
(1999) 11 KAR CK 0004
In the Karnataka High Court
Case No : S.T.R.P. No. 152 of 1996

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 9 (1)

Citation : (2003) 133 STC 433

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Judgement

V.K. Singhal, J.—The order of the Karnataka Appellate Tribunal dated April 30, 1996 in respect of the assessment year 1991-92 has been challenged in this petition. Learned counsel for the petitioner submitted that the Tribunal has erred in taking into consideration the value of the debit note which was in respect of the transfer of goods from one State to another. It is submitted that, the real value has been given in the invoice which was issued from the other State and that should be the basis for the purpose of assessment.

2. Arguments of the learned counsel for both the parties heard.

3. The debit note is only an internal arrangement of the petitioner for accounting adjustment in between Bangalore and Trichy units. The debit note was not acted upon and it was not considered to be a transfer as shown in the debit note. The transactions have been considered to be an inter-State sale from Bangalore and not from Trichy. The sale has to be of the amount what the buyer has to pay and the buyer has paid the money on the basis of sale invoice issued by the Trichy unit. In these circumstances, the value shown in the invoice has to be taken into consideration and not that of the debit note. It will be for the petitioner to prove with reference to the goods sent of Rs. 3,41,04,462 under different debit notes as to how much is the amount actually received by way of sale price from the

customers in respect of the invoice issued by Trichy unit for the goods sent from Bangalore. If there is difference in value, it will be ascertained with the quantity of goods despatched from Bangalore and the value shown in excise gate pass. The matter shall be examined by the assessing authority.

4. The other contention which has been raised is, that, the Tribunal was not justified in granting three months" time to produce "C" forms. It is submitted that "C" forms have already been submitted to the authorities of Trichy. Petitioner claimed the transaction as branch transfer which were finally held inter-State sale from Karnataka. In *Bharat Heavy Electrical Limited etc. Vs. Union of India and Others etc.*, , the nature of the transaction was considered and it was held that the petitioner is entitled to a direction to the States for the adjustment of tax amount collected by the various States in such a manner that the appropriate tax which was lawfully leviable in the State which was not entitled to collect the tax, but had it collected unlawfully, it had to refund the same to the petitioner or send it to the State, wherein, it was lawfully due and payable. If this judgment is taken to its logical conclusion, the result would be that, the tax could be levied only in one State from where the movement of goods commenced. Section 9(1) of the Central Sales Tax Act provides that the tax has to be levied by the Government of India and the tax so levied has to be collected by the Government in accordance with the provision of Sub-section (2) in the State from which the movement of goods commenced. The various State Governments are levying and are collecting the taxes on behalf of the Government of India and thus, they are acting as an agent. If the tax is collected by one agent, then the principal cannot say that there was no collection of tax. The apex Court in the case of the petitioner has also taken the same view and have given directions for adjustment or refund of the tax. So far as the submission of "C" forms is concerned, the benefit, of concessional rate of tax can be claimed only on furnishing the valid "C" forms. If the said "C" forms have been furnished before the authority which has no jurisdiction to receive the "C" form, then, it is appropriate that the said authority should return the "C" forms to the petitioner or send it to the assessing authority of the appropriate State which has the jurisdiction to levy tax. The judgment of the apex Court cannot be interpreted that there will be two assessments, under the Central Sales Tax Act in respect of same transaction. In one, the tax is levied at 4 per cent while in the other, it is levied at 10 per cent because of furnishing and non-furnishing of "C" forms. The petitioner may also submit a copy of the assessment order of the State where the "C" forms have been submitted and the facts could be verified by the assessing authority. In case, the assessing authority of Karnataka is not satisfied that the transaction is covered by "C" forms, then, the petitioner has to approach the authorities who have received the "C" forms and arc not remitting the said "C" forms to the Karnataka authorities which has the jurisdiction to levy the tax for transfer of the said "C" forms. In this revision petition, because the Trichy authorities are not a party, therefore, we are not issuing any direction to the said authorities. The petitioner would be free to take such legal action against Trichy

authorities as is permissible under law.

Revision petition is disposed of with the above observation.