(1976) 04 OHC CK 0013

In the Orissa High Court

Case No : S.J.C. No''s. 134 to 137 of 1974

Caltex (India) Ltd. APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(2)

Citation : (1976) 42 CLT 778 : (1978) 42 STC 21

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—On an application made by the assessee u/s 24(2) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") this court by order dated 3rd September, 1975, called upon the Sales Tax Tribunal to state a case and refer the following question for opinion of the court :

Whether, in the facts and circumstances of the case, the sales effected by the assessee can be taken to be in the course of inter-State trade or would they constitute intra-State trade; in the first case, the transactions being liable to Central sales tax and, in the other, the transactions being exigible to Orissa sales tax ?

2. The periods with which these four references are concerned are quarters ending with 30th June, 1960, 30th September, 1960, 31st December, 1960 and 31st March, 1961. The petitioner has been assessed as an unregistered dealer u/s 12(5) of the Act and has been subjected to penalty. The brief facts useful for the purposes of the present proceeding are these : The National Mineral Development Corporation (briefly known as "N. M. D. C") runs a unit of its business at Kiriburu of Keonjhar District within this State. For its business N. M. D. C. required several motor vehicles which consumed high speed diesel oil and petroleum. For its own consumption, N. M. D. C. wanted to set up private pumps

within the project site. In the year 1959, the petitioner made an offer to N. M. D. C. for supply of high speed diesel oil and petroleum and the offer was contained in a letter dated 23rd May, 1959. In December, 1959, the petitioner submitted quotations for petrol and high speed diesel oil clearly indicating that supplies will be effected from its Tatanagar depot in barrels to be delivered into the underground tanks installed in the project site of N. M. D. C. The orders from time to time were placed by the Controller of Stores of N. M. D. C. at Kiriburu on the assessee at Jamshedpur for supply of both petroleum as also h. s. d. oil and in the bills drawn against the consumer, Central sales tax was collected on the basis that the supply effected from Jamshedpur within the State of Bihar to Kiriburu within the State of Orissa involved inter-State transactions.

From time to time, N. M. D. C. placed orders for supply of high speed diesel oil, petroleum and lubricants on the Jamshedpur unit of the petitioner and those goods were transported in tankers and delivered to the consumer at Kiriburu. The practice was that drivers of the transport vehicles presented challans which used to be acknowledged by the officers of N. M. D. C. and from time to time payments against supplies of goods were made to the petitioner. Explosive licence for storage stood in the name of the petitioner. There was, however, no written contract fixing the terms.

When the assessing officer issued notice to the petitioner, the assessee took the stand that the transactions were not exigible to tax under the Orissa Sales Tax Act and as they were of inter-State character, Central sales tax was payable and has been paid in Bihar. The assessing officer as also the Assistant Commissioner of Sales Tax took the view that sales took place within the State of Orissa and, therefore, the transactions were exigible to Orissa sales tax.

3. The Tribunal while dismissing the assessee''s appeals held:

...Thus, the appellant made offer to sell petrol, high speed oil, etc., to N. M. D. C. at Kiriburu and for the convenience of N. M. D. C. even installed a petrol pump at Kiriburu. Petrol, high speed oil, etc., used to be carried in lorries of the appellant''s firm from Jamshedpur which is in Bihar to Kiriburu in Orissa. The offer that was made by the appellant showed that N. M. D. C. was not concerned from which place or by whose conveyance the appellant-firm would bring petrol, high speed diesel oil, etc., but N. M. D. C. was interested in getting petrol, high speed diesel oil, etc., at site, i. e., at Kiriburu and, therefore, it was immaterial for N. M. D. C. whether the appellant brought petrol or high speed diesel oil from Bihar or from any place of Orissa ; these purchases of petrol and high speed diesel oil were made at Kiriburu itself and evidently there existed no covenant in pursuance of which movement of petrol, high speed diesel oil, etc., was occasioned from Bihar to Orissa. Even the appellant has failed to show that as an incident of contract of sales, the goods moved from one State to another. The N. M. D. C. accepted the offer of the appellant to purchase petrol, etc., at Kiriburu from the tank of the appellant-firm installed at that place....

Admittedly, there is no written contract from which the terms of the transactions can be gathered. The transactions, however, seem to have been brought about by a series of correspondence exchanged between the assessee and N. M. D. C. On 23rd May, 1959, the assessee from Jamshedpur gave the following offer to N. M. D. C.:

We understand that you are very soon going to start extraction of iron ore at Kiriburu Project area in Bihar/Orissa border. We will be very pleased to give you all the assistance and supply all your requirements of petrol, high speed diesel oil and lubricants.

We have a major depot at Tatanagar which is about 100 miles from Barbil. Besides, we also have a petrol and h. s. d. outlet at Barbil, through which we will be very pleased to supply your initial requirements. As Kiriburu is going to be a big project and there would be considerable number of machines at work, we take this opportunity of offering you consumer petrol and h. s. d. pumps at site and we offer to instal these at our own cost. We will provide underground tankage and pumps and charge you a nominal rent of Re. 1 per tank/pump per month.

As soon as you have finalised your arrangements for the supply of machinery, we shall be very pleased to make a complete lubrication survey and give you every technical assistance possible. We will then also offer you our quality lubricants at prices applicable to Government departments and we are looking forward to your business.

Assuring you of our best services at all times.

On 28th December, 1959, the assessee wrote again to N. M. D. C. to the following effect:

Re : Supplies of Caltex petrol and hispeedol.

Further to our letter No. G-12/673/EKS of 7th September, 1959, enclosing our quotations Nos. TR-28 and TL-92 for Caltex petrol and hispeedol respectively for supplies to our dealer''s pump at Barbil, we are now pleased to enclose herewith quotations Nos. TE-48 and TI-167 of date, for petrol and hispeedol, for supplies to consumers'' pumps installed at Kiriburu.

The rates quoted by us are as applicable to DGS & D indentors. Supplies will be effected ex our Tatanagar depot in barrels, delivered into undergound tanks installed by us for you.

We trust you will find our quotations most satisfactory. Thanking you and assuring you of our best attention at all times.

It was clearly indicated in the aforesaid letter that the pump situated at Kiriburu was of the consumer. Undoubtedly, the explosive licence stood in the name of the assessee and the pump rented out to N. M. D. C. There is clear indication in this letter that the supplies were to be effected from Tatanagar depot in barrels and would be delivered into the underground tanks installed by the assessee for the consumer. A letter written on 7th July, 1960, by the consumer to the assessee placing orders may now be extracted:

Central Stores Depot No. KP-1(6)/ST/(VIII) dated 7/8th July, 1960. To M/s. Caltex (India) Limited, P. O. Bag No. 8, Jamshedpur. Supply order for petrol/ hispeedol and lube oils. Dear Sirs, Kindly despatch the following items of P. O. L. at your earliest: Sl. No. Item Quantity Remarks 1. Petrol 3,000 litres in sealed barrels. 2. Hispeedol 3,000 litres in sealed barrels. 3. RPM Delo 30 200 litres in non-returnable drum. 4. RPM Motor oil 30 200 litres in non-returnable drum. Thanking you, Yours faithfully, Sd/- Illegible. For Asst. Controller of Stores, Kiriburu, N. M. D. C.

One of the bills may now be quoted :

CALTEX (INDIA) LIMITED Shipping Point: Tatanagar O/P No. 25688. Date delivered 27-4-62. F. I. 21 No. 10526 dated 24-4-62. Date approved Mode of Transport Cont. T/T BRT 271. Terms: Credit. Destination Town: Kiriburu. Sold to: Messrs. National Mineral Development Corporation, Kiriburu Project, P. O. Kiriburu, District Keonjhar, Orissa. Description Kind Qty. Litres Unit Value Kilogram cost Rs. nP. -- Motor spirit Bulk 8000 641.51 per k/1 5,l32.08 Plus: Central sales tax (Bihar motor spirit) Tax at 0.09 per It. 720.00 --------- 5,852.08 --------- Rupees five thousand eight hundred fifty- two and nP. eight only. Caltex (India) Limited, Sd/- Certified that the goods on which sales tax has been charged are not exempted under the Sales Tax Act and that charges on account of sales tax on the goods are correct under the provisions of that Act.

On 26th April, 1961, the assessee wrote another letter to N. M. D. C. running thus :

CALTEX (INDIA) LIMITED Ref : No. N-5/558/VJ Jamshedpur, 26th April, 1961. The National Mineral Development Corporation Ltd., Kiriburu Project, P. O. Kiriburu, Dist. Keonjhar, Orissa. Kind attention: Mr. B. B. Bewan, Asst. Controller of Stores. Dear Sirs, Re: Rate of revision for supplies of petrol, hispeedol to your consumer pumps.

Please refer to our following existing quotations for supplies of petrol and hispeedol to your consumer pumps ex our Tatanagar depot in tank lorries:

(1) TGR-149 of 2-12-1960 for petrol, viz., Rs. 641.02 per kilo litre nett, exclusive of all taxes, sent under cover of our letter No. G-12/829/BVS of 2nd December, 1960.

(2) KGL-265 of 29-6-1960 per hispeedol, viz., Rs. 557.13 per kilo litre nett, exclusive of all taxes, sent under cover of our letter No. G-12/20/MC of 2nd July, 1960.

We would now advise you that effective from April, 1961, our prices for petrol and hispeedol have been increased by 2 nP. per kilo litre and 3 nP. per kilo litre respectively, due to revision in the railway freight structure. Accordingly, we enclose herewith our quotations No. TGR-54 of date for petrol and TGL-119 of date for hispeedol effective 1st April, 1961, for your kind acceptance.

We confirm that the rates offered are those applicable to D. G. S. & D. and other Government indentors.

Thanking you and assuring you of our best services at all times.

Yours very truly, CALTEX (INDIA) LIMITED, Calcutta District.

VJ. TK.

Enclosure: as above

c.c. Tata/B/D/price & order : AKM

cc. Calcutta D.O. MMBL. SKG. Sd/- V. T. Kumaraswamy." From the correspondence and the bills it is very clear that parties stipulated that supply of the gasolene and other products would be from Jamshedpur. There is no dispute that all the supplies in question have been effected as a fact from Jamshedpur and prior to movement of the goods there existed a contract (though not a consenting written agreement- a contract as gathered from the correspondence) in terms whereof supply from Jamshedpur had to be made. In view of this position, which clearly emerges from the materials on record, the latest decision of the Supreme Court in the case of Oil India Ltd. Vs. The Superintendent of Taxes and Others, , has full application. In the reported decision, the facts are : Oil India Limited had its office in Assam and was engaged in the business of prospecting petroleum and also producing and transporting crude oil from that State pursuant to the prospecting licence and mining lease granted by the State of Assam. In pursuance of an agreement to which the petitioner was one of the parties, the petitioner supplied crude oil to the Barauni Refinery of the Oil India Corporation situated in Bihar through pipe-lines constructed and owned by Oil India Corporation. At Barauni Refinery, the crude oil which passed through the pipes from the oil-fields of Assam was pumped into the Corporation''s tanks and thereafter it was measured. After the measurements were agreed to by both the parties, the crude oil was taken delivery of by the Oil India Corporation. In Bihar, the transactions were treated as intra-State sales. The court held that the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale and, therefore, the sales to the refinery at Barauni were sales in the course of inter-State trade. The Bihar State had no Jurisdiction to tax the sales under the sales tax law of that State. The rule in the aforesaid case has full application to the present facts. Undoubtedly, the transactions are inter-State sales and the assessments in question, therefore, are without jurisdiction.

4. Our answer to the question referred to us, therefore, is:

On the facts and in the circumstances of the case, the sales effected by the assessee are in the course of inter-State trade and accordingly are not exigible to Orissa sales tax.

The assessee shall be entitled to the costs of these proceedings. Consolidated hearing fee is assessed at rupees two hundred.

N.K. Das, J.

I agree.

