(1986) 12 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Revision Petition No. 3 of 1979

Commercial Taxes Officer APPELLANT

Vs

Poddar Spinning Mills RESPONDENT

Date of Decision : 18-12-1986

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 16

Citation : (1987) 67 STC 359

Hon'ble Judges : J.S. Verma, C.J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; S.M. Mehta, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This is a revision u/s 16 of the Rajasthan Sales Tax Act, 1954 as amended by the Rajasthan Sales Tax (Amendment) Act, 1984.

2. A question of law was referred to this Court by the Tribunal in accordance with the direction given in the order dated October 21, 1976 of this Court in Reference No. 232 of 1975. The question of law referred accordingly for the decision of this Court is the following :

Whether, in the facts and circumstances of the case, the sale of two generating sets on foundation at Jaipur, amounted to sale in the course of inter-State trade ?

3. During the pendency of this matter, the Rajasthan Sales Tax Act, 1954 was amended by the aforesaid Amendment Act of 1984 resulting in substitution of a new Section 15 in the Act under which the remedy of a revision has been substituted for a reference provided earlier. According to the transitory provision contained in Section 13 of the Amendment Act, the pending reference has been treated as a revision under the newly substituted Section 15 of the principal Act. This is how this revision comes up for decision.

4. The material facts are these :

The assessee, M/s. Poddar Spinning Mills Ltd., Jaipur, carries on business within the State of Rajasthan. The assessee sold two generating sets during the assessment year 1968-69 for a sum of Rs. 6,00,000 to M/s. Swan Mills Ltd. of Bombay. After purchase of these generating sets at Jaipur the buyer removed the same at its own expense to Bombay. Question arose of the exigibility of sales tax on this transaction. One of the contentions of the assessee which alone is now relevant was that it amounted to an inter-State sale which was required to be taxed at the concessional rate instead of being taxed as an intra-State sale at the higher rate. The assessing authority as well as the appellate authority rejected this contention, but the Board of Revenue accepted this contention of the assessee and treated the transaction as an inter-State sale. Thereafter the Revenue''s application for a reference having been rejected by the Tribunal, an application was made to this Court resulting in the aforesaid direction and consequently the reference to this Court.

5. 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.

6. The sale transaction was complete in the present case at Jaipur after delivery of the machinery to the buyer and thereafter the seller''s entire obligation under the contract came to an end. There is no material to show that under the contract the seller was required to do anything or to be associated with anything connected even with the removal of the goods thereafter from Jaipur. The mere knowledge that the goods had to be removed by the buyer from Jaipur to Bombay cannot be treated as incident of the contract with the assessee. In my opinion, the decisions of the Supreme Court in State of Mysore Vs. Guduthur Thimmappa and Son and Another, and Balabhagas Hulaschand Vs. State of Orissa, fully support this conclusion on the facts of this case. The decisions in OH India Ltd. v. Superintendent of Taxes [1975] 35 STC 445 (SC), English Electric Company of India Ltd. v. Deputy Commercial Tax Officer [1976] 38 STC 475 (SC), State of Bihar v. Tata Engineering & Locomotive Co. Ltd. [1971] 27 STC

127 (SC), Sahney Steel & Press Works Ltd. v. Commercial Tax Officer [1985] 60 STC 301 (SC), State of Gujarat v. Bombay Metal Alloys 6- Mfg. Co. Pvt. Ltd. [1983] 54 STC 45 (Guj) and Union of India v. K.G. Khosla & Co. Ltd. [1979] 43 STC 457 (SC) cited by learned counsel for the assessee are clearly distinguishable inasmuch as in each of them the inter-State movement of goods was either the result of an express or implied covenant or it was a necessary incident of the contract, which is not the position in the present case. It follows that the sale of the two generating sets at Jaipur by the assessee did not amount to an inter-State sale and, therefore, the contrary view taken by the Board of Revenue was not justified.

7. Accordingly the revision is allowed in this manner. In the circumstances of the case, there will be no order as to costs.

