(1989) 09 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 26 of 1985

Electric Construction and Equipment Co. Ltd. — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 21-09-1989

Acts Referred:
Central Sales Tax Act, 1956 — Section 3

Citation : (1990) 77 STC 424

Hon'ble Judges : Sukhdev Singh Kang, J;Jai Singh Sekhon, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; S.K. Sood, D.A., for the Respondent

Judgement

Jai Singh Sekhon, J.—The Sales Tax Tribunal, Haryana, Chandigarh, had referred the following question for the opinion of this Court u/s 42 of the Haryana General Sales Tax Act, 1973, at the instance of the assessee-company :

"Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal, Haryana, was right in law in holding that the sales tax authorities had correctly treated the stock transfers of the value of Rs. 75,11,460 from its factory at Sonepat to the Rajpura depot of its Patiala branch as exigible to Central sales tax as inter-State sales ?"

2. The brief resume of facts for understanding the controversy is as under :

The assessee-company manufactures various electrical equipments including transformers at its factory located at Sonepat in Haryana State. The head office of the company is located at Delhi. The company had branch offices at Rajpura in Punjab and at other places. It is a registered dealer both under the Punjab General Sales Tax Act, 1948 (as applicable to the State of Haryana) (hereinafter referred to as "the State Act") and the Central Sales Tax Act, 1956. The Punjab State Electricity Board (hereinafter referred to as "the Board") placed orders for the supply of 750 and 3,100 transformers vide their purchase orders dated 16th December, 1969 and 29th June, 1970, respectively. Copies of these orders are annexures A-l and A-2. The terms and conditions of both these purchase orders are identical. The said transformers were manufactured at Sonepat factory and thereafter were shown as transferred to the Rajpura branch of the company before being handed over to various offices of the Electricity Board in Punjab. The modus operandi of the company was that after the manufacture of the transformers at Sonepat, these were despatched to the company branch office at Rajpura for treating the transformers in order to make them ready for delivery as under :

(a) Filling up transformers with oil (required for cooling of transformer).

(b) Fixing of copper thimbles (required for connecting overhead line to the transformer bushing terminals).

(c) Fixing of arcing horns (required for protection of transformer against lightning).

(d) Fixing of silicagel breathers (required for permitting breathing in and out during the expansion and contraction of oil).

(e) Fixing of name-plates (giving details regarding the capacity, voltage, etc., of the transformer).

3. The assessee-company supplied 990 transformers to its Rajpura depot of Patiala branch during the assessment year 1970-71 at a total price of Rs. 75,11,460. Before the Assessing Authority, the dealer claimed the exemption from payment of Central sales tax on the ground that goods were moved from the factory to its Rajpura branch by way of branch transfers and not in pursuance of the contract of sale. The Assessing Authority, however, after examining the terms and conditions of the purchase orders concluded that the movement of the transformers from the factory at Sonepat was in pursuance of the contract of sale entered into by the assessee with the Electricity Board. In coming to this conclusion, the Assessing Authority mainly relied on para 20(b) of the purchase order providing certain tests to be performed by the assessee-company in its factory in the presence of a nominee of the Electricity Board before their despatch. It was also held that the above referred accessories required to be fitted with the transformers were only ancillary in nature and that it cannot be said that the transformers were partially manufactured till the accessories were fitted. The factum that the assessee-company had to give an advance notice to the Board before despatching the transformers from its factory at Sonepat in order to enable the Board to arrange purchase money also weighed with the Assessing Authority in coming to this conclusion. Aggrieved against the order of the Assessing Authority, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) u/s 9(2) of the Central Sales Tax Act read with Section 39(1) of the Haryana Act. The Deputy Excise and Taxation Commissioner (Appeals) also upheld the findings of the Assessing Authority vide his order dated 19th April, 1976. The assessee then filed second appeal before the Sales Tax Tribunal, Haryana. The Tribunal also dismissed the appeal of the

assessee vide its order dated 18th April, 1980, except allowing the assessee an opportunity of submitting C form for claiming some concession in the rate of tax. The case was remanded to the Assessing Authority for affording opportunity to the company to furnish requisite forms and proceeding further in accordance with law.

4. Feeling aggrieved against the said order of the Tribunal, the assessee-company claimed a reference to this Court u/s 42 of the Haryana Act for opinion on the above referred question of law.

5. Mr. B.K. Jhingan, the learned counsel for the assessee-company, contended that the perusal of the conditions of the purchase orders annexuies A-l and A-2 as a whole clearly shows that the transformers were despatched by the assessee from its Sonepat factory to Rajpura branch in incomplete condition because without the fixing of the accessories and putting oil in the transformers, these were not worthy of being used as such. He further maintained that the assessee-company manufactures identical transformers on the basis of the orders of the Electricity Boards of different States and thus the mere factum that the quality tests were to be conducted at the premises of the assessee-factory before their despatch to the Board is not of much consequence in concluding that the transformers were moved in pursuance of the contract of sale or purchase. In this regard, he has drawn our attention to the fact that both these purchase orders were addressed to the assessee-company at its branch office located at Patiala besides referring to Clauses 7 and 13(b) providing that the freight and insurance charges had to be borne by the assessee-company and that no Central sales tax will be payable as the goods are purchased by the Board from Patiala branch of the company. Mr. S.K. Sood, the learned District Attorney, appearing on behalf of the State of Haryana, on the other hand, maintained that in the purchase orders, the assessee had tried to create a smoke screen in order to depict that the transformers were not despatched from Sonepat in pursuance of the contract of sale by showing that some accessories were fixed in the transformers at Rajpura branch of the assessee and that, thereafter, the transformers were moved to Patiala branch and delivered to the Board. He further developed this point by referring to Clauses 22(b) and 9 of the purchase order.

6. There is no dispute between the parties that the transformers were manufactured at the factory of the assessee-company located at Sonepat and that there is no regular workshop being maintained at its Rajpura branch. Merely because filling of transformers with oil or fixing of copper thimbles, arcing horns, silicagel breathers and name-plates takes place at Rajpura branch, it cannot be said that the transformers were completely manufactured at Rajpura branch because if such like fixtures are fixed at the factory before the despatch of goods, there is every likelihood of the same being dislodged or damaged during transit. Thus it appears that these fixtures were fixed at Rajpura branch only to save the company from any loss in this regard. It is noteworthy that the

assessee had not set up a case of manufacturing these fixtures at Rajpura branch. Thus in a way it can be well said that these fixtures were also despatched from Sonepat factory to Rajpura before these were fitted or fixed in the transformers. We do not find any force in this contention of the learned counsel for the assessee.

7. In order to properly understand the controversy whether the goods were moved from Sonepat in pursuance of the contract of sale or purchase, the purchase orders annexures A-1 and A-2 would play the crucial role. No doubt, both these purchase orders are addressed by the Board to the assessee-company at its branch office Patiala, yet all the same the factum that Clause (b) of para 22 of the purchase order clearly provided that the transformers shall be inspected by the purchaser or its duly authorised agent at the factory of the assessee at Sonepat before their despatch and that the assessee-company shall give one month''s notice regarding readiness of the material for inspection for enabling the purchaser to depute its representative for the said purpose and that the same number of transformers were despatched from Sonepat factory to the Rajpura as were required to be delivered to the Board clearly spells out that goods were appropriated to the Board at Sonepat branch of the factory before their despatch and that the movement of these goods took place in pursuance of the contract of sale as envisaged u/s 3(a) of the Central Sales Tax Act. Contents of Clause (b) of para 22 of the purchase order annexure A-I pertaining to inspection by the purchaser read as under :

"(b) Inspection by the purchaser

The purchaser or his duly authorised agent shall inspect the material and witness test before despatch thereon any time during the course of manufacture. The supplier shall give one month''s notice regarding readiness of material for inspection to enable this office to depute its representative for the same. You shall have to provide facilities for carrying out routine tests. Heat run test on one unit for a lot of 260 units or part thereof and impulse test on one transformer as specified in the ISS will be conducted in the presence of a representative of this office with no extra cost before commencing supplies. No supplies should be despatched without inspection by the purchaser or its duly authorised agent."

8. From the perusal of the above referred clause of the purchase order, it can be well inferred that at the stage of manufacture, the assessee knew that particular transformers were meant for supply to the Board. The matter does not rest here as vide Clause 20 of the contract, the purchaser had reserved its right to cancel, amend or alter its order without assigning any reason whatsoever but before the receipt of intimation in its office regarding the commencement of manufacture or despatch of material to its destination. This clause clearly shows that the Board cannot cancel the order of purchase if the transformers are in the process of manufacture or had been despatched from the factory to its destination which in turn implies that the goods did move from the factory premises of the assessee-company at Sonepat in pursuance of the contract of sale.

9. Moreover, Clause 9 of the contract in annexure A-2 provides that the assessee-company would give at least 10 days'' prior notice before the despatch of the material to the Chief Accounts Officer of the Centralised Payment Cell, Patiala, in order to enable the latter to make arrangement for payment, failing which, the assessee-company shall be liable for demurrage/wharfage, etc. It is further provided that a copy of such intimation should be sent to the consignees, i.e., different offices of the Board in the State of Punjab directly also. This circumstance further shows that the goods were directly despatched from Sonepat in pursuance of the contract of sale for their delivery to different stations of the Board in the State of Punjab.

10. The question then arises whether Clauses 7 and 13(b) of the contract providing that no Central sales tax will be payable as the goods are being supplied from the Patiala branch of the company, it is noteworthy that it appears to be an attempt on the part of the assessee-company and the Board to evade the Central sales tax, yet all the same, above referred clauses of the contract of sale or purchase order clearly reveal that the movements of goods from the factory of the assessee located at Sonepat in Haryana took place in pursuance of the contract of sale. So, the above referred clauses are of no consequence to conclude that the movement of the goods was a branch transfer from the factory of the company to its branch office at Patiala or Rajpura.

11. Mr. Jhingan then tried to make out that the contract of purchase or sale was not complete before the movement of goods at Sonepat as there was no acceptance of offer on the part of the Board. Mr. Jhingan relying upon the decision of the Supreme Court in Kelvinator of India Ltd. v. State of Haryana [1973] 32 STC 629, further contended that the sale of transformers took place at Patiala in the State of Punjab and thus it was not a case of movement in pursuance of the contract of sale. We find no force in this contention as that case related to the movement of goods from Faridabad to Delhi, to the distributor on the basis of agreement between the assessee and the distributors and on these facts it was held by the apex court that the distribution agreements and the subsequent contracts of sale were different transactions but in the case in hand, as already discussed, the movement of goods took place from Sonepat in Haryana to Rajpura or Patiala in Punjab on the basis of contract of sale. The decision of the Supreme Court in Union of India v. K.G. Khosla and Co. Ltd. [1979] 43 STC 457, is aptly attracted to the facts of the case in hand. Therein, the apex court held as under vide head notes (i) and (ii) :

"Held, (i) that if a contract of a sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale. But for the purposes of Section 3(a) of the Act it is not 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. A sale can be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one

State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract ;

(ii) that goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by the respondent only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Although the contracts of sale did not require or provide that the goods should be moved from Faridabad to Delhi, the movement of the goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi. The High Court was, therefore, right in holding that the sales were inter-State sales and that the turnover of such sales was assessable to sales tax under the Central Act by the sales tax authorities of Faridabad.

12. The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the circumstance as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale."

13. In the above referred case, the goods confirming to agreed specifications were manufactured at Faridabad and although the sale agreement did not provide that the goods should be moved from Faridabad to Delhi, yet all the same the apex court held that since the contract of sale could be performed only by the movement of goods from Faridabad with the intention of delivering them to the purchasers, it was an inter-State sale.

14. Learned counsel for the appellant then tried to make out a case that the transformers did not pass to the Electricity Board till these were made fit for use after fixing the above referred fixtures. Reliance in this regard was placed on the provisions of Section 21 of the Sale of Goods Act, 1930. There is no dispute regarding the legal position but these provisions are not attracted to the case in hand as herein the controversy is whether the goods were moved from Sonepat to Rajpura or Patiala in pursuance of the contract of sale.

15. The apex court in English Electric Company of India Ltd. v. Deputy Commercial Tax Officer [1976] 38 STC 475, had farther held that when the movement of goods from one State to another is an incident of the contract of sale, it is a sale in the course of inter-State trade falling u/s 3(a) of the Central Sales Tax Act and it does not matter in which State the property in the goods passes, It was further held that the decisive circumstance in such matter is whether the sale is one which occasions the movement of goods from one State to another. In the case in hand, even if it is taken that the property in goods passed to the Board at Patiala, it would be of no consequence as the movement of goods from Sonepat took place in pursuance of the contract of sale.

16. Lastly, the learned counsel for the appellant tried to make out a new case contending that there being no unconditional acceptance of the offer by the assessee, a contract of sale has not come into force. Reliance in this regard was placed on the decision of the Division Bench of the Lahore High Court in Kahn v.

Jugal Kishore Gulab Singh AIR 1930 Lah 114, as well as in Kahn and Kahn of Delhi v. Premsukh Das Rup Narain AIR 1931 Lah 260. Reliance has also been placed on the decision of the Supreme Court in Badri Prasad Vs. The State of Madhya Pradesh and Another,

17. The assessee cannot be allowed to raise this argument especially when it was not raised before the Sales Tax Tribunal. Moreover, the opening words of the purchase orders annexures A-I and A-2 reveal that the assessee-company had filed the tenders which were accepted by the Board and thereafter a letter of indent was placed with the assessee-company and the assessee-company had accepted the same vide its letter dated 3rd December, 1969, in the case of purchase order annexure A-I and letter dated 25th May, 1970, in the case of purchase order annexure A-2. The assessee had not placed the relevant documents on the file in order to show that his acceptance of the proposal was not absolute but conditional. Thus there is no force in this contention.

18. For the foregoing reasons, there is no option but to conclude that the movement of transformers from the factory of the assessee at Sonepat to Rajpura or Patiala took place in pursuance of the contract of sale and it was a clear case of inter-State sale of goods. Thus the above referred question is answered in the affirmative and in favour of the Revenue. There is no order as to costs.

