

(2004) 12 GUJ CK 0032
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1994

Commissioner of Sales Tax

APPELLANT

Vs

Pure Beverages Ltd.

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax Act, 1956 — Section 3, 8, 8(1), 8(2), 8(3)
Gujarat Sales Tax Act, 1969 — Section 41(3), 46A, 69

Citation : (2005) 142 STC 522

Hon'ble Judges : Harsha Devani, J; D.A. Mehta, J

Bench : Division Bench

Advocate : Uday R. Bhatt, Additional Government Pleader, for the Appellant;

Judgement

D.A. Mehta, J.—The Gujarat Sales Tax Tribunal has referred the following question of law u/s 69 of the Gujarat Sales Tax Act, 1969 ("the State Act") for the opinion of this Court, at the instance of the applicant-State of Gujarat :

"Whether, on the facts and in the circumstances of the case, and having regard to the terms and conditions of the contract between the present opponent, M/s. Pure Beverages Ltd., and its vendee, the Gujarat Sales Tax Tribunal is justified in law in treating the sale of goods of Rs. 8,58,343 as inter-State sale as defined u/s 3(a) of the Central Sales Tax Act, 1956 and not local sales as envisaged under the Gujarat Sales Tax Act, 1969?"

2. The respondent-assessee is a limited company engaged in manufacture of cold drinks. For the period from January 1, 1977 to December 31, 1977, the respondent-assessee was provisionally assessed by the Sales Tax Officer (3), Ahmedabad District, Division 1, Ahmedabad, for the relevant period. Since the dues as assessed exceeded Rs. 25,000, the respondent-assessee objected to the provisional assessment and the Assistant Commissioner of Sales Tax (Appeals-5), Range 3/9 framed the assessment u/s 41(3) read with Section 46A of the State Act. The case of the assessee was that it had made inter-State sales to the tune

of Rs. 8,58,343, but the said claim was not accepted and it was disallowed treating the said sales as local sales.

3. The assessee preferred first appeal before the Deputy Commissioner, Ahmedabad Division, Ahmedabad, who for the reasons stated in his order dated June 13, 1984 confirmed the action of the assessing officer. The assessee carried the matter in revision before the Gujarat Sales Tax Tribunal ("the Tribunal") and the said revision application was registered as R.A. No. 53 of 1984. The Tribunal for the reasons stated in its order dated August 8, 1986 accepted the stand of the assessee, and hence, the present reference.

4. Mr. Uday R. Bhatt, learned Additional Government Pleader appearing on behalf of the applicant, submitted that the Tribunal had erred in accepting the claim made by the assessee that the sales stated to have been made to five different parties in Rajasthan were sales made within the meaning of Section 3(a) of the Central Sales Tax Act, 1956 ("the Central Act"). According to Mr. Bhatt, the onus was on the assessee to establish that there was a sale of goods and that the sale occasions the movement of goods from one State to another. That only if these conditions were shown to be satisfied, the assessee could be stated to have made inter-State sales within the meaning of Section 3(a) of the Central Act. Mr. Bhatt in support of the aforesaid proposition referred to *Balabhagas Hulaschand Vs. State of Orissa*, , with special reference to the proposition in paragraph 15 at page 53 of *M/S. BALABHAGAS HULASCHAND Vs. STATE OF ORISSA. (CIVIL APPEALS NOS. 449-454 OF 1971)*. *M/S. KELURAM RAMKARAN v. STATE OF ORISSA. (CIVIL APPEALS NOS. 888-890 OF 1974)*., which reads thus :

"That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce :

(i) that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another ;

(ii) that in pursuance of the said contract the goods in fact moved from one State to another ; and

(iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move.

If these conditions are satisfied then by virtue of Section 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act. This proposition is not, and cannot, be disputed by the learned Counsel for the parties."

4.1 According to Mr. Bhatt, the only contract between the parties was as incorporated in the terms and conditions printed on the reverse side of the invoice raised by the assessee. That as per the said terms and conditions, it was apparent that the contract was completed ex-factory ; the delivery of goods was given, and thereafter, there was no risk of the seller. In the circumstances, according to the terms, neither the indent memo issued by the purchaser nor the

advance payment made by the purchaser would go to prove that, in fact, the goods had moved from the State of Gujarat to the State of Rajasthan. That as the contract was completed ex-factory, it would amount to a local sale and the terms of the invoice went to show that any likely dispute between the purchaser and the seller was required to be resolved within the jurisdiction of Ahmedabad courts only. Referring to the submission on behalf of the assessee before the Tribunal regarding declaration before excise authorities, Mr. Bhatt submitted that the same was a voluntary act and even if the said documents, namely, the form submitted to the excise authorities, the gate pass issued by the excise authorities carried the details regarding the purchaser, i.e., the name and the out of State address, etc., it would not conclude the issue in favour of the assessee. Thus, according to Mr. Bhatt, the Tribunal had committed an error of law in reading the requirement of provisions of Section 3(a) of the Central Act, and once it was shown that the assessee had failed to establish inter-State movement of goods, nothing more was required to be done so far as the department was concerned and the transaction in question was liable to be treated as a local sale.

5. Though served, there is no appearance on behalf of the respondent-assessee.

6. The Tribunal has accepted the stand of the assessee and found that, "we, therefore, hold that in view of the facts and circumstances of the case, the goods have moved from Gujarat to Rajasthan as a contract of sale and a conceivable link is established and as such the sales in question are inter-State sales".

7. As the facts on record go to show, the assessee was approached by the purchasers from Rajasthan for sale of goods manufactured by the assessee. The assessee has placed on record, by way of illustration, complete set of documents reflecting the entire transaction in relation to one of the five purchasers, namely, M/s. Vijay Trading Corporation of Udaipur, and submitted that the transactions in relation to all the five parties are identical in nature.

8. The evidence before the Tribunal shows that M/s. Vijay Trading Corporation of Udaipur sent an indent memo dated March 6, 1977 which was accompanied by demand draft towards the goods required by the said party. The said indent memo and the demand draft were sent along with empty bottles and crates in truck No. RTY 5121 and the same truck number was mentioned in the indent memo calling upon the assessee to load the goods and supply the same to M/s. Vijay Trading Corporation. Accordingly, the assessee prepared invoice No. 344 dated March 7, 1977 which was accompanied by excise gate pass No. 1785 dated March 7, 1977, shipping memo No. 4761 dated March 7, 1977 and these documents specifically mentioned the particulars regarding the purchasing dealer and the destination of the goods. It has further been placed on record before the Tribunal that goods as mentioned in the invoice memo were actually loaded in the said truck and despatched to the purchasing dealer in Rajasthan. In light of the aforesaid facts which have come on record before the Tribunal, it is necessary to briefly recapitulate the provisions of Section 3 of the Central Act as

well as the settled legal position interpreting the said provisions.

9. Section 3 of the Central Act as is necessary for the present reads as under :

"Section 3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.--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.

Explanation 1.--Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2.--Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

10. In the case of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, , the honourable apex Court has 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."

10.1 In the case of Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes [1970] 26 STC 354 the honourable apex Court has observed as follows :

"A sale being transfer of property becomes taxable u/s 3(a) "if the movement of goods from one State to another is under a covenant or incident of the contract of sale".

10.2 In the case of Kelvinator of India Ltd. v. State of Haryana [1973] 32 STC 629 the honourable apex Court has observed as follows :

"It is also plain from the language of Section 3(a) of the Act that the movement of goods from one State to another must be under the contract of sale. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of the above clause. Perusal of Section 3(a) further makes it manifest that there must be a contract of sale preceding the movement of the goods from one State to another, and the movement of goods should have

been caused by and be the result of that contract of sale. If there was no contract of sale preceding the movement of goods, the movement can obviously be not ascribed to a contract of sale nor can it be said that the sale has occasioned the movement of goods from one State to the other."

10.3 In the case of *Oil India Ltd. v. Superintendent of Taxes* [1975] 35 STC 445 the honourable Supreme Court has observed as follows :

"This Court has held in a number of cases that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale.

Even though Clause 7 of the supplemental agreement does not expressly provide for movement of the goods, it is clear that the parties envisaged the movement of crude oil in pursuance to the contract from the State of Assam to the State of Bihar. In other words, the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale. No matter in which State the property in the goods passes, a sale which occasions, "movement of goods from one State to another is a sale in the course of inter-State trade". The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale."

10.4 The observations in the case of *Balabhagas Hulaschand Vs. State of Orissa*, have been explained by a later decision of the apex Court in the case of *Commissioner of Sales Tax, U.P. v. Bakhtawar Lal Kailash Chand Arhti* [1992] 87 STC 196 in the following words wherein similar contention raised on behalf of the sales tax department was repelled in the following words :

"Relying upon these statements, the learned Counsel contends that a concluded sale must necessarily take place in the other State and not in the State from which the goods emanate. According to him, a concluded or a completed sale must follow the movement of goods and should not precede. If a purchase or sale is complete in the State from which the goods emanate, he says, it can never be an inter-State purchase or sale. We cannot accede to this understanding of the learned Counsel. The said observations, no doubt rather widely worded, must be understood in the context of the question that arose for consideration in that case, viz., whether an agreement of sale is included within the definition of "sale" as defined in the Central Sales Tax Act. Be that as it may, the true position has since been explained in the later decision in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, . It is immaterial whether a completed sale precedes the movement of goods or follows the

movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected. The ratio of *Balabhagas Hulaschand Vs. State of Orissa*, is this : if the goods move from one State to another in pursuance of an agreement of sale and the sale is completed in the other State, it is an inter-State sale. The observations relied upon by Shri Sehgal do not constitute the ratio of the decision and cannot come to the rescue of the appellant-State. Indeed, if one looks to the language employed in Clause (a) of Section 3 it seems to suggest that the movement of goods follows upon and is the necessary consequence of the sale or purchase, as the case may be, and not the other way round."

11. Thus, the position in law is well-settled that the movement of goods from one State to another has to be as a result of a contract or an incident of the contract of sale, only then there is an inter-State sale. The contract may be express or implied. Similarly, it is also necessary for a sale to be deemed as an inter-State sale, that the covenant regarding inter-State movement must be specified in the contract itself. It is also immaterial as to in which State the property in the goods passes. However, simultaneously it has to be borne in mind that movement of goods which takes place independently of a contract of sale would not fall within the ambit of Clause 3(a) of the Central Act.

12. Before the aforesaid principles can be invoked and applied to the facts of the case, it is necessary to bear in mind that Section 3 of the Central Act is a charging provision and fastens liability to tax on assessee who enters into a transaction which falls within the meaning of inter-State sale as stipulated under the said section. On a conjoint reading of Clauses (a) and (b) of the said section, namely, Section 3 of the Central Act, it becomes apparent that the movement of goods from one State to another has to be occasioned by the contract between the parties and it is not necessary that the movement of the goods has to be only at the behest of the seller. That interpretation canvassed by the Revenue is not borne out from a plain reading of the provision. Even where the goods are delivered to the purchaser or his agent in the first State, if there is a movement of goods to the other State and same is occasioned or incident of contract of sale conditions specified in Section 3 of the Central Act stand fulfilled.

13. Section 8 of the Central Act provides for rates of tax on sales in the course of inter-State trade or commerce. In Sub-section (4) of Section 8 of the Central Act, it is specified that provisions of Sub-section (1) which prescribe the concessional rates will not apply to any sale in the course of inter-State trade unless the selling dealer furnishes to the prescribed authority in the prescribed manner, a declaration duly filled up and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. The Central Sales Tax (Registration and Turnover) Rules, 1957 prescribe under Rule 12 that the declaration and the certificate referred to in Sub-section (4) of Section 8 shall be in forms "C" and

"D" respectively.

14. The object of the provision, namely, Section 8 of the Central Act is to discourage inter-State trade with unregistered dealers and to canalise the inter-State trade through registered dealers over whom the appropriate Government would have control and thus prevent evasion of tax. In this context, the requirement and importance of form "C" has been explained by the Supreme Court in the case of *State of Rajasthan v. Sarvotam Vegetables Products* [1996] 101 STC 547 in these words :

"The "C" form prescribed by the Rules is titled "Form C-Form of Declaration". These forms are supplied by the appropriate authority under the Act to the purchasing registered dealers. If this form, containing all the relevant particulars is issued by the purchasing dealer to the selling dealer, the latter will collect tax (pass on tax) from the purchasing dealer only at the rate prescribed in Section 8(1); otherwise, he will collect tax at the higher rate, as may be applicable, prescribed by Section 8(2). The purchasing dealer must furnish all the particulars required by the said declaration/form. They include (1) name of the issuing State, office of issue, date of issue, name of the purchasing dealer along with his registration certificate number and the date from which the registration is valid and (2) particulars of the goods purchased, of the bill/cash memo/challan concerning the purchase and the purpose for which the goods are purchased. It has to be signed by the purchasing dealer. The selling dealer must produce these "C" forms in his assessment proceedings if he wishes to be taxed at the (lower) rate prescribed in Section 8(1). The purpose of the C form is obvious ; the Parliament wants to tax specified goods purchased for specified purposes [Sub-section (3) of Section 8] at a lower rate but anyone wishing to avail of the said lower rate must obtain from his purchasing dealer the C form and produce it before his assessing officer. Thus, Clause (b) of Sub-section (1), Sub-section (3) and Sub-section (4) go together. [Similarly, Section 8(1)(a) and Sub-section (4) go together.] The reason why the C form requires several particulars to be stated is to ensure that the concessional rate prescribed by Section 8(1)(b) is not misused or abused. With the help of those particulars, the appropriate authority or authorities can verify the truth and correctness of the transaction. Both the selling dealer and purchasing dealer are under an obligation to abide by the said requirements of law ; otherwise the very scheme underlying the said provisions breaks down. This crucial significance of the C form needs to be kept in mind."

15. Therefore, the tender of form "C" by the selling dealer raises a fundamental presumption that the purchasing dealer is a registered dealer and in such circumstances, it is possible for the assessing officer to undertake an exercise to verify the genuineness of the transaction. In the case at hand, admittedly, the assessee has produced "C" form in relation to the transactions with the five out of State purchasing dealers but the true import of the same has been lost on the authority.

16. The entire case put up by the sales tax department proceeds on the footing

that the only contract between the parties is governed by the terms and conditions printed on the reverse of the invoice, thus ignoring other accompanying documents like indent memo, declaration before the excise authorities, excise gate pass, shipping memo, etc.

17. On behalf of the applicant an additional contention has been raised--that the onus to establish movement of goods from the State of Gujarat to State of Rajasthan is on the respondent-assessee. That as the sale was concluded ex-factory and the assessee has not produced any further evidence to show movement of goods from this State to State of Rajasthan, the Tribunal had committed an error in accepting the version put forth by the assessee. It is an established position that the burden of proving an averment would be on the person making such an averment. In the present case, it is the Revenue which is averring that there is no movement of goods, and hence, the Revenue will have to discharge the onus. This is in light of the fact that the assessee has produced number of documents detailed hereinbefore coupled with form "C" from the purchasing dealer and the finding of fact recorded by the Tribunal which has already been reproduced heretofore.

18. In a converse situation, the Supreme Court of India in the case of Commissioner of Sales Tax, U.P., Lucknow v. Suresh Chand Jain [1988] 70 STC 45 laid down that "The onus lies on the Revenue to disprove the contention of the dealer". The apex Court was called upon to decide as to whether the sale of tendu leaves was in the course of inter-State trade or was it a local sale ? The case of the dealer was that he had effected only local sales but the Sales Tax Department did not accept the same. In aforesaid circumstances, while dismissing the appeal filed by the department, the court observed as aforesaid, and held that the condition precedent for imposing sales tax under the Central Act was that the goods must move out of the State in pursuance of some contract entered into between the seller and the purchaser.

19. In the present case, therefore, the assessee had claimed that the transactions in question were governed by Section 3(a) of the Central Act, that it was liable to be charged with tax under the said provision, but the department disputed the said averment. The contention of the department that the assessee ought to have procured evidence in the form of endorsement of the authorities at the check-post or delivery memo issued by the transporter or octroi receipts showing payment of octroi by the purchaser at the destination, etc., proceeds on the presumption that there is no movement of goods and discards the version of the assessee that both the sale and the movement of goods are part of the same transaction and there is a conceivable link between the sale and the movement of goods. In other words, the Revenue would like the court to raise a presumption that the purchaser must have diverted the goods after having taken delivery of the same at the factory gate. Not only does the Revenue fail in discharging the onus which is on it, but the presumption that it wants to draw is far-fetched in absence of any evidence to show that such an exercise had been

undertaken by the purchaser. The assessee herein, namely, the selling dealer had submitted "C" forms. It was open to the department to verify the genuineness of the transaction ; call upon the purchasers, who are registered dealers, and seek evidence to satisfy itself as to whether goods had in fact moved or not from this State to State of Rajasthan. The department does not undertake the requisite exercise, ignores the evidence produced by the assessee and merely presumes a state of affairs not warranted in law or on facts. "Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof." [Reference : Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa,

20. In the circumstances, it is not possible to accept the submissions made on behalf of the Revenue that the transactions in question did not amount to inter-State sale. Having regard to the terms and conditions of the contract which emanate from all the documents read together it becomes apparent that the Tribunal was justified in law in treating the sale of goods of Rs. 8,58,343 as inter-State sale within the meaning of Section 3(a) of the Central Act and not local sale as envisaged under the State Act.

21. The question referred is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue. Reference stands disposed of accordingly. There shall be no order as to costs.