(2000) 02 RAJ CK 0035

In the Rajasthan High Court

Case No : Sales Tax Revision No''s. 850 and 851 of 1999

Commercial Taxes Officer APPELLANT

Vs

Nahata Textiles Industries RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Citation : (2001) 121 STC 250

Hon'ble Judges : Rajesh Balia, J;Mohd. Yamin, J

Bench : Division Bench

Advocate : Sanjeev Johari, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

1. These two revisions involve common questions of law and facts and hence, they were heard together and are being disposed of by a common order.

2. The brief facts giving rise to these revisions are : that the respondent is a dealer under the provisions of Rajasthan Sales Tax Act, 1954. During the course of its assessment for the assessment years 1990-91 and 1991-92, the assessing officer noticed the fact that certain turnover of saris which has been claimed to be a sale in the course of inter-State trade and commerce has been consigned to different places in the name of self or other dealers but however, the consignee''s name in respect of such transmission of goods has been shown to be K.K. Shah & Co., Pali and, therefore, he drew the inference that the respondent-assessee has sold the goods to K.K. Shah & Co., Pali and thereafter K.K. Shah & Co., Pali had despatched the goods to various places either to itself or to other parties. So far as transaction between respondent-assessee and K.K. Shah & Co. was concerned, it was completed at Pali and it was an intra-State transaction and not a sale in the course of inter-State trade and commerce. Therefore, the assessing officer levied the tax on packing material by having recourse to proviso to Section 5(1) of the Act.

3. The respondent-assessee claimed that K.K. Shah & Co. is a registered dealer

of Bombay, from whom, he has received orders of purchases. He sold goods to K.K. Shah & Co., Bombay and all his bills have been issued in the name of K.K. Shah & Co., Bombay. The goods have been sent to different parties whether K.K. Shah & Co., or other parties, at the instance of said buyer as per its instructions. The bilties were prepared in the name of K.K. Shah & Co., because the goods were sold to K. Shah & Co., Bombay and they had been despatched to respective destinations as per the instructions of K.K. Shah & Co., Bombay and, therefore, to identify the goods as having been consigned as per instructions by K.K. Shah & Co., the consignor''s name was shown as K.K. Shah & Co. However, the goods have moved out of the State of Rajasthan as an integral part of the sale transaction between respondent-assessee and K.K. Shah & Co., Bombay.

4. This plea of the respondent-assessee found favour with the Deputy Commissioner (Appeals) (appellate authority) as also with the Rajasthan Tax Board, Ajmer, vide their orders dated June 20, 1995 and April 15, 1998 respectively. Hence these revisions by the Revenue.

5. The question that arises for consideration is whether in the present case, the movement of goods outside the State of Rajasthan can be said to be the result of a sale in the course of inter-State trade and commerce by the respondent-assessee or it can be said that transaction between respondent-assessee and K.K. Shah & Co., was complete at Pali and nothing was required to be done by the respondent-assessee in respect of these goods after the sale was complete at Pali and, therefore, the subsequent movement of the goods at the instance of K.K. Shah & Co. cannot be treated to be a sale in the course of inter-State trade and commerce by the respondent-dealer.

6. The test for determining whether such transaction is an inter-State sale or not is well-settled and succinctly stated by this Court in the case of Commercial Taxes Officer, Special Circle II, Jaipur v. Poddar Spinning Mills [1987] 67 STC 359 :

"Several authorities have been cited at the Bar from both sides in support of the rival contentions. The test for determining whether the transaction was an inter-State sale or not is well-settled and the only question is of its application. The true test is to see whether the inter-State movement of the goods was the result of a covenant, express or implied, in the contract or even an incident of the contract. Unless the inter-State movement is shown to be connected with the contract in such a manner, the mere fact that the buyer was from outside the State and he moved the goods to a place outside the State after completion of the sale transaction without any involvement of the seller, cannot make it an inter-State sale. In other words, the seller''s association with the inter-State movement is necessary either under a covenant, express or implied, in the contract or as an incident of the contract and not independent of the contract. Learned counsel for the assessee contended that the letter dated November 28, 1968 referred in the order of the Board of Revenue according to which the assessee''s co-operation was sought for fixing the machinery at Bombay shows that movement of goods from Jaipur to Bombay was an incident of the contract. I am unable to accept this contention."

7. In the present case, both the appellate authorities have found on the basis of the record available before them that the sales have been made to K.K. Shah & Co., Bombay. In coming to this conclusion, the appellate authorities have taken into account that all bills have been issued in the name of K.K. Shah & Co., Bombay. Orders have been placed by the buyer firm of Bombay under instruction that goods after appropriating in their account be transported with their instructions and GR/RR may be consigned to them. The respective challans received from K.K. Shah & Co., Bombay have also been placed on record before the assessing officer and were also before Deputy Commissioner (Appeals) and the Rajasthan Tax Board for consideration. The transporter himself has also been examined who has clarified the position that the goods have been booked by the respondent-assessee and bilties were prepared at the instructions of the respondent-assessee and they were also delivered to the respondent-assessee after making them in the name of K.K. Shah & Co. With this material, both the appellate authorities found that merely on the basis of the bilties showing the name of consignee as K.K. Shah & Co., in the facts and circumstances of present case it cannot be inferred reasonably that goods have been sold to K.K. Shah & Co., Pali and delivery was also given to them at Pali so as to infer that transaction was complete at Pali and nothing more was required to be done by the respondent-assessee in respect of the contract of sale. In this view of the matter, the appellate authorities came to the conclusion that since goods have moved outside the State of Rajasthan from within the State of Rajasthan as a direct result of the sale transaction between the respondent-assessee and K.K. Shah & Co., Bombay and, therefore, it was a sale in the course of inter-State trade and commerce by the dealer.

8. Both the appellate authorities have also found that the revenue has not been able to prove by any cogent material that any firm by the name of K.K. Shah & Co. existed at Pali or delivery was given to the buyer at Pali. These facts which have emerged from the record are the findings of facts and really they have not been challenged.

9. What has been urged before this Court is that since the goods purported to have been consigned by K.K. Shah & Co., Pali, the necessary conclusion that the transaction between the respondent-assessee and K.K. Shah & Co., became complete at Pali and thereafter the goods have been despatched outside the State of Rajasthan by the respondent-assessee not at his own but at the best, it can be said that the goods have been despatched as an agent of K.K. Shah & Co., the buyer, independent of their status as seller. So far as sale transaction between respondent-assessee and K.K. Shah & Co. is concerned, it was complete and nothing more was required to be done by the respondent-assessee.

10. Having carefully considered the contentions raised by the learned counsel for the parties in the light of the aforesaid test of determining the nature of

transactions, I am of the opinion that the contentions raised by the learned counsel for the petitioner cannot be sustained.

11. It may be that because of existence of transport documents in the name of K.K. Shah & Co., initially presumption may be drawn as suggested by the learned counsel for the Revenue. However, that cannot be held to be a conclusive proof of the nature of transaction inasmuch as bilty is not an evidence of sale transaction nor an evidence of terms of the contract between the buyer and the seller. The presumption can always be dispelled by leading cogent evidence. In the instant case, the respondent-assessee has produced the bills and the challans of the purchase orders and the bills in the name of K.K. Shah & Co., Bombay which by itself may be sufficient to sustain the claim of the respondent-assessee. Further, the fact that delivery of goods to K.K. Shah & Co., Pali has not been proved and the goods have been despatched by the respondent-assessee to different destinations outside the State of Rajasthan under the instructions of the buyer as a part of sale contract also leads to reasonable inference that the impugned sale was a transaction of inter-State trade and commerce.

12. In this view of the matter, there is no hesitation to come to the conclusion that the turnover in question in the present case with which we are concerned was in respect of sales in the course of inter-State trade and commerce. The appellate authorities have correctly reached the conclusion by applying the principles of law correctly to the facts of this case.

13. As a result, there is no merit in these revisions and they are hereby dismissed with no order as to costs.

