

(2004) 10 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 58 of 1997

Bharat Carbon Ribbon Manufacturing Co. Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : (2006) 146 STC 606

Hon'ble Judges : G.S. Singhvi, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Auneesh Jhingan, for the Appellant; Vijay Dahiya, A.A.G., for the Respondent

Judgement

G.S. Singhvi and Ajay Kumar Mittal, JJ.—In compliance of the direction given by this Court in S.T.C. Nos. 2 to 4 of 1989, decided on August 14, 1996, Sales Tax Tribunal-I, Haryana (for short, "the Tribunal") referred the following question of law:

Whether, on the facts and circumstances of the case, the transaction of despatch of goods, manufactured by the assessee under a contract, was only a stock transfer by the assessee to its depot/branch outside the State of Haryana or was an inter-State sale ?

2. The only point which arises for determination by this Court is whether the transaction involving despatch of goods by the dealer under a contract would amount to stock transfer by the dealer to its branches outside the State of Haryana or was in the nature of inter- State sale.

3. We have heard learned Counsel for the parties and have gone through the record.

4. The Tribunal, while deciding the appeal of the dealer, held that the claim of the dealer regarding transfer of goods manufactured by the dealer to suit the requirements of the particular dealers would amount to inter-State sale and was

not a transaction which could be said to be a branch transfer. The findings recorded by the Tribunal read as under:

The orders of the lower authorities make it clear that the goods were manufactured to suit the requirements of particular dealers as the name of the purchasing company was perforated on the back of the products. Therefore, the judgment in the case reported as Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, would be applicable. It was held in that case that the goods conforming to agreed specification having been manufactured at Faridabad, the contract of sale could be performed by the respondent only by the movement of goods from Faridabad with the intention of delivering them to the purchaser. These sales must be held to be sales flowing from pre-existing contract between the company and the ultimate buyers though the orders might have been routed through the branches. In the case reported as Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, , the factory was advised to manufacture goods which were brought to the head office in Delhi and outside. The bills were sent from the head office and the price of the goods was also received there. The Delhi High Court and the Supreme Court held that the sales tax under the Central Sales Tax Act was leviable by the sales tax authorities at Faridabad where the factory was situated. The judgment of the Madras High Court reported as Indian Duplicators Ltd. v. State of Tamil Nadu [1984] 57 STC 263(MAD) , relied upon by the counsel for the appellant, is not applicable as in that case, the duplicating ink was not a commodity which was specifically manufactured for use by the customer and this was a consideration which weighed with the division Bench in reversing the orders of the sales tax authorities that those transactions were inter-State sales. In the present case, the goods were perforated to the requirements of the customers and could not be delivered or sold to any other customer. I, therefore, find that the assessing authority has rightly disallowed the claims of transfer and rightly treated these transactions as inter-State sales.

5. In our opinion, the aforesaid finding is a pure finding of fact and no substantial question of law arises from the order of the Tribunal.

6. Consequently, the reference is answered against the dealer and in favour of the department.