(1968) 08 SC CK 0038

In the Supreme Court Of India

Case No : C. A. No. 1208 of 1966

Commissioner of Sales Tax APPELLANT

Vs

Allwyn Cooper RESPONDENT

Date of Decision : 21-08-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Constitution of India, 1950 — Article 269, 286
Madhya Pradesh General Sales Tax Act, 1958 — Section 18(3), 44

Citation : (1970) JLJ 105

Hon'ble Judges : V. Ramaswami, J;A.N. Grover, J

Bench : Division Bench

Advocate : C.K. Daphtary, Attorney-General for India and I.N. Shroff, for the Appellant; G.L. Sanghi and A.G. Ratnaparkhi, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—This appeal is brought by special leave from the judgment of the Madhya Pradesh High Court dated 26th November, 1965, in Miscellaneous Civil Case No. 318 of 1964.

2. The respondent, who carries on business of selling manganese ore, was assessed to sales-tax u/s 18 (3) of the Madhya Pradesh General Sales Tax Act, 1958 (2 of 1959) for the period 1st October 1957 to 30th September 1958, by the Sales Tax Officer, Balaghat, in respect of sales of manganese ore by the respondent of the value of Rs. 2,77,976.45. The respondent took the matter in appeal to the Appellate Assistant Commissioner of Sales Tax. It was contended on behalf of the respondent that the entire turnover was of sales in the course of export of manganese ore out of India and alternatively, the sales were inter-State sales, and, therefore, not liable to be taxed under the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter called "the Act"). The objection was rejected by the Appellate Assistant Commissioner who dismissed the appeal. In second appeal the Board of Revenue accepted the contention of the respondent

that the sales were in the course of inter-State trade or commerce, and, therefore, could not be assessed to sales-tax under the Act. Taking this view the Board of Revenue remanded the matter to the Sales Tax Officer for assessment under the Central Sales Tax Act, 1956. At the instance of the respondent, the Board of Revenue made a reference to the Madhya Pradesh High Court u/s 44 of the Act on the following question of law:

Whether, in the facts and circumstances of the case, the disputed sales of manganese amounting to Rs. 2,77.976 45 were sales in the course of inter-State trade and commerce or were intra-State sales?

3. By its judgment dated 26th November 1965, the High Court answered the question holding that the disputed sales were in the course of inter-State trade of manganese ore.

4. The sales of manganese ore were effected during the period 1st October 1957 to 30th September, 1958. Before the commencement of this period, Article 286 of the Constitution was amended on 11th September, 1956, by the Constitution (Sixth Amendment) Act, 1956. By the amendment, the explanation to the first clause of Article 286 was omitted and for clauses (2) and (3) the following clauses were inserted :

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sate or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

5. By the Constitution (Sixth Amendment) Act, 1956, a new clause in Article 269 was added giving to Parliament the power to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. In order to carry into effect the conferment of this power, the Constitution (Sixth Amendment) Act inserted a new entry, entry 92-A of the First List of Seventh Schedule and amended entry 54 of the State List. In exercise of this power under entry 92-A, Parliament enacted the Central Sales Tax Act, 1956, which came into force on the 5th January, 1957. Section 3 of the Central Sales Tax Act provides as follows ;

(3) A sale or purchase of goods shall be deemed to take place in the course of inter-State 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.

6. The interpretation of section 3 (a) of the Central Sales Tax Act was the subject-

matter of consideration by this Court in Tata Iron and Steel Co. Ltd, Bombay v. S. R. Sarkar (1860) 11 S T C 655, and Shah J., speaking for the majority of the Bench, observed as follows :

In our view, therefore, within clause (b) of section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto; clause (a) of section 3 covers sales, other than those included in clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

7. This observation of Shah J., was cited with approval by this Court in Cement Marketing Co. v. State of Mysore (1963) 14 S T C 175 and again in State Trading Corporation v State of Mysore (1963) 14 S T C 188. In the later case Sarkar J., observed thus:

The question then is, did the sales occasion the movement of cement from another State into Mysore within the meaning of the definition. In Tata Iron and Steel Co., Ltd. v. S. R. Sarkar, it was held that a sale occasions the movement of goods from one State to another within section 3 (a) of the Central Sales Tax Act, when the movement is the result of a covenant or incident of the contract of sale'. That the cement concerned in the disputed sales was actually moved from another State into Mysore is not denied. The respondents only contend that the movement was not the result of a covenant in or an incident of the contract of sale.

8. In that case the Court held that the movement of goods was a result of the covenant of the contract of sale or an incident of such contract and so the sale must be treated as inter-State sale as defined in section 3 (a) of the Central Sales Tax Act, 1956. The Court did not go into the question as to whether the property had passed before the movement of the goods or not and this was because according to the decision in Tata Iron and Steel Co. Ltd., Bombay v. S. R. Sarkar and others, it did not matter whether the property passed in one State or another. The same principle was reiterated by this Court in K. G. Khosla and Co. (P) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras Division (1966) 17 S T C 473.

9. In the present case the sales of manganese ore took place under four written agreements-one with M/s. Ram Bahadur Thakur and Co, Nagpur, dated 22nd July, 1957, another with M/s. Jyoti Brothers, Calcutta, dated 7th March, 1958, and the remaining two with M/s. B P. Khemka and Co. Private Ltd., Calcutta, dated 10th November, 1956., and 29th May, 1958. In the first two contracts, there was a clause to the effect that the price was F. O. R. Katangjhiri railway siding and that the first weighment at the Gondia weighbridge shall be the basis for final accounts. It was held by the High Court that the clause relating to the weighment at Gondia weigh-bridge which fell in route between the place of despatch and the destination clearly showed that the performance of the contract

necessarily involved the movement of the goods accross the State frontier. As regards the other two contracts there is a specific clause that the price per ton will include railway freight from the loading station to the port of Vishakhapatnam and that the last 10 per cent, of the price will be paid on receipt of the goods at that port. The High Court took the view that these two contracts also involved despatch of goods outside the State of Madhya Pradesh and delivery thereof at a place outside the State, and so, the sales fell u/s 3 (a) of the Central Sales Tax Act.

10. On behalf of the appellant the Attorney-General put forward the argument that the High Court had misconstrued all the four contracts in respect of their true legal effect. It was contended that the High Court did not give proper consideration to the fact that two of the four contracts provided delivery of the goods F. O. R. loading point in the State of Madhya Pradesh and the transportation of the goods from the State to a place outside was subsequent to the passing of the title to the buyers within the State of Madhya Pradesh. We are unable to accept the argument put forward by the Attorney-General as correct. Having examined the terms of the four contracts in the present case, we are satisfied that the performance of each one of the contracts necessarily involved the movement of goods from the State of Madhya Pradesh to the State of Maharashtra or to the State of Andhra Pradesh. The relevant clauses of the contract with M/s. Ram Bahadur Thakur and Co., dated 22nd July, 1957, are as follows:

The sellers agree to sell and the buyers agree to purchase 500 tons (five hundred tons only), 10% more or less Indian hard lumpy manganese ore practically free from dust and fines and not more than 5% to pass through a 20 Mosh Tyler's Sieve of either of the following metallurgical specifications on terms and conditions hereinafter noted......

11. Price: - The price of goods mentioned in clause I, Grade 'A' above shall be Rs. 165 (Rupees one hundred and sixty-five only) per long ton of 2,240 lbs., each based on 48% M.N. unitage Rs, 3 per Mn. unit, fraction pro rata above 48% Mn F. O. R. Katangjhiri railway siding......

V. Weight:- The first net weight at Gondia weigh-bridge shall be final and binding on both the parties for the purposes of payment.

VI. Payment:- The buyers agree to pay a sum of Rs 35,000 (Rupees thirty-five thousand only) to the sellers on signing this agreement and the balance as follows-.

(a) 80% value of the estimated quantity of manganese ore tendered and accepted by the buyers after adjusting the proportionate advance, on receipt of satisfactory anal)sis report, shall be paid to the sellers.

(b) Balance payments shall be made by the buyers to the sellers after entire loading of the stock and on receipt of weight from Gondia weigh-bridge.

The second contract dated 7th March 1956, with M/s. Jyoti Brothers contains clauses to a similar effect:

Sellers:-Allwyn Cooper, Mining Proprietors, Wardha Road, Nagpur-1.

Buyers:-Jyoti Brothers, P 11, New Howrah Bridge, Approach Road, Calcutta......

Delivery:- Immediate at the Katangjhiri railway siding.

Weight:- The first weight of Gondia weigh-bridge shall be the basis for final accounts.

Price:-The price for Grade IV shall be Rs 178 (Rupees one-hundred and seventy-eight) and for Grade 'B' Rs. 158 (Rupees one-hundred and fifty-eight only) per long ton of 2.240 lbs. basis 48% Mn. with unitage fraction pro rata per Mn. unit above or below 48% Mn. F. O. R. Katangjhiri railway siding, Katangjhiri.

11. So far as these two contracts of sales are concerned, it is manifest that the first weighment at the Gondia weigh-bridge was the basis of fixation of price and the parties, therefore, necessarily contemplated the movement of the goods to the Gondia weigh-bridge and the weighment of the goods at Gondia in fulfilment of the terras of the contract. In our opinion, this is a very important feature of the two contracts and in order to fulfil the requirement of the clause, the seller had necessarily to move the goods by rail accross the frontier of Madhya Pradesh In regard to these two contracts, therefore, the movement of goods was a direct and necessary consequence of the important covenant with regard to the fixation of price. It follows that the sales under these two contracts were inter-State sales within the language of section 3 (a) of the Central Sales Tax Act and were not liable to be taxed under the Madhya Pradesh General Sales Tax Act.

12. The legal position with regard to other two contracts, viz., the contracts dated 10th November, 1956, and 29th May, 1958, with M/s. B. P. Khemka and Co., is the same. The relevant portions of the contract dated 10th November, 1950, are to the following effect:

An agreement of sale, made and entered into on this tenth day of November, nineteen hundred fifty six between.

Buyers:-B. P. Khemka, Private Ltd., 5, Clive Row, Calcutta-1, having their branch office at New Colony, Nagpur 1.

Sellers:-Allwyn Cooper, Wardha Road, Nagpur-1,

It is Agreed as Follows:

That the buyers have agreed to purchase from the sellers and the sellers have agreed to sell to the buyers 500 (five hundred only) long tons of high grade manganese ore, 10% more or less, of the specifications mentioned on the terms and conditions stated as under;-

Price;-Rs. 152 (Rupees one-hundred and fifty-two only) per long ton of 2,240

Ibs. plus railway freight from the station, Katangjhiri to the port of Vishakhapatnam shall be the F. O. R. Vishakhapatnam Port rate. The buyers shall pay at Rs. 152 per long ton to (he sellers and the actual railway freight to Vishakhapatnam to the railway authorities on account and on behalf of the sellers. The said price is based on 48 per cent, minimum, with unitage Rs 3 (three) on every one per cent, of minimum, below 48 per cent, fraction pro rata...... Payment:-20 per cent value of the ore shall be paid to the sellers by the buyers as advance against this contract during the last week of November, 1956. The buyers shall further pay 60 per cent, value on the basis of the quantity indicated on the analysis report and the balance 20 per cent, after the goods have been loaded, weighed and despatched to the port.

Weight:-The first weighments of wagons as recorded at the railways weigh-bridge shall be the basis for final account.

Loading:-The buyers shall indent for necessary number of wagons against their export quota and as and when wagons are allotted by the railway authorities, the sellers shall load them fully as their cost and expenses in accordance with the loading instructions given by the buyers and the loading foreman of the buyers shall be entitled to the supervise loading operation ....

The relevant portion of the contract dated 29th May, 1958, states:

An agreement of sale, made and entered into on this twenty-nine day of May, nineteen hundred fifty-eight, between:-

Buyers:-B. P. Khemka Private Limited, 5, Clive Row, Calcutta-1-Sellers:-Allwyn Cooper, Wardha Road, Nagpur-1.

It is agreed as follows : That the buyers have agreed to purchase from the sellers and the sellers have agreed to sell to the buyers about 450 tons of high grade manganese ore of the specifications mentioned below on terms and conditions stated as under:-

Delivery:- Prompt from ready stock at Katangjhiri railway siding in two stocks of about 250 and 200 tons .....

Price:-Rs. 150 (Rupees one hundred and fifty only) per long ton plus railway freight from loading station to the port of Vishakhapatnam will be the F. O. R Vishakhapatnam Port rate. The buyers shall pay at Rs. 150 per long ton to the sellers and the actual railway freight to the railway authorities on account and on behalf of the sellers. The said price is based on 48 per cent. Ma. with unitage Rs. 3 (three) per ton for each per cent, of Mn. above 48 per cent. Mn., fraction pro rata......

Payment:-90 per cent, value of the ore, on the basis of the quantity indicated on the analysis report, shall be paid to the sellers by the buyers on receipt of satisfactory analysis report from Messrs. Essen and Company, Nagpur, The balance 10 per cent, value shall be paid and the account finally settled after the goods have been loaded, weighed, despatched to the port and the goods have been finally received in the plots of the buyers at the port. The final invoice shall be prepared by the sellers on the basis of the analysis result obtained from Messrs. Hughes and Davies, Bombay, after ascertaining the weight of the ore from the railway weigh-bridge at Gondia.

Weight:-First weighments of wagons as recorded at Gondia railway weigh-bridge shall be final and binding on both the parties.

Loading:- Since wagons are allotted and supplied only to export quota holders, the buyers shall indent for necessary number of wagons against their quota slip to load and despatch the above quantity of manganese ore to the port. The sellers shall load the wagons at their cost and expenses as and when they are placed at their disposal. Delivery of the ore under this agreement shall be complete when it has been received in the plots of the buyers at the port......

13 It is evident that in these two contracts there is an express covenant for the despatch of manganese ore to Vishakhapatnam Port and for payment of a certain price for the ore, which included railway freight from Katangjhiri railway siding to Vishakhapatnam Port. Under one agreement, the last balance of the price of the goods was to be paid after loading, weighing and despatch of the ore to the port. The other agreement provided that the last balance of the price was payable after the acceptance of the goods "in the plots of the buyers at the port". It is manifest from these stipulations that the movement of manganese ore from the State of Madhya Pradesh to Vishakhapatnam outside the State was a direct result of the covenant of these contracts. It follows that these two sales also were inter-State sales u/s 3 (a) of the Central Sales Tax Act and were not liable to be taxed under the Madhya Pradesh General Sales Tax Act.

14. For the reasons expressed, we hold that the judgment of the High Court dated 26th November, 1965, is correct and this appeal must be dismissed with costs.

