (2) of Section 4 to explain the expression "where the sale is effected" as used in Clause (ii) of the Explanation to Section 2(a), the Legislature would have expressly stated so. Nor are we able to agree that the contention that Section 4 only seeks to define "outside sales" and is not intended to locate the place where the sale is effected. The argument that by the application of Section 4, Sub-section (2) in cases where the goods sold are unascertained or future goods, there would be difficulty in ascertaining the place

where the sale is effected, has also no force. In any event Section 4(2) may not be denied its full operation, merely because difficulty may be encountered in some cases in ascertaining the place where it is effected by the application of the rules set out therein" (page 672).

The underlined expression in the passage quoted above (at page 667) shows that title in the goods may pass either in Orissa or in West Bengal, and yet the transaction may be an inter-State sale if the conditions prescribed in Section 3(a) are fulfilled. But in order that such sale would come within the ambit of inter-State trade or commerce, the movement of the goods must be the result of a covenant or an incident of the contract of sale. In this case, if the jute mills in West Bengal would have rejected the goods and would not have appropriated them to the contract, there would be no transfer of title and consequently no sale, as "sale" within the meaning of Section 2(g) of the Central Sales Tax Act does not include a mere agreement to sell. In such a case, neither Orissa nor West Bengal could tax an agreement to sell. But the position is different where the agreement to sell unascertained goods ultimately matures into a completed sale which involves transfer of property. In this case, ultimately the goods were approved at the siding of the mills and accordingly there was a completed sale. Even though title to the property passed in West Bengal and the sale was completed there, the transaction would be taxable as a "sale in the course of inter-State trade or commerce" because the movement of the jute from Orissa to West Bengal was the result of a covenant entered into between the petitioner and the jute mills, through the licensed broker, that the goods should be moved to the sidings of the mills for final approval and appropriation towards the contract. Thus, though title to the jute passed in West Bengal and ordinarily the transaction would have been an internal sale within the meaning of Section 4(2) (b), it would, in this case be a sale in the course of inter-State trade or commerce u/s 3(a), as Section 4(a) is subject to Section 3(a), The movement of the goods to West Bengal was a direct and necessary consequence of the important covenant regarding weighment, approval of specification and final acceptance. Thus, the movement was in performance of the terms of the contract.

9. Mr. Mohanty placed reliance on *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , to show that an agreement to sell is not taxable. After the aforesaid Supreme Court decision, the point has become elementary and is no longer in doubt. But it does not assist the solution of the problem arising out of Section 3(a). Similarly *The Commissioner of Sales-Tax, Eastern Division, Nagpur Vs. Husenali Adamji and Co.*, merely supports the conclusion that title does not pass in case of unascertained Goods until appropriation is made. That again does not carry the matter far.

10. Reliance was placed on a Division Bench decision of the Madras High Court in (1969) 23 STC 86 (Mad), *Cement Distributors (P.) Ltd. v. Dy. Commercial Tax Officer* in support of the conclusion that the despatching State has no jurisdiction

to tax the transaction as an inter-State sale merely because movement of goods is involved. We have carefully gone through the aforesaid decision and with great respect we are of opinion that their Lordships have not given due weight to Section 4(1) being subject to Section 3(a). Emphasis has been laid in the Madras case on Section 4(2)(b) as if it is independent of Section 3(a).

11. Mr. Mohanty also placed reliance on an unreported decision of the Supreme Court in *Tata Engineering and Locomotive Co., Ltd v. Asstt. Commr. of Commercial Taxes*, Civil Appeals NOS. 2105 and 2106 of 1969, D/- 2-3-1970 = (since reported in *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, . This decision is distinguishable on facts. There the dispute related to the assessment made in respect of vehicles which moved from the manufacturing plant in Jamshedpur to the stockyards in different States in the country. Sales tax had been duly paid in accordance with the respective State laws on the sales effected from the stockyards there. The facts of that case were that the appellant did not maintain any stockyard in the State of Bihar, but stockyards were maintained in different States, This was done for the purpose of more effective distribution of the vehicles particularly among the network of dealers. These stockyards were operated by the appellant's own personnel and the sales of vehicles were effected to the dealers as well as other users in the different States from the stockyards. There was therefore no "sale in the course inter-State trade or commerce."

12. Our conclusion is supported by (1970) 25 STC 26 (SC), *Commr. of Sales Tax, Indore v. Allwyn Cooper and Hanuman Mining Corporation Ltd. Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore*, .

In the first case, the respondent carried on business of selling manganese or sold manganese ore pursuant to four contracts. Under the first two contracts, there was a clause to the effect that the price was F.O.R. Katangihiri railway station in Madhya Pradesh and that the first weighment at the Gondia weighbridge (which is located in Maharashtra State) which was en route between the place of despatch and the destination in the State of Maharashtra should be the basis for final account. In the other two contracts there was a specific clause that the price would include railway freight from the loading station in Madhya Pradesh to the port of Visakhapatnam in the State of Andhra Pradesh and the balance of 10 per cent of the price was to be paid in the case of one contract after loading weighing and despatch of the ore to the port, and in the case of the second after acceptance of the goods in the plots of the buyers at the port. Their Lordships held that the performance of each one of the contracts necessarily involved movement of the goods from the State of Madhya Pradesh to the State of Maharashtra or Andhra Pradesh and the sales under the four contracts were inter-State sales u/s 3(a) of the Central Sales Tax Act, 1956.

In the second case, their Lordships held that as the first weighment at Gondia weigh-bridge was the basis for fixation of the price of manganese ore, the parties necessarily contemplated movement of goods to the Gondia weigh-bridge and

the weighment of the goods at Gondia in performance of the terms of the contract. The movement of the goods across the frontier was a direct and necessary consequence of the important covenant with regard to the fixation of price. Therefore, the sales were inter-State sales.

13. The same principle would apply in the present case. Weighment, approval and appropriation of the jute were to be done at the siding of the jute mills under the terms of the agreement. On the basis of these terms, the movement! of the jute had to take place from Orissa to West Bengal. Completed sales in West Bengal therefore occasioned the movement of the jute from Orissa to West Bengal and would come within the scope of Section 3(a). The sales were in the course of inter-State trade or commerce.

14. There is no dispute before us that if the sales were in the course of inter-State trade or commerce, the taxing authorities in Orissa were within their jurisdiction to tax the sales.

15. We would accordingly answer the questions thus:--

(i) Title to the jute passed in West Bengal and not in Orissa.

(ii) Even though title to the jute passed in West Bengal the sales were in the course of inter-State trade or commerce, as the completed sales occasioned the movement of the jute from Orissa to West Bengal.

16. On the aforesaid analysis, the reference is discharged, but in the circumstances of the case, there will be no order as to costs.

S. Acharya, J.

17. I agree.