(2015) 07 AHC CK 0139

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No. 1057 of 2011

D.P. Saw Mill — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 27-07-2015

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(g), 3, 3(a)
Constitution of India, 1950 — Article 226, 286(1)(a)
Sales of Goods Act, 1930 — Section 2(14), 20, 64, 64(2)

Citation : (2015) 7 ADJ 318

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Ashok Kumar and Praveen Kumar, for the Appellant; Balwant Singh and S. Shekhar, Advocates for the Respondent

Judgement

Surya Prakash Kesarwani, J—Heard Sri Praveen Kumar, learned counsel for the petitioner and Sri C.B. Tripathi, learned Standing Counsel for the respondents. Sri Praveen Kumar, learned counsel for the petitioner submits that the Circular No. 1251, dated 5.10.1993 issued by the Commissioner of Sales Tax, U.P. Lucknow expressing the view that timber sold through auction by the forest corporation is an intrastate sale and not interstate sale is violative of the provisions of Section 3 of the Central Sales Tax Act, 1956 (hereinafter referred to as the "Act").

2. Elaborating his submissions he urged that if the ingredients of Section 3 of the Act is satisfied then even in case of auction the sale would be inter-state sale and not the intra-state sale. He further submits that the purchases made by the petitioner is an inter-state sale and, therefore, a direction in the nature of mandamus may be issued to the respondent No. 5 to accept Form-C from the petitioner against the auction purchases of timber by the petitioner. He submits that the amount of value added tax realized by the respondent No. 5 from the petitioner is refundable, inasmuch as the auction sale in question is an inter-state sale and, therefore, it would fall out side the purview of out of the U.P. VAT

Act.

3. In support of his submissions he relied upon the judgment of Hon''ble Supreme Court in the case of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., (2007) 6 SCALE 284 : (2007) 9 SCC 97 : (2007) 5 SCR 792 : (2007) 1 SCR 683 : (2007) 7 VST 214 .

4. Sri C.B. Tripathi, learned counsel for the respondents submits that the auction sale made by the forest corporation was complete the moment bid of the petitioner was accepted. The bid took place within the State of U.P. He, therefore, submits that since the sale was complete in all respect within the State of U.P. and as such the sale was an intra-state sale and, therefore, no illegality has been committed by the respondent No. 5 to realize VAT. He, further submits that the auction sale in question was made by the respondent No. 5 in June/July pertaining to Assessment Year -2011-12 and the assessment for the said assessment year must have been completed, inasmuch as, the limitation provided under the U.P. VAT Act for completion of the assessment has expired. He submits that the assessment orders have not been challenged. He further submits that whether the sale in question was an inter-state sale or an intra-state sale is basically a question of fact to be decided by the fact finding authorities under the Act on appreciation of evidence and the contract of sale. Such questions cannot be adjudicated in writ petition under Article 226 of the Constitution of India and as such the writ petition itself was not maintainable. The impugned circular does not suffer from any infirmity, inasmuch as it merely reiterates the principles of law as laid down by Hon''ble Supreme Court in various judgments that the sale by auction is complete on acceptance of bid. He drew the attention of this Court to the provisions of Section 64 of the Sales of Goods Act, the provisions of Section 3 of the Central Sales Tax Act and the law laid down by Hon''ble Supreme Court in the case of Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, AIR 1979 SC 1160 : (1979) 2 SCC 242 : (1979) 2 SCR 453 : (1979) 43 STC 457 : (1979) 11 UJ 381 , Kelvinator of India Ltd. Vs. The State of Haryana, AIR 1973 SC 2526 : (1973) 2 SCC 551 : (1974) 1 SCR 463 : (1973) 32 STC 629 , Hyderabad Engineering Industries v. State of Andhra Pradesh, 2011 NTN (45) 141, Commissioner of Commercial Taxes, Hyderabad v. Desai Beedi Company, Andhra Pradesh, 2015 NTN (Vol. 58) 53 and the Division Bench judgment of this Court in M/s. Mohan Steels Ltd. and another v. Commissioner of Trade Tax and another and other connected writ petitions, (1996) UPTC 1121.

5. We have carefully considered the submissions of learned counsel for the parties and perused the record of the writ petition.

6. Briefly stated, the facts of the present case are that the petitioner deals in timber and other goods and is registered under the Bihar VAT Act and the Central Sales Tax Act. U.P. Forest Corporation, respondent No. 5 is also a dealer who invited tender for sale of timber by auction. It appears that the petitioner was a successful bidder and thus, purchased certain quantity of timber from the U.P.

Forest Corporation. Neither copy of tender notice nor the conditions of tender have been filed alongwith the writ petition. Merely, the approval of sale by public auction dated 23rd June, 2011 has been filed as Annexure No. 2 from which it appears that the bid of the petitioner for certain lots of timber was accepted by the U.P. Forest Corporation for Rs. 8,14,700/-. Clause 3 of the aforesaid approval specifically provides that if the timber is not removed by the auction purchaser within the specified time or within a further period of 15 days on payment of late fees then the amount deposited by the purchaser shall be forfeited and the Forest Corporation shall also become the owner of the timber of the lots, kept in the depot. This indicates that the delivery to the petitioner of the timber auctioned was complete at the depot of the Forest Corporation on payment of the agreed amount of consideration.

7. The question whether a particular sale is an intra-state sale or inter-state sale is basically a question of fact which can be appropriately adjudicated by the statutory authorities under the Act on appreciation of evidence brought on record including conditions of the tender. Learned counsel for the petitioner has also not disputed the fact that the assessment of the seller forest corporation must have been completed by now. The petitioner has also not denied that his assessment has also been completed by the concerned Assessing Authority under the relevant Act for the Assessment Year 20011-12.

8. In the case of Gail India Ltd. v. Sales Tax Officer, Gujrat, (2005) 10 SCC 192 para 12, Hon''ble Supreme Court held that the issue whether the transactions were inter-state sale or intra-state sale and if so, whether the sale had taken place in Andhra Pradesh, are issues which should be decided as a question of fact initially by a fact finding Tribunal. Thus, the question that auction sale effected by the U.P. Forest Corporation was inter-state sale or intra-state sale are basically questions of fact which cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India, particularly, when neither a copy of the tender notice nor the conditions of tender for auction sale of timber are available on record.

9. Section 3 of the Central Sales Tax Act, deals with the circumstances when the sale or purchase of goods can be said to take place in the course of inter-state trade or commerce which reads as follows :

Section 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.

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. The word "sale" has been defined under Section 2(g) of the Act as under :

"Section 2(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,-

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by installments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;"

11. In the present set of facts, we are concerned only with Clause (a) of Section 3 of the Act. A sale of goods can be said to have taken place in the course of inter-State Trade or commerce under Clause (a) of Section 3 of the Act if it can be shown that the sale has occasioned the movement of goods from one State to another. Thus, a sale in the course of inter-State Trade has three essentials namely;

"(i) There must be a sale,

(ii) the goods must actually be moved from one State to another, and,

(iii) the sale and the movement of goods must be part of the same transaction."

12. The word "occasions" is used as a verb and means "to cause or to be the immediate cause of". A transaction of sale becomes subject to tax on completion of sale. For a sale to be exigible to tax under the Act, it must be shown to have

occasioned the movement of goods from one State to another and the movement must be the result of a covenant or incident of the contract of sale. Thus, the sale of goods is in the course of inter-State Trade if the sale and movement of goods from one State to another are integral part of the same transaction. There must exist a direct nexus between the sale and movement of goods from one State to another.

13. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of the above clause (a) of Section 3 of the Act. In the case of Kelvinator of India Ltd. (supra) Hon''ble Supreme Court held in para 10 as under:

"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 a contract of sale preceding the movement of the goods from one State to another, and the movement of goods should have been caused 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.

14. In the case of Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, AIR 1970 SC 1281 : (1970) 1 SCC 622 : (1970) 3 SCR 862 : (1970) 26 STC 354 , constitution Bench of Hon''ble Supreme Court considered the provision of Section 2(g) and Section 3 of the Act, and held in para 5 as under :

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

15. In the case of Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, AIR 1979 SC 1160 : (1979) 2 SCC 242 : (1979) 2 SCR 453 : (1979) 43 STC 457 : (1979) 11 UJ 381 para 15 , the three judges Bench of Hon''ble Supreme Court explained the provisions of Section 3(a) of the Act, as under :

"It is true that in the instant case the contracts of sales did not require or provide that goods should be moved from Faridabad to Delhi. But it is not true to say that for the purposes of Section 3(a) of the Act it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. The true position in law is as stated in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, AIR 1961 SC 65 : (1961) 1 SCR 379 : (1960) 11 STC 655 , wherein Shah, J. speaking for the majority observed that clauses (a) and (b) of Section 3 of the Act are mutually exclusive and that Section 3(a) covers sales 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" (page 391). Sarkar, J. speaking for himself and on behalf of Das Gupta, J. agreed with the majority that clauses (a) and (b) of Section 3 are mutually exclusive but differed from it and held that "a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides" (page 407). The view of the majority was approved by this Court in The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another, AIR 1963 SC 980 : (1963) 3 SCR 777 : (1963) 14 STC 175 , State Trading Corporation of India Ltd. Vs. State of Mysore, AIR 1963 SC 548 : (1963) 3 SCR 792 : (1963) 14 STC 416 and Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others, AIR 1966 SC 563 : (1966) 2 SCR 190 : (1966) 17 STC 197 , in K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, AIR 1966 SC 1216 : (1966) 3 SCR 352 : (1966) 17 STC 473 , counsel for the Revenue invited the Court to reconsider the question but the Court declined to do so. In a recent decision of this Court in Oil India Ltd. Vs. The Superintendent of Taxes and Others, AIR 1975 SC 887 : (1975) 1 SCC 733 : (1975) 3 SCR 797 : (1975) 35 STC 445 : (1975) 7 UJ 289 , it was observed by Mathew, J., who spoke for the Court, that: (1) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) 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; and (3) 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 (page 801). The learned Judge added that it was held in a number of cases by the Supreme Court 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."

16. In the case of A.V. Thomas and Co. Ltd. Vs. Deputy Commissioner of Agricultural Income Tax, AIR 1964 SC 569 : (1963) 2 SCR 608 Supp : (1963) 14 STC 363 , a constitution Bench of Hon''ble Supreme Court considered the controversy relating to passing of the title in the goods to the buyer and held in para 7 as under :

"7. In the present case as soon as the hammer fell the title in the goods passed to the buyer as the goods were specific goods i.e. goods which were auctioned in full lots and this event took place at Fort Cochin which was in the State of Madras. But in the case of unascertained goods the title in the goods does not pass to the buyer unless and until the goods are ascertained. It was for this reason that a distinction was drawn by the Sales tax Appellate Tribunal between goods which were sold in full lots and those which were sold in portions. In regard to the former it was held that the title passed as soon as the hammer fell but not so in regard to the latter and therefore the sale of "full lots'' was held to have taken place outside the State of Travancore Cochin and of portions of lots inside that State. The case was consequently remanded to the Sales tax Officer for determining the amount of the tax."

(Emphasis supplied by me)

17. In the case of Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, AIR 1980 SC 1468 : (1980) 3 SCC 358 : (1980) 3 SCR 625 : (1980) 46 STC 164 , a three judges Bench of Hon''ble Supreme Court considered the sale by auction, provisions of Section 64 of the Sales of Goods Act and provisions of the Central Sales Tax Act and held in para 26 as under :

"Section 64(2) of our Sale of Goods Act, being in pari materia with Section 58(2) of the English Sale of Goods Act 1893, will have to be interpreted in the same manner and we are therefore, of the view that it does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. It would also be correct to say that if the auction sale of chattels is unconditional and is in respect of specific ascertained goods and nothing remains to be done to the goods for putting them in a condition ready for delivery, the property in the goods would pass to the purchaser upon the acceptance of the bid but that would not be because of Section 64(2) but because of Section 20 and such would not be the case if the goods sold thereat are non-specific or unascertained goods or the auction sale is conditional. In this context it will be useful to refer to a decision of this Court in A.V. Thomas and Co. Ltd. Vs. Deputy Commissioner of Agricultural Income Tax, AIR 1964 SC 569 : (1963) 2 SCR 608 Supp : (1963) 14 STC 363 , where this Court recognised a distinction between auction sales pertaining to specific or identifiable goods and auction sales in regard to unascertained goods and held that in regard to the former the property in the goods passed when the contract was accepted at the fall of hammer and not in the latter case. That was a case where the teas were stored in the godowns in the Willingdon Island which was in the State of Travancore Cochin and samples of those teas were taken to Fort Cochin which at the relevant time was in the State of Madras. At Fort Cochin by the samples the teas were sold by public auction in lots, some of the lots were purchased in their entirety and others in parts and after the consideration money was paid at Fort Cochin delivery orders were given to the buyers addressed to the godown keepers at Willingdon Islands and actual delivery of tea was taken there. These teas were then sent out from willingdon Island in Travancore Cochin for consumption either in other parts of India or were exported out of India. The taxability of the sales of teas in the manner mentioned above under the Travancore Cochin General Sales Tax Act depended upon whether the sales could be held to have taken place at Willingdon Island. i.e., within the territory of Travancore Cochin State and were liable to sales tax under the Act or whether the sales were ''outside sales'' and, therefore, not subject to sales tax in the State of Travancore Cochin in view of Article 286(1)(a) read with the Explanation. This Court after referring to Section 64(2) and the definition of ''specific goods'' in Section 2(14) of our Sale of Goods Act, took the view that on the fall of the hammer the offer would get accepted and if the goods were specific goods the title would pass to the buyer. The distinction that was made by the Sales Tax Appellate Tribunal between goods which were sold in "full lots" and those which were sold "in portions" and its view that in regard to the former title had passed as soon as the hammer fall and not in regard to the latter was referred to by this Court with approval. At page 612 this Court observed thus:

"In the present case as soon as the hammer fell the title in the goods passed to the buyer as the goods were specific goods i.e. goods which were auctioned in full lots and this event took place at Fort Cochin which was in the State of Madras. But in the case of unascertained goods the title in the goods does not pass to the buyer unless and until the goods are ascertained. It was for this reason that a distinction was drawn by the Sales Tax Appellate Tribunal between goods which were sold in full lots and those which were sold in portions. In regard to the former it was held that the title passed as soon as the hammer fell but not so in regard to the latter and therefore the sale of full lots'' was held to have taken place outside the State of Travancore Cochin and of portions of lots inside that State."

Approving the distinction this Court ultimately held that the sales of full lots'' being outside sales were not liable to the levy of sales tax. Thus Section 64(2) has nothing to do with the aspect of the passing of the property at an auction sale and it is by virtue of goods being specific and in a deliverable state that under Section 20 the property in such goods passes to the buyer at the completion of the contract at the fall of hammer at such sale."

18. In a recent judgment of Hon''ble Supreme Court in the case of Commissioner of Commercial Taxes, Hyderabad v. Desai Beedi Company, Andhra Pradesh, considered the provision of Section 3(a) of the Act with respect to auction sale of Beedi leaves and held it to be not an inter-state sale, as under :

"30. The tender schedule, as issued by the seller, also stipulates that the purchaser should remove the stocks from the godowns within 30 days of issue of delivery orders failing which the purchaser will have to pay the godown rent and other expenses on watch and ward, insurance etc. Further, the period for which the stocks remain in the godown, the seller shall not be responsible for any deterioration in the quality of ''Beedi'' leaves during the storage in godown. Based on the aforementioned stipulations, it is clear that the delivery of the goods is complete at the godown of the seller on payment of the amount of the agreed consideration.

32. Taking into consideration the abovementioned factors it becomes clear that the delivery of the goods takes place at the godown of the seller in the State of

Andhra Pradesh. The movement of goods from the godown takes place at the instance of the purchaser. The final destination of the consignment and the route or destination of the goods by the seller is inconsequential to the sale transaction.

33. In view of the above discussion, it can be inferred that the events of sale of goods by the seller and the movement of goods from the State of Andhra Pradesh to another State are not inextricably connected and independent of each other. There is no incident of direct sale between the seller and the head office of the respondent-Company in the State of Maharashtra. It is the branch office that purchases the goods and receives them subsequent to payment made by it to the seller and thereafter transfers it to the head office of the respondent-Company in the State of Maharashtra. The incidence of sale is complete once the purchaser, that is, the branch office renders the payment for the goods. Once the sale transaction concludes in the State of Andhra Pradesh only, the mere transport of goods from branch office in Andhra Pradesh to the head office in Maharashtra would not result in an inter-State sale. Therefore, the sale or purchase of the ''Beedi'' leaves in the present case do not occasion the movement of the goods outside the State in order to qualify as an inter - State sale under Section 3(a) of the CST Act and therefore, is exigible to tax under the Act."

In view of the above discussions, we do not find any merit in the writ petition. The writ petition fails and is hereby dismissed.

