(2003) 04 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1716/91

B.S. Sundaravadivel Mudaliar and Sons — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Madhya Pradesh General Sales Tax Act, 1958 — Section 2, 6

Citation : (2003) 3 MPHT 334 : (2004) 1 MPLJ 27

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Sandeep Aole, for the Appellant; Ashok Agrawal, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner is a purchaser of Tendu leaves (units) for the 1990 season, assails the recovery of Sales Tax under the M.P. General Sales Tax Act, 1958. Petitioner submits that as petitioner has purchased the leaves as per the tender notice and has taken the goods to State of Tamil Nadu, the M.P. General Sales Tax is not recoverable. Petitioner is liable to pay Central Sales Tax. The transaction is being that of inter-State sale.

In the petition it is averred that the petitioner offered for the purchase of the unit No. 270 and unit No. 279 within the State of M.P. for purchase of Tendu leaves and also deposited the amount of royalty. The Madhya Pradesh State Minor Forest Produce (Trading and Development) Co-operative Federation Ltd., is charging Sales Tax inter alia on royalty paid, collection charges and forest development cess. Petitioner submits that though auction is made in the State of M.P., the collection charges bills are sent to the petitioners at their Madras address and it is an inter-State transaction and even if any Sales Tax is required to be paid it will be at 4% and not 16% as claimed as under the State Act. The action is without jurisdiction. Demand of Rs. 98,378/- as per demand notice (Annexure-C) is, thus, liable to be quashed.

In the return filed by respondent No. 2 it is contended that the Sales Tax has been properly levied. It is not a case of inter-State sale. The royalty is a consideration for appointment of the petitioner as a purchaser. Royalty is a part of purchase price.

Shri Sandeep Aole, learned Counsel appearing for the petitioner, has strenuously submitted that it is a case of inter- State sale as the goods sent to the State of Tamil Nadu and while accepting the offer the address of the petitioner was known and his intention was to take the Tendu leaves to Tamil Nadu. The fact is not in dispute that the goods were taken out of the State of M.P. As such it is a case of inter-State sale, hence, the liability is only to pay under the Central Sales Tax Act. He has relied on the definition of interstate sale in Section 3 of the Central Sales Tax Act, 1956 and has submitted that if the sale or purchase action of moving goods from one State to another is enough to making an inter-State sale. He has relied upon various decisions to be referred later.

Shri Ashok Agrawal, learned Panel Lawyer appearing for the respondents, has submitted that it is a case of intra-Slate sale. There is nothing in the contract or the tender notice to show that the goods were agreed to be taken at the time of issue of tender notice or under the contract to the State of Tamil Nadu, hence, it cannot be said that if the petitioner has chosen to take the goods to State of Tamil Nadu then it is a case of inter-State sale. It was open to the petitioner to have sold it within the State of M.P. if petitioner on his own volition has taken it to the State of Tamil Nadu or any other State which cannot make it inter-State sale.

Inter-State sale is defined u/s 3 of the Central Sales Tax Act, 1956. Section 3 reads thus :--

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.-- A sale or purchase of goods shall be deemed to take place in the course of inter-Slate 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,"

It is necessary that sale or purchase transaction must occasions the movement of goods from one State to another as required u/s 3(a). Clause (b) is not attracted to the facts of the instant case. In the tender notice there is no mention nor it was notified that the goods arc supposed to be put in inter-State sale. Petitioner had purchased it in the open auction in the contract of purchaser; it is not provided that goods have to be taken to the State of Tamil Nadu, thus Section 3 of Central Sales Tax Act is not attracted in the instant case and it cannot be said to be a case of inter-State sale; the sale was concluded in the

State of M.P. and it was open to the petitioner to dispose of the goods in the State of M.P. or to take it out of the State of M.P, to any destination. In State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, , the Apex Court has laid down in Para 24 thus :--

"24. It is well settled by a catena of decisions of this Court that a sale in the course of inter-State trade has three essential ingredients : (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another pursuant to such contract of sale, the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element. Precedents are legion; we may briefly refer to some of them. In English Electric Co. of India Ltd. v. CTO, this Court held that when the movement of the goods from one State to another is an incident of the contract, it is a sale in the course of inter- State sale and it does not matter which is the State in which the property passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. In Union of India v. K.G. Khosla and Co. Ltd., it was observed that a sale would be an inter-State even if the contract of sale does not itself provide for the movement of goods from one State to another provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of the contract. Similar view was expressed in Sahney Steel and Press Works Ltd. v. CTO. In Manganese Ore (India) Ltd. v. Regional Asstt., CST, after referring to Balabhagas Hulaschand v. State of Orissa, it was observed that so far as Section 3(a) of the CST Act is concerned, there is no distinction between unascertained or future goods and goods which are already in existence, if at the time when the sale lakes place these goods have come into actual existence."

I am fortified in my view by the above decision of the Apex Court.

Learned Counsel for the petitioner has relied upon a decision of Division Bench of this Court in the State of M.P. and Ors. v. The Bengal Paper Mills Company Ltd (1979) 44 STC 347. The said decision is clearly distinguishable. If there is a sale and that sale occasions the movement of goods from one State to another, the sale becomes an inter-State sale within Section 3(a) of the Central Sales Tax Act, 1956. The condition of passing of property in the State where the goods are transported is a necessary condition for making the sale an inter-State sale. In the peculiar facts of that case it was held that it was a case of inter-State sale. Extraction to other State was itself provided under the agreement. It is not the case here.

Reliance has also been placed in Orient Paper & Industries Ltd., Orissa v. State of M.P. and Ors. (1982) 15 VKN 272, wherein the bamboos were purchased for transportation to Brajraj Nagar in the State of Orissa. The petitioner was bound to take immediate delivery of all bamboos made available by the Forest Department at the mutually agreed rail head depots in M.P. for onward transportation to Brajraj Nagar, Orissa.

Another decision relied upon by the learned Counsel for the petitioner is in Orient Paper and Industries Ltd. v. State of M.P., (1997) 30 VKN 324, wherein it has been held that it is immaterial whether sale/purchase has taken place within the M.P. or not. So long as the "movement" of the goods is an "incidence" of sale/ purchase, it amounts to inter sale/purchase though according to the Supreme Court it is also not necessary that the contract of sale must expressly provide for movement of the goods and it is sufficient that the movement of goods is "implicit" in the sale.

Learned Counsel for the respondents has placed reliance on a decision of this Court in Pataka Bin Mfg. Co. Ltd. and Anr. v. State of M.P. and Ors. (2000) 33 VKN 524, decided by esteemed brother Mr. S.K. Kulshrestha, J. The view has been taken on similar transaction that the sale is intra-State sale and merely the goods have been taken out of the State cannot make it inter state sale. The decision in Pataka Biri Mfg. Co. Ltd. and Anr. v. State of M.P. and Ors., is on the similar facts involved in the present petition.

Resultantly, the writ petition is dismissed. No order as to costs. Security if deposited be refunded to the petitioner.