(1987) 02 RAJ CK 0073

In the Rajasthan High Court

Case No : Sales Tax Revision No''s. 64 of 1987 (77 of 1980)

Commercial Taxes Officer APPELLANT

Vs

Spinning Accessories Pvt. Ltd. RESPONDENT

Date of Decision : 11-02-1987

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

Citation : (1987) 67 STC 90

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

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; T.C. Dhadha, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This was initially a reference by the Tribunal for decision by this Court of the following question of law :

Whether, on the facts and in the circumstances of the case, the transaction involving movement of the goods from Jaipur to Calcutta is liable to be treated as an inter-State sale for purposes of levy of sales tax under the Central Sales Tax Act ?

2. By virtue of the newly substituted Section 16 of the Rajasthan Sales Tax Act, 1954, as amended by the Amendment Act of 1984, this reference is now heard and disposed of as a revision.

3. The material facts are these :

The assessee is a manufacturer of wire cloth having its head office at Calcutta in the State of West Bengal and its factory at Jaipur in the State of Rajasthan. During the relevant period the assessee disclosed its inter-State sales to the extent of Rs. 25,67,633 and in addition it showed transfer of wire cloth valued at Rs. 2,75,800 from its factory in Jaipur to its head office at Calcutta. It claimed that no tax was payable on the transactions amounting to the value of Rs.

2,75,800 since they were not even sales but merely transfer of the manufactured goods from Jaipur to Calcutta. The assessing authority rejected this contention and held that the movement of these goods described as transfer from the factory in Jaipur to the head office at Calcutta was in pursuance of contracts of sale entered into between the buyers and the assessee acting through its head office. Accordingly these transactions were treated as inter-State sales and were taxed at the rate of 3 per cent on the basis of C forms produced by the assessee. On appeal, the Deputy Commissioner (Appeals) upheld this conclusion of the assessing authority and rejected the assessee''s contention that to this extent the transactions did not amount to inter-State sales. The appellate authority affirmed the finding that the goods were manufactured in the assessee''s factory at Jaipur against the specific orders of the buyers which had been placed with the head office at Calcutta and after its manufacture the same has been despatched in the packing provided by the buyers for transport of the goods from Jaipur to Calcutta or in other words, the movement of goods from Jaipur to Calcutta had been occasioned and was a direct consequence of a pre-existing contract for sale of the specific goods to the specified buyer. The assessee''s revision to the Board of Revenue was rejected by a Single Member of the Tribunal who held that these transactions were clearly of inter-State sales as initially held by the assessing authority. While dismissing the assessee''s revision, a clear finding of fact was recorded as under :

In the present case, the goods have been despatched to Calcutta in pursuance of the contracts, existing before the movement of goods though these contracts were effected at Calcutta between the seller''s representative and the buyers. The intending purchasers have sent their own packings to the manufacturing plant at Jaipur in which the goods were packed and sent. Accordingly, a view cannot be taken reasonably that the movement of goods from Jaipur to Calcutta was independent of the agreement to sell and the actual sales concluded thereunder.

4. Thereafter, the assessee preferred a special appeal before the Division Bench of the Board of Revenue which was allowed. Hence this reference at the instance of the department which has now to be heard and decided as revision as earlier stated.

5. It is clear from the order of the Division Bench of the Tribunal (Board of Revenue) that express finding of fact recorded by the learned Single Member while dismissing the revision and affirming the findings recorded by the assessing authority, and the appellate authority were not reversed by the Division Bench of the Tribunal and even without doing so, the contrary view has been taken. It is patent that on the finding of fact recorded by the learned Single Member of the Tribunal, the irresistible conclusion from the settled principle of law is that the transaction amounted to inter-State sales as the movement of goods from Jaipur to Calcutta was the direct consequence and was occasioned by the transaction of sale. The Division Bench of the Tribunal has nowhere in its

order while taking the contrary view reversed the finding of fact and held that this was not so. All that the Division Bench has said in this connection is as follows :

It is an admitted fact that the head office is at Calcutta and the factories are in Jaipur. It also cannot be denied that the goods moved from Jaipur to Calcutta at the instance of the head office and the buyers in West Bengal might have placed orders with the head office but they did not place any order directly to Jaipur office. Jaipur office despatched the goods not to the buyers but to the head office. The bills were also prepared by the head office and the money was also received by them.

6. From the above extract, which alone is relevant in the order of the Division Bench of the Tribunal, it is clear that it did not reverse the finding of fact of the Single Bench that the movement of goods from Jaipur to Calcutta was occasioned and was a direct consequence of sale and in fact the Division Bench itself did not rule out the probability of the movement being occasioned by the sale transaction. The Division Bench of the Tribunal committed the obvious error of treating the assessee''s Jaipur office and head office as distinct legal entities which is patently erroneous. In fact, the above extract from the order of the Division Bench is sufficient to indicate that the requisite findings to support the contrary conclusion reached by it that the movement of goods from Jaipur to Calcutta was not occasioned by the sale transaction, have not been recorded so as to justify the contrary conclusion reached by the Division Bench of the Tribunal. The Division Bench, therefore, acted illegally in reversing the decision of the Single Bench without first recording the requisite findings to support the contrary conclusion.

7. It follows that on the basis of finding of fact recorded by the Single Bench of the Tribunal, which remained unreversed, the conclusion that these transactions amounted to inter-State sales, is irresistible and inescapable.

8. Learned counsel for the assessee advanced several arguments to support the conclusion reached by the Division Bench of the Tribunal. In my opinion, on the above conclusion based on the findings of fact, no further question arises for consideration.

9. Consequently, this revision is allowed, the order of the Division Bench of the Tribunal dated February 16, 1979, is set aside and that of the Single Bench of the Tribunal dated June 14, 1977, affirming the decisions of the lower authorities that these transactions were of inter-State sales, is restored. No costs.

