
(1974) 04 AHC CK 0004

In the Allahabad High Court

Case No : Sales Tax Reference No. 219 of 1971

Bhoorey Khan Glass Bangle Factory

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 02-04-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1974) 34 STC 332

Hon'ble Judges : Satish Chandra, J; H.N. Seth, J

Bench : Division Bench

Advocate : V. Sarup, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.N. Seth, J.—These two references u/s 11 of the U. P. Sales Tax Act have been made in connection with the assessment of M/s. Bhoorey Khan Glass Bangle Factory, for the years 1958-59 and 1959-60.

2. During the course of its assessment, the assessee claimed that a part of its gross turnover in both the years consisted of the turnover of the goods sold by it during the course of inter-State trade. That part of the turnover was thus not liable to be taxed under the U. P. Sales Tax Act. In this connection one of the partners appeared before the Sales Tax Officer and stated that all the purchasers relating to the goods alleged to have been sent outside U. P. had come to his shop where they loaded the goods. If any purchaser gave the truck number it was noted on the bill, but in case a person did not give the truck number it was not noted on his bill. The sales tax authorities construed this statement as meaning that the goods carried outside the State were delivered to purchasers at Firozabad. Production of C forms by the assessee did not have the effect of changing the real nature of the transaction into a transaction entered into during the course of inter-State trade. The sales tax authorities relying upon the case of Ben Gorm Nilgiri Plantations Company v. Sales Tax Officer 1962 13 S.T.C. 309 held that subsequent export of goods by the purchaser, after taking its delivery at Firozabad could not convert it into inter-State sale. They accordingly taxed the

entire turnover of the assessee under the U. P. Sales Tax Act. Being aggrieved by the order of the Judge (Revisions), Sales Tax, the assessee got the following question of law for each of the assessment years 1958-59 and 1959-60 referred for the opinion of this court:

Whether, on the facts and circumstances of the case, the sale of goods was a sale in the course of inter-State trade or commerce?

3. Learned counsel appearing for the assessee relied upon Section 3 of the Central Sales Tax Act, which runs thus:

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....

4. He contended that as in this case the statement made by one of the partners of the assessee-firm indicated that (in cases, which, according to assessee were represented inter-State sales) immediately after the sale, the goods were transported outside the State. This means that the sale occasioned the movement of those goods from one State to another. Accordingly, these sales were made in the course of inter-State trade and were not to be taxed under the U. P. Sales Tax Act.

5. In the case of K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, , the Supreme Court observed that u/s 3(a) a sale occasions movement of goods from one State to another, when the movement is the result of a covenant or incident of the contract of sale. In our opinion, the real test for determining when a sale occasions the movement of goods contemplated by Clause (a) of Section 3 of the Central Sales Tax Act, is that the movement of goods should be as a result of an integral part of the contract of sale that the goods should cross the border from one State to another; It is not enough that the buyer takes delivery of the goods from the seller for the purposes of despatching them to another State, nor is it enough that the seller pursuant to the instructions of the buyer despatches the goods across the border to another State, The contract of sale must itself provide as an integral part of it that the goods shall be transported from one State to another.

6. In this case, the assessee has not led any evidence about the precise nature of the contract that had been entered into between it and the purchasers. In the absence of evidence with regard to such a contract and in view of the fact that delivery of goods in question was effected at Firozabad, it cannot be said that any movement of the goods from one State to another was occasioned by the transaction of sale effected by the assessee. In our opinion, the sales tax authorities were justified in treating the sales in question as intra-State sales and in taxing the turnover thereof as such.

7. The question referred to us is accordingly answered in the negative and against the assessee. The Commissioner of Sales Tax will be entitled to his costs which we assess at Rs. 100. There will be only one set of costs.