

(1996) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 18397, 18398, 18399 and 18400 of 1989 and 107, 110 and 114 of 1990

Bharat Heavy Electricals Ltd. and Another

APPELLANT

Vs

Commercial Tax Officer and Others

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Central Sales Tax Act, 1956 — Section 9

Constitution of India, 1950 — Article 226, 269(1), 32

Citation : (1996) 102 STC 367

Hon'ble Judges : P. Venkatarama Reddi, J; P. Ramakrishnam Raju, J

Bench : Division Bench

Judgement

P. Venkatarama Reddi, J.—In these seven writ petitions, Bharat Heavy Electricals Limited (hereinafter referred to as "BHEL") having its manufacturing unit at Ramachandrapuram, Hyderabad, has sought for a writ of certiorari quashing the assessments made under the Central Sales Tax Act by the Commercial Tax Officer, Sangareddy, Medak district, for the assessment years 1977-78 to 1980-81 and the provisional assessments made for the years 1983-84 to 1985-86.

2. There is an obvious mistake in the prayer in Writ Petitions Nos. 18397 to 18400 of 1989. For those years, the petitioner is aggrieved by the revised assessments made by the Deputy Commissioner (Commercial Taxes), Nizamabad, but not by the assessment orders passed by the Commercial Tax Officer. Even the dates on which the Deputy Commissioner passed the revisional orders are not correctly mentioned in the memoranda of writ petitions.

3. We may also point out that the prayer made in the writ petitions does not tally with what has been prayed for in the affidavits filed in support of the writ petitions. In the affidavits, the prayer mentioned is to issue a writ of certiorari quashing the common order of the Sales Tax Appellate Tribunal dated July 19, 1989, in respect of the aforementioned assessment years and to declare that the

sales tax authorities in the State of A.P. have no power, authority or jurisdiction to assess or collect the Central sales tax (for short, "CST") on the inter-division stock transfers effected by the Hyderabad unit of BHEL. The other prayer incorporated in the affidavit is as follows :

"In the event this honourable court comes to the conclusion that in law the commercial tax authorities in the State of Andhra Pradesh would be competent to levy CST on the transactions of stock transfers effected by the Hyderabad unit of the petitioner-company,..., an appropriate writ or direction in the nature of mandamus be issued directing respondents 5 to 12 to return to the State of A.P. the sums collected by them towards CST from the executing units of the petitioner-company in respect of goods which moved from the Hyderabad unit either to the customer or to the executing division of the petitioner itself."

Respondents 5 to 12 are the States of Tamil Nadu, Uttar Pradesh, Karnataka and Madhya Pradesh and the concerned sales tax officials of those States. In October, 1995, certain W.P.M.Ps. were filed to delete the name of the 8th respondent and to implead the Assistant Commissioner (Trade Tax), Muzafarnagar, Uttar Pradesh, in the place of the 8th respondent, probably in view of the change of jurisdiction. We have formally allowed those W.P.M.Ps. today.

4. If we go strictly by the prayer in the memoranda of writ petitions, these writ petitions have to be dismissed in limine because by the date of filing of the writ petitions, the Sales Tax Appellate Tribunal decided the appeals against the assessments/revised assessments and the assessments/revised assessments were set aside and the assessing authorities were directed to make fresh assessments in the light of the findings and directions given in the judgment of the Tribunal. However, we are not inclined to dismiss the writ petitions on this technical ground.

5. We have proceeded on the basis that prayers incorporated in the affidavits filed in support of the writ petitions represent the real and intended reliefs sought for. But then, the prayer to quash the common order of the Sales Tax Appellate Tribunal cannot be granted as we have upheld the orders of the Tribunal in the batch of T.R.Cs., i.e., T.R.C. No. 195 of 1989 and batch [Reported as Bharat Heavy Electricals Ltd. Vs. State of Andhra Pradesh, , in which judgment has been pronounced just now. We have taken the view agreeing with the Tribunal that the component parts and equipment sent directly to the inter-State customers by the petitioner's Hyderabad unit at the instance of the unit responsible for the execution of the contract are inter-State sales coming within the purview of section 3(a) of the Central Sales Tax Act and the sales tax authorities of the Andhra Pradesh State alone are competent to collect tax on these inter-State transactions irrespective of the payment of CST by the executing unit in the other State. The Tribunal itself granted relief in so far as the materials sent on stock transfer to the executing unit of the other State because there was interruption of movement and the materials have lost their identity before they were despatched to the inter-State customer by the executing unit.

The order of the Tribunal has been assailed in the writ petitions almost on the same grounds which were raised in the T.R.Cs. At any rate, no additional arguments have been raised in these writ petitions as regards the legality of the view taken by the Sales Tax Appellate Tribunal. In view of the dismissal of T.R.Cs., the prayer to quash the common order of the Tribunal or to declare that the sales tax authorities of the Andhra Pradesh State have no authority or jurisdiction to assess and collect the CST on the transactions in respect of which CST has already been paid by the executing unit in the other State in which it is registered (sic).

6. What remains now is the prayer (c) extracted above. The question is whether we should direct the States of Tamil Nadu, Uttar Pradesh, Karnataka and Madhya Pradesh and the concerned sales tax authorities of those States to transfer the CST collected by them on the basis of the returns filed by the concerned unit of BHEL itself in respect of the goods moved from the Hyderabad unit directly to the site of the inter-State customer for which the invoice has been raised by the executing unit. In the light of what we have said in our judgment in the T.R.Cs. in which the Tribunal's view has been affirmed, there can be no doubt that the collection of CST by the sales tax authorities of other States in respect of such transactions is illegal and contrary to section 9 of the Central Sales Tax Act read with article 269(1) of the Constitution. It is also true that if the Hyderabad unit of the petitioner is now called upon to make the payment towards CST to the Andhra Pradesh State in accordance with the judgment in T.R.Cs. the petitioner will have to bear an additional burden of taxation. The only way to remedy the situation is to direct the State concerned which collected the tax illegally - may be on the basis of voluntary returns filed by the petitioner's sister unit itself to transfer that revenue to the Andhra Pradesh State which has exclusive competence to collect the disputed tax. Whether it is open for us in exercise of the jurisdiction vested in the High Court under article 226 and whether it is a fit and proper case for the grant of such direction under article 226 is a matter to be considered now.

7. The learned Additional Solicitor-General appearing for the petitioner takes us through the precedential route to make good his submission that this Court is not powerless to grant such directions to the other States. Mr. V. R. Reddy has drawn our attention to the directions given by the Supreme Court in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, . On the other hand, it is pointed out by the learned Government Pleader for the respondent that in *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, , no such direction was granted by the Supreme Court although it was a case of double payment of CST. Mr. P. Srinivasa Reddy, learned counsel appearing for the State of Tamil Nadu further points out that the appeals filed by BHEL against the CST assessment orders are pending before the appellate authorities in Tamil Nadu and moreover the matters are pending in the Supreme Court and therefore it is not proper for us to grant any direction sought for by the petitioner under article 226. The learned counsel Mr. Srinivasa Reddy also

submits that this Court will be lacking in territorial jurisdiction for issuing a mandate to the sales tax authorities of Tamil Nadu and other States. He has also pointed out certain difficulties in working out the turnover with reference to which the refund, if at all, could be directed.

8. For more than one reason, we feel that we should refrain from issuing any directions to the sales tax authorities of the other States in exercise of our jurisdiction under article 226. The first and foremost consideration which has weighed with us in coming to this conclusion is that the Supreme Court is still seized of the matter. The writ petitions filed in the Supreme Court under article 32 seeking for almost the same directions are pending. The Supreme Court thought it fit to postpone the hearing of those cases till the decision is rendered by this Court in the tax revision cases. Their Lordships observed :

"In our opinion, it would be appropriate to have the views of the High Court in the matter before we proceed to decide the issues arising in this writ petition."

Pending the hearing of the writ petition under article 32, the Supreme Court granted a general direction to the States concerned not to insist upon the payment of CST if it is proved by BHEL that CST has already been paid to one of the States in respect of the disputed transactions. Now that the decision has been rendered by us, the way is cleared for the honourable Supreme Court to decide whether the views expressed by us are correct and in the light of the view that may be taken by the Supreme Court as regards the competence and jurisdiction of the sales tax authorities of Andhra Pradesh State to collect the CST, what relief ought to be granted. It will be more appropriate if the honourable Supreme Court on consideration of the controversy raised in the tax revision cases takes a decision as to the nature of directions if any that have to be granted to various States.

9. The second reason which dissuades us from issuing a direction for refund or transfer of the tax illegally collected is that we may have to formally declare the assessments made in other States null and void before granting any such order. But none of the assessments nor details thereof are before us. In fact, no declaration to invalidate such assessments has been sought for.

10. The third reason which comes in the way of granting a direction of the nature suggested by the petitioner is the territorial jurisdiction of this Court. Of course, as pointed out by the learned counsel for the petitioner, it is enough if a part of cause of action arises within the State of Andhra Pradesh. It is contended by the learned Additional Solicitor-General that there is a proximate link between the transactions and events that have taken place in Andhra Pradesh State and the other States and the facts constituting the cause of action are almost common to both the States. But, we are unable to accept this contention. The Supreme Court, in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, while reiterating the proposition that the question of territorial jurisdiction must be decided on the facts pleaded in the petition, applied the crucial test whether

the facts alleged would form an integral part of the cause of action. Their Lordships were concerned with a case where a Calcutta based company challenged the decision taken by Oil & Natural Gas Commission, Delhi, in connection with the bid offered by the petitioner, by moving the Calcutta High Court under article 226. The Supreme Court found fault with the Calcutta High Court clutching at jurisdiction and rejected the petitioner's plea that a part of cause of action arose within the jurisdiction of Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid from Calcutta and made representations demanding justice from Calcutta. Their Lordships observed :

"The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of January 15, 1993, cannot be construed as conveying rejection of the offer as that fact occurred on January 27, 1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court."

Treading the same line of approach, we are unable to say that the factum of movement of goods at the instance of executing unit in the other State, raising of debit notes by Hyderabad unit on the executing unit located in other States or the demand of CST in this State form an integral part of the cause of action having an indelible impact on the relief sought for. The facts constituting cause of action for granting any direction to the other State to refund or transfer the sales tax already collected are the submission of returns on the basis of the invoices raised by the executing unit located in the other State, the demand and collection of CST in that State and the assessments made in that State. This Court cannot reach the assessments and collections of CST made in the other States by stretching the concept of cause of action. In our view, no part of the cause of action germane to the assessment and collection of CST by other States has arisen in the State of Andhra Pradesh. We, therefore, consider it difficult to issue a binding direction to the sales tax authorities of other States in regard to refund or transfer of sales tax. As already observed, that may have to be done by the Supreme Court depending on the view the apex Court takes on the nature of transactions and the competence of the sales tax authorities of the State of Andhra Pradesh to collect the CST. The judgment of the Delhi High Court cited by the learned counsel for the petitioner, reported in *Pandit Brothers Vs. Union of India* and others, has no relevance in the context of the territorial jurisdiction

because the Delhi High Court merely quashed the assessment orders passed by the sales tax authorities of Delhi and directed refund.

11. There was some debate before us as to the manner in which the tax refundable by other States is to be worked out. While the learned Additional Solicitor-General suggested that the debit note value instead of invoice value is the proper criterion, the learned counsel appearing for the State of Tamil Nadu has submitted that care should be taken to see that the invoice value does not exceed the total consideration received from the buyer. As we are not issuing any directions to the States concerned for the refund or transfer of the tax illegally collected, we are not called upon to decide the basis on which the refundable tax should be quantified.

12. Subject to the observations made hereinabove, we dismiss the writ petitions. No costs.

13. Writ petitions dismissed.