
(2002) 08 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 907, 933 and 938 of 2000

Guljag Industries Limited

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 30-08-2002

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2), 9(1)
Constitution of India, 1950 — Article 19(1), 226, 286

Citation : (2003) 129 STC 3

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Advocate : P. Chidambaram, Rajendra Mehta, Pallav Shishodia, G. Maheshwari and R.K. Purohit, for the Appellant; Sangeet Lodha and Suman Porwal, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—These three special appeals are directed against the judgment of the learned single Judge dismissing the writ petitions on the ground of availability of alternate remedy and relegating the appellant to a statutory remedy under the Rajasthan Sales Tax Act, 1994. The appeals involve common questions of law and, as such, are disposed of by a common judgment.

2. By three different petitions, for the assessment years 1995-96, 1996-97 and 1997-98, the appellants challenged the authority of the Assistant Commissioner, Special Circle-II, Commercial Taxes Department, Jodhpur, making a demand u/s 29 of the Rajasthan Sales Tax Act, 1994, hereinafter referred to as "the RST Act", by treating the inter-State sales of goods effected in terms of Section 3(b) and Section 6(2) of the Central Sales Tax Act, 1956, hereinafter referred to as "the CST Act" as a local sale and thereby imposing tax at the rate of 4 per cent under the RST Act.

3. The appellant, a public limited company having its registered office at Jodhpur with branches at different places in the State of Rajasthan, is engaged in the

business of buying and selling chemicals, namely, methanol, chlorine, caustic soda lye, soda ash, hydrochloric acid, etc. It is averred that the appellant purchases the aforesaid chemicals in the course of inter-State trade from manufacturers/suppliers from Gujarat and effects subsequent inter-State sales to various buyers in the State of Rajasthan including SRF Ltd., Bhiwadi, by transfer of the documents of title to the goods, i.e., by endorsing goods receipts/bilties during their movement from Gujarat to Rajasthan. According to the appellant, these transit sales are duly supported by "C" forms from the purchasing dealers in Rajasthan and also forms E-I from the seller outside Rajasthan from whom the appellant has purchased the goods in the course of inter-State trade on "C" forms after paying 4 per cent CST. In the case of subsequent inter-State sales effected to SRF Ltd., Bhiwadi, the chemicals have been booked with the transporter by the appellant's Gujarat supplier for the destination Bhiwadi for being delivered to SRF Ltd., on the instructions and on account of the appellant. It is asserted by the appellant that in respect of all transactions in question, it is not in dispute that the appellant did not take physical/actual delivery of the goods at any time during the course of inter-State movement and that the transporter had given delivery to the ultimate buyers in whose favour goods receipts/bilties were endorsed by the appellant. The said goods merely passed through the areas where the appellant's branches/head office are located and they were carried to the destination of the subsequent buyers in that very vehicle in which they were brought from Gujarat by the same transporter. The case of the respondents as set up in the impugned notice is that on account of the entries of the said sales made by the appellant in the daily sales report, preparation of invoices and delivery challans in respect of the said sales, it must be presumed that the appellant took symbolic/notional/constructive delivery of the goods which terminated their inter-State movement and the sales effected thereafter were "intra-State sales" of such goods to the buyers in Rajasthan on which local tax is leviable. Thus, the question raised before the learned single Judge was with respect to the scope and interpretation of Section 3(b) and Section 6(2) of the CST Act and powers of the assessing authority in that regard. According to the appellant, Section 3(b) contemplates inter-State sales effected by transfer of documents of the title to the goods during their movement from one State to another and Explanation I appended thereunder provides that inter-State movement of goods commences from time the goods are handed over by the seller to the carrier or other bailee for transmission to the ex-State destination and such movement continues up to the time delivery of the goods is taken from such carrier or bailee by the purchaser. Subsequent inter-State sales satisfying the pre-conditions of requisite declaration are exempt from tax u/s 6(2). The learned single Judge following his own decision dated August 25, 2000 rendered in *B.S.L. Ltd. v. State* "S.B. Civil Writ Petition No. 651 of 2000", dismissed all the three petitions on the ground of availability of alternate remedy. The order dated September 18, 2000 followed in the other two writ petitions, dismissed by orders dated September 20, 2000 and September 25, 2000, reads as follows :

"In this case, the petitioner has alternate remedy available. In view of my judgment delivered in the case of B.S.L. Ltd. in S.B. Civil Writ Petition No. 651 of 2000 dated August 25, 2000, the petitioner in this case also will have to be relegated to the alternate remedy as provided by the statute. Reserving the right to pursue the alternate remedy, this petition is rejected."

4. We have perused the judgment of the learned single Judge in B.S.L. Limited's case (supra). It was a case wherein petitioner, M/s. B.S.L. Limited purchased diesel from Indian Oil Corporation and Bharat Petroleum Corporation during the relevant assessment year. A concessional tax and surcharge was paid on it at the rate of 3 per cent instead of 4 per cent, as was leviable and in doing so, the company had misused the S.T. form No. 17. According to the department, this payment of tax at the rate of 3 per cent instead of 4 per cent amounts, in the circumstances, was to evade the tax and hence show cause notice was given to the company as to why it should not be penalised for such misuse and evasion. The learned single Judge after referring number of decisions of the apex Court, held that as a general rule, wherever there is an alternate remedy available, it must be followed. It was further held that there can be a deviation from the general rule only when the well-defined exceptions as enunciated by the Supreme Court of India exist. In the opinion of the learned single Judge, there did not exist any exceptional reason to deviate from the general rule. The learned single Judge without putting the instant writ petitions to the test of exceptions of availing the alternate remedy, dismissed them. The learned single Judge has referred to the decisions of the apex Court in the *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, *Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay*, *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, *U.P. Jal Nigam and Another Vs. Nareshwar Sahai Mathur and Another*, *State of Himachal Pradesh Vs. Raja Mahendra Pal and Others*, *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, *Ramniranjan Kedia Vs. The Income Tax Officer, "A" Ward, Udaipur and Others*, *Bhanwarlal Binjara v. Assistant Commercial Taxes Officer, Jodhpur 1976 WLN (UC) 459*, *Kota Box Manufacturing Co. Vs. State of Rajasthan and Others*, *Lodha Fabrics and Another Vs. State of Rajasthan and Others*, *Gopi Lal Teli Vs. The State of Rajasthan and Others*, and *Laxman Singh Verma v. State of Rajasthan (2000) 1 RLR 137*.

5. Dealing with the question of alternate remedy, Mr. P. Chidambaram, Senior Advocate, has referred to a recent Division Bench judgment of this Court dated 29th May, 2002 rendered in *Rajasthan Textile Mills Association v. Director-General of Anti Dumping (D.B. Civil Writ Petition No. 4629/2001)*, to which one of us was a party (Mathur, J.), wherein after referring to various decisions of the

apex Court, viz., The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, , Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , Rohtas Industries Vs. S.D. Agarwal and Others, and The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , the court held that the High Court has power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction more particularly in a case where such an action is likely to subject a person to lengthy proceedings and unnecessary harassment. Thus, the alternate remedy has been consistently held by the courts not to operate as a complete bar for exercise of powers under Article 226 of the Constitution of India. The High Court having regard to the facts of the case, has discretion to entertain or not to entertain a petition. In spite of existence of alternate remedy, the High Court has power to entertain a petition under Article 226 of the Constitution of India where (i) there is a threat by the State to realise without authority of law tax from a citizen by using coercive machinery of an impugned Act infringing the fundamental rights guaranteed to him under Article 19(1)(g) of the Constitution, reference be made to Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, , The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, and Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, ; (ii) the action of the executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, reference be made to Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, ; (iii) the authority had no jurisdiction or had purported to usurp jurisdiction without any legal foundation, reference be made to Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; (iv) the constitutional validity of any statute is under challenge ; (v) the vindication of public right ; (vi) prevention of injury to public at large ; (vii) the act is arbitrary or without sanction of law, reference be made to Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, ; and (viii) the petition involves interpretation of constitutional provision and the taxability of the transaction in respect of a tax has been assessed, the reference be made to Paradip Port Trust Vs. Sales Tax Officer and Others, .

6. According to the appellant, the instant case clearly falls within the well-settled exceptions with the rule regarding exhaustion of alternate remedy. According to the appellant, the entry of sales in question fully satisfies the conditions of Section 6(2) and Section 3(b) of the CST Act and are duly supported by form "C" and form E-I on sale of goods effected in the course of inter-State movement, as such, the assessing authority by refusing exemption has usurped the jurisdiction under the RST Act. All the sales in question are governed by the CST Act and are beyond the scope of the RST Act. The attempt to treat the subject sale as a local

sale and thereby levy of Rajasthan sales tax is in violation of and beyond the constitutional mandate contained in Articles 19(1)(g), 269 and 286 of the Constitution of India.

On the other hand, it is submitted by the learned counsel for the respondents that the transaction of sale of chemicals as inter-State sale in terms of Section 6(2) read with Section 3(b) of the CST Act by way of transfer of documents of title to the goods, may not be treated as an inter-State sale. As a matter of fact, there is a symbolic/constructive/notional delivery taken by the appellant first at its branch. The entries in the books are made by the appellant in the stock registers, invoices are raised and fresh delivery challans are being prepared. Thus, it is not a case of inter-State movement but clearly a case of intra-State movement, inasmuch as the movement of the goods from Gujarat to Rajasthan comes to an end, when it is delivered at the branch office. According to the learned counsel, it is a disputed question of fact, which cannot be gone into in the writ jurisdiction.

7. In order to examine whether a case falls in any of the exceptional categories to by-pass the alternate remedy, an apparent error shown on the face of the record is required to be seen. To appreciate the controversy involved, it is necessary to acquaint with the relevant legislative provisions.

8. By virtue of entry 92A of List I of the Seventh Schedule appended to the Constitution, the Parliament has exclusive power to make laws with respect to "tax on sale or purchase of goods other than newspapers". The entry reads as follows :

"92-A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

9. It is well-settled that if the operation of an act of Legislature extends beyond the boundaries of the State, the law will be ultra vires under Article 245 in the absence of territorial nexus. The taxation by the State on sale or purchase, which takes place in the course of import outside the State or in the course of import of goods into or export of goods out of the territory of India is forbidden by Article 286 of the Constitution of India. The real purpose of Article 286(1) is to prevent imposition of unduly heavy burden upon the consumers by multiple taxation of a single transaction of sale. Article 286 reads as follows :

"286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--

(a) outside the State ; or

(b) in the course of the import of the goods into or export of the goods out of the territory of India.

(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) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce ; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of Clause (29-A) of Article 366, 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."

10. Parliament enacted the Central Sales Tax Act, 1956 to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State sale or commerce or outside a State or in the distribution of taxes on sale of goods in the course of inter-State trade or commerce and to declare certain goods to be of subject importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing tax on sale or purchase of goods of special importance. Once a sale is prima facie found to be an inter-State sale, the tax shall be collected in the State from which the movement of the goods commenced in view of Section 9(1) of the CST Act and none other. Thus, in the case of an inter-State sale, any act to realise tax from a citizen under the RST Act, will be ultra vires being in violation of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution. A citizen aggrieved will have a right to seek relief by a petition under Article 226 of the Constitution of India. In the instant case, the learned single Judge dismissed the writ petition even without looking into the facts of the case and appreciating the contentions, which prima facie indicates that all subsequent sales effected by the appellants during the course of inter-State movement of the said goods are exempt in terms of Section 3(b) and Section 6(2) of the CST Act. Such sale is governed by the CST Act and are beyond the scope of RST Act. Thus, the writ petition involved an arguable question as to whether there is a patent lack of authority to impose RST on the sales by treating them as local sales ? In our view, the learned single Judge was not justified in dismissing the writ petition on the ground of availability of alternate remedy.

11. Now turning to the merits of the case, Chapter II of the CST Act provides formulation of principles for determining when sale or purchase of goods takes place in the course of inter-State trade or commerce or outside the State or "in the course of import or export. Section 3 reads as follows :

"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."

12. By virtue of Section 3, the inter-State sales or purchases are carved out and separated from inside sales or purchase with reference to some indicia but integrated with them for the purpose of situs for taxation [1968] 21 STC 350 (Mad) (Hakim Syed Abid Hussain and Sons v. Government of Madras). A sale or purchase takes place inside the State if the specified or ascertained goods are within its limits at the time a contract of sale is made or in the case of unascertained or future goods they are within the limits of the State at the time of their appropriation to the contract of sale by the seller or the buyer. Once, this test is satisfied and it is established that the sale or purchase is one inside the State, it is at once a sale or purchase outside all other States but subject to the provisions of Section 3, which defines when a sale or purchase of goods takes place in the course of inter-State trade. A sale falling within the clause (a) is excluded from the purview of clause (b) of Section 3. A sale becomes taxable u/s 3(a) if the movement of goods from one place to another is the result of a covenant or incident to the contract of sale and property of the goods passes to the purchaser either State or otherwise than by transfer of documents of title when the goods are in movement from one State to another. The sale contemplated by sub-clause (b) of Section 3 is one which is effected by transfer of documents of title to the goods during their movement from one State to another. The sale effected by transfer of documents of title after the commencement of the movement and before its conclusion as defined by the two terminus set out in explanation 1 and no other sale, will be regarded as inter-State sale u/s 3(b). The transfer of documents contemplated by Section 3(b) is, therefore, such transfer as in law amounts to delivery of goods.

13. Explanation 1 gives a clue in case of sales falling within clause (b), i.e., the place where the sale is effected. It provides that where the goods are delivered to a carrier, the movement of goods shall be deemed to commence at the time of such delivery and terminated at the time the delivery is taken from such carrier.

14. The apex Court considering the provisions of Section 3 of the CST Act in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , observed in para 16 as follows :

"(16) The sale contemplated by clause (b) is one which is effected by transfer of

documents of title to the goods during their movement from one State to another. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b) ; nor will the sale in which the property in the goods passes after the movement from one State to another has ceased be covered by the clause. Accordingly, a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two termini set out in explanation (1) and no other sale will be regarded as an inter-state sale u/s 3(b). The definition of the expression "sale" undoubtedly includes transfer of goods on hire-purchase or other systems of payment by instalments, but thereby, a mere contract of sale which does not result in transfer of property occasioning movement of goods from one State to another does not fall within the terms of Section 3(a). That transaction alone in which there is "transfer of goods" on the hire-purchase or other systems of payment by instalments is included in the definition of "sale".

15. Section 6 is the charging section, which reads as follows :

"6. Liability to tax not conditional on any minimum turnover or upon the registration of the dealer or assessment.--The Act does not lay down any minimum turnover upon which the liability to tax may depend as is the case under the local sales tax laws. Tax under the Central Act is payable on each and every sale irrespective of the quantum of turnover. The liability to pay tax is also not conditional on the registration of the dealer or even assessment. Even if the registration of a dealer is bad, that can have no effect on the validity of the proceedings taken against him under the Act and the assessment of tax made thereunder. Assessment order only quantifies the liability which is definitely and finally created by the charging section."

16. By Section 6, every dealer is made liable to pay tax on sales effected by him in the course of inter-State trade or commerce. A subsequent inter-State sale effected by transfer of documents of title to the goods during the movement of the goods from one place to another is exempt from tax u/s 6(2) of the CST Act. As per the rules, a dealer in order to claim exemption in respect of second or subsequent inter-State sales has to necessarily file or produce, apart from E-I forms, also "C" forms from the purchasing dealer.

17. It is contended that the appellant is purchasing goods in the course of inter-State route and, inter alia, selling them to buyers in Rajasthan by effecting subsequent inter-State sales in terms of Section 3(b) and Section 6(2) of the CST Act and, therefore, obviously recorded the said transaction in its books of account and also executed necessary supporting document. It is asserted that the subsequent sales have been effected by endorsing the documents of title during the course of inter-State movement of the goods but no physical delivery was taken. The inter-State movement of goods continued and terminated in terms of Explanation I u/s 3(b) on subsequent buyers taking delivery of goods from the carrier.

18. On the other hand, it is submitted by Mr. Sangeet Lodha, learned counsel for the department, that the goods in question were purchased by the petitioner from M/s. Gujarat Alkalies in the course of inter-State trade and commerce. There was a constructive delivery of the goods at the branch office of the appellant inasmuch as an entry of the sale/purchase was made in the records. Not only this, but also the invoice and delivery challans were prepared. Further, there is a stock entry in the daily sales report, preparation of invoices/delivery challans, etc. Thus, according to Mr. Lodha, the symbolic/constructive/notional delivery being taken by the petitioner first at its branch, the inter-State movement of the goods from Gujarat to Rajasthan came to an end. It is submitted that by no stretch of imagination, it can be said that the subsequent sale effected by the appellant to M/s. SRF Limited is an inter-State sale in terms of Section 3(b) and Section 6(2) of the CST Act.

19. Learned counsel for the appellant has heavily placed reliance upon a decision of the apex Court in *G.A. Galiakotwala & Co. (P.) Ltd. v. State of Madras* reported in [1976] 37 STC 536. In the said case, the assessee having its place of business at Coimbatore entered into an agreement with a mill situated within the State of Madras for the sale of cotton. The assessee in turn placed orders with its sellers at Bombay for purchase of cotton and directed to despatch the goods to the mill as a consignee and sent the railway receipts to the assessee to endorse the same in favour of the mill after collection of a substantial portion of the sale price. The question came up for consideration as to whether the sale of cotton by the assessee to the mills within the State of Madras was inter-State sale u/s 3(a) of the CST Act or the local sale u/s 3(b) of the CST Act. The apex Court held that the sale by the Bombay seller to the appellant was an inter-State sale. As such, the sales tax authorities had jurisdiction to assess the transaction of sale by the assessee to the mill u/s 3(b) of the CST Act.

20. The apex Court in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, following its earlier decision in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, held that if the movement of the goods from one State to another is the result of covenant or incident of contract of sale, the sale is inter-State sale.

21. In *State of Tamil Nadu Vs. Dharangadhara Trading Co. Ltd.*, the court held that since the deliveries of goods sold, were effected by the transfer of documents after the movement of goods from one State to the other, the sales could be regarded as covered u/s 3(b) of the CST Act.

22. In *State of Gujarat v. Haridas Mulji Thakker* reported in [1992] 84 STC 317, the assessee, distributor of carbon dioxide, took orders from Ahmedabad and Surat in the State of Gujarat. The assessee in turn placed the orders to the supplier at Bombay. The goods were despatched by the Bombay supplier directly to the purchasers f.o.r. Bombay, the transport receipts in their names. The price charged by the assessee-dealer was higher than that charged by the Bombay supplier. The delivery of the goods was taken by the purchasers, paying the

freight charges. The question that came up for consideration was whether the sale by the assessee to the purchasers in Gujarat was an inter-State sale within the meaning of Section 3(b) of the CST Act and not a local sale liable to tax under the Gujarat Sales Tax Act. The High Court held that there were two deliveries which synchronised in point of time, even though both the sales were separate in point of fact and in law. When the Bombay supplier transported the goods to Gujarat and took out receipts in the name of the purchaser/purchasers in Gujarat, there was constructive delivery in favour of the assessee-dealer. The court further held that at the same time, there was constructive delivery of the same goods in favour of the purchasers. While effecting the second delivery, the Bombay supplier acted as agent of the assessee. In the opinion of the court, the moment the goods were transported and the transport receipts were taken in the name of the Gujarat purchasers, the property in the goods stood transferred in their favour. The sale was by transfer of documents of title to the goods while the goods were in movement from one State to another although there was no actual endorsement thereon by the assessee. The court concluded that the second sale was an inter-State sale within the meaning of Section 3(b) of the CST Act. In arriving at the said conclusion, the court relied upon a decision of the apex Court in *Bayyana Bhimayya Vs. The Government of Andhra Pradesh*, . The division Bench of the High Court negating the contention that there was only one transaction of sale between the mills and the third party and that the transaction between the dealer and the third party could not be treated as sale, observed as follows :

"It was held that there were two transactions of sale and sales tax was, therefore, payable at both the points by both the parties. The, Supreme Court held that there were two deliveries of the goods in question ; both the deliveries were synchronised in point of time but were separate both in point of fact and in law."

23. The Madras High Court in *Thavakkal Agencies v. State of Tamil Nadu* reported in [1981] 47 STC 179 found that where the goods sold and despatched by the assessee from Coimbatore to a buyer in Bangalore, were not accepted by that buyer, but the assessee found another buyer in Bangalore, raised a separate bill and arranged the goods to be delivered to the subsequent buyer, the goods were delivered only to a common carrier and the journey had not terminated as provided in the Explanation to Section 3(b) of the CST Act till the sale in favour of the subsequent buyer had taken place and in pursuance of that sale, the goods were delivered to the subsequent buyer. The court concluded that the transaction clearly falls u/s 3(b) and was liable to be taxed under the CST Act as inter-State sale.

24. Mr. Sangeet Lodha, learned counsel for the department, has referred to a decision of the Madras High Court in *State of Tamil Nadu v. N. Ramu Bros. (Electricals)* reported in [1993] 89 STC 481. In the said case, the assessee booked supply of generators from various customers in the State of Madras. The

assessee in turn placed orders with suppliers outside the State, mostly from Delhi. The suppliers despatched the goods through lorries of South Eastern Roadways, who were having their transport office at the place of those outside State sellers and also at Coimbatore in Tamil Nadu. On despatch of the consignments, the supplier advised the assessee through postal communication about the transport way-bill number, freight payable, insurance charges, etc. On receiving necessary particulars of the movement of the goods after despatch, the assessee informed its purchasers. Then the said purchasers paid the necessary transport charges from the place of origin outside the State and took delivery of the goods at their own respective business places in Tamil Nadu. The said purchasers also paid the transit insurance charges and other incidental charges before taking delivery of the consignments by themselves. Since South Eastern Roadways were not having their own transport office in all places of destination, the assessee gave necessary "letters of authority" to the lorry office of the said carrier at Coimbatore with instructions to deliver the consignments to the assessee's purchasers at their doorsteps. According to the Revenue, there was termination of movement of goods at Coimbatore and the assessee had taken the notional deliveries of the goods at Coimbatore and then the goods were booked covered by delivery notes in form XX. So, according to the Revenue, the subsequent sales by the assessee were only intra-State sales liable to be taxed under the State Act. It was admitted that there was no evidence at all as to when actually, this second subsequent sale had taken place. It was also admitted that in some of the sales in favour of number of purchasers, there was booking of the goods for transportation from Coimbatore to respective places of purchasers by separate lorry receipts in which only assessee figured as consignor. On the admitted facts, the court concluded that the assessee's sales in favour of the purchasers cannot be said to have been effected by transfer of documents of title to goods. The court also found that the movement of goods came to an end at Coimbatore at the time when the said notional delivery was effected there and so the subsequent sales by the respondents were only after the termination of such movement. In view of this, the court held that the assessee was not entitled to exemption u/s 6. Thus, this case does not advance the case of the department.

25. The Gujarat High Court in *State of Gujarat v. Chem-Dyes Corporation* reported in [1991] 83 STC 488, found that the modus operandi of the assessee was that he will purchase goods from the Bombay and despatch to Rajkot and the railway receipts will be handed over to the purchasers of the goods at Rajkot. The purchasers after taking delivery of the goods from the railway, will carry out inspection of the goods. After carrying out such inspection, they used to make payment of goods. According to the assessee, the sales were concluded only after inspection and approval of the goods by the purchasers. According to the Revenue, as the sale was complete only after the purchasers took delivery of goods, inspected them and ultimately approved them, the provisions of Section 3(b) of the CST Act were not attracted. The High Court held that one of the

requisite conditions for applicability of Section 3(b) was sale of goods and not an agreement to sale. The court also found that in the said case, the railway receipts had been endorsed by the dealer in favour of the intending purchasers during the movement of goods but sale had not taken place. The court observed that during the said period, what was in existence was merely an agreement to sale. Thus, the provisions of Section 3(b) of the CST Act were not attracted. The court following the decision of the apex Court in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , observed that the sale contemplated by clause (b) is one which is effected by transfer of documents of title to the goods during their movement from one State to another and where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b) ; nor will the sale in which the property in the goods passes after the movement from one State to another has ceased, be covered by that clause. On facts, the court found that there was nothing to indicate that the intending purchasers had entered into agreement to sale in which there was stipulation regarding transfer of property in the goods. On the contrary, the finding of facts was otherwise. It was categorically found that the property in the goods had passed only after the goods reached the destination at Rajkot and only after the intending purchaser took delivery and thereafter inspected and approved the same. In our view, this case is also of no avail to the department.

26. Another case which the department has referred to is of Madras High Court reported in [1992] 86 STC 554 (*Sundaram Industries v. State of Tamil Nadu*). In the said case, the assessee, a dealer in Madras entered into a contract with SPIC for supply of HDPE bags at Tuticorin. The supply was subject to verification and approval at the time of delivery. A part of the supply was made by purchase of the goods in question from suppliers outside the State in Bangalore. The Bangalore manufacturers directly sent the goods in question, to SPIC at Tuticorin in the name of the consignee as SPIC. The supply was made under instructions and to the account of the assessee. The turnover of bags supplied by the Bangalore manufacturers was claimed by the assessee to be exempt from taxation u/s 6(2) of the CST Act and in the alternative, even if it was not, the assessee claimed that it was not liable to the sales tax under the Tamil Nadu General Sales Tax Act, 1959. It was found that there was no material on record to establish that the assessee had effected the transfer only by the documents nor that the transfer of goods had been made after the goods had left Bangalore and before they reached Tamil Nadu. It was also found that there was no stipulation between the assessee and the SPIC about the place from where the goods were despatched. The court found that there was no material on record to establish that the assessee had effected the transfer only by documents. There was also no material on record to show that the transfer of goods had been made after the goods had left Bangalore and before they had reached Tamil Nadu. In these circumstances, the court held that the transaction between the assessee and the SPIC was not an inter-State sale but an intra-State sale in pursuance of the contract executed between the assessee and the SPIC. Thus, in the opinion

of the court, the assessee could not claim exemption u/s 6(2) of the CST Act. Apparently, this decision also does not help the department.

27. The department has heavily relied upon a decision of the Delhi High Court in *Arjan Dass Gupta & Bros. v. Commissioner of Sales Tax* reported in [1980] 45 STC 52. The assessee, M/s. Arjan Dass Gupta was engaged in the business of selling coal, imported from Bihar/Bengal to retailers in the Union Territory of Delhi. During the assessment year 1964-65, procurement of coal from the collieries outside Delhi and its sale in Delhi was regulated by the Delhi Coal Control Order, 1963, issued u/s 3 of the Essential Commodities Act. The assessee used to place orders on colliery owners in Bengal/Bihar for the purchase of coal. The railway receipts for the consignments of coal used to be in the name of the dealer as consignee (freight to pay) for despatch to Delhi. The invoices covering the cost of coal despatched and the sales tax under the Central Act charged by the colliery owners on the consignments of coal despatched to Delhi also used to be in the name of dealer. On arrival of the consignments, the dealer used to present the railway receipts before the civil supplies authorities for endorsement on the railway receipts, which permit the import of coal within the Union Territory of Delhi under the provisions of the notification issued under the Essential Commodities Act. The railway receipts so endorsed by the civil supplies authorities used to be endorsed by the assessee in favour of the purchasing retailers in Delhi. The actual delivery of the coal wagons in Delhi used to be taken by the purchasing retailers on payment of railway freight to the railway authorities. The landed cost of coal used to be paid to the dealer by the purchasing retailers which included the cost of coal, the Central sales tax and the dealer's profit. The court held that where the documents of title were transferred after the coal had landed in Delhi or the sales thereafter were intra-State sales within Delhi. The court further held that the sales in question did not fall u/s 3(b) read with Explanation I of the CST Act. This case also has no application to the facts of the case, as it pertains to the essential commodities and further that it does not deal with the question of subsequent sale. The High Court also has not taken into consideration the decision of the apex Court in *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, . Therefore, this case is of no help to the department.

28. A division Bench of the Allahabad High Court in *Karam Chand Thappar and Brothers (C.S.) Ltd. v. Sales Tax Commissioner*, reported in 1981 TLR 3101, did not agree with the view expressed by the Delhi High Court in *Arjan Dass Gupta's* case [1980] 45 STC 52. Dealing with Section 3(b) read with Explanation 1, the court held that a sale or purchase of goods takes place in the course of inter-State trade or commerce, if effected by the transfer of documents of title to the goods during their movement from one State to the other, shall be deemed to be an inter-State sale. The court found that the starting point of the movement is delivery of the goods to the carrier or bailee for transmission and the point of termination is when the goods are taken delivery of from the carrier or such bailee. The division Bench held that the Explanation contains a deeming clause

and the fiction so created is to be taken to its logical conclusion. The court further held that if sale or purchase is effected by transfer of documents of title to the goods during such movement of the goods, it shall be treated as an inter-State sale. We are in respectful agreement with the view expressed by the division Bench of the Allahabad High Court.

29. The assertion of the department to the effect that there was constructive delivery of the goods at the branch office of the appellant is on the basis of stock entries in the daily sales register and preparation of invoices/delivery of challans favouring the subsequent buyers. In this regard, Explanation I provides the clue. It defines commencement of the movement of goods and their termination and, as such, it overrides any other concept regarding commencement and termination of movement of goods for the purpose of Section 3(b). We do not find anything in the language of the Explanation I, which may indicate that the movement of the goods contemplated therein would terminate on the basis of constructive delivery being presumed on account of certain entries. The delivery contemplated is only actual delivery and till such delivery is taken by the buyer from the transporter, the movement of goods continues. It cannot be disputed that the subsequent sale has been effected by endorsing the documents of title during the course of inter-State movement of the goods. The goods were delivered to SRF Limited at Bhiwadi as per the bilties and the said SRF Limited took delivery from the transporter. One of the invoices produced before us shows the name of the consignor as Gujarat Alkalies and Chemicals, Baroda, and the name of the consignee is Guljag Industries Limited, Jodhpur. The goods are to be delivered at SRF Limited, Bhiwadi. It also gives the MTR/VR No. 5235 dated March 2, 1998. The tanker's number is GJ9V-1807. On the back of the invoice, there is an endorsement made by the manager of the appellant to deliver the goods at SRF Limited, Bhiwadi. Another receipt dated March 4, 1998 shows that the liquid chlorine bearing MTR/VR No. 5235 dated March 2, 1998 was delivered at Bhiwadi. It carries the same tanker No. GJ9V-1807. It clearly shows that the movement did not terminate earlier on account of the appellant's endorsement of documents of title or on account of making entries, invoice, challan, etc. So far as the entry in the daily sales report and the preparation of the invoices/delivery challans favouring the subsequent buyers is concerned, it appears to be on account of the first inter-State sale in the appellant's favour involving in the transaction. Thus, on this basis alone, no presumption of constructive delivery can be drawn. When the appellant effected subsequent inter-State sale by endorsing the documents of title forthwith and accordingly, the transporter who brought the goods from outside the State took the goods to the subsequent buyers, who obtained delivery thereof, there is no question of any notional or constructive delivery to the appellant. The appellant did not take delivery of goods. Inter-State movement of goods continued and terminated only upon taking delivery of goods by subsequent buyers. Thus, it emerges from the facts that--

(i) The chemicals have been booked with the transporter by: he appellant Guljag

Industries for destination to Bhiwadi to be delivered to SRF Limited on the instructions and on account of the appellant ;

(ii) In respect of all transactions in question, the appellant did not take physical/ actual delivery of goods from the transporter at any time during the course of inter-State movement ;

(iii) The transporter had given delivery to the ultimate buyer in whose favour, goods receipts/bilties were endorsed by the appellants ;

(iv) The said goods merely passed through the areas where the appellant's branches/head office are located and they were carried to the destination of the subsequent buyers in that very vehicle in which they were brought from Gujarat by the same transporter. Thus factually, the movement of goods continued and the transporter also continued to carry goods as transporter.

30. Consequently, the inference of constructive delivery raised in the instant case by the assessing authority, which is the sole basis for refusing the exemption, is patently illegal.

31. It is also submitted by the learned counsel for the appellant that u/s 51(2) of the Sale of Goods Act, goods are deemed to be in transit from the time they are delivered to a carrier or other bailee for transmission to the buyer until the buyer takes delivery of them from such carrier or other bailee. In terms of Section 51(3) of the said Act, transit comes to an end when after arrival of the goods, the carrier or bailee acknowledges to the buyer that he holds goods on his behalf, i.e., there is an agreement between a carrier and the buyer by which carrier undertakes to hold goods for consignee not as a carrier but as his agent. There is a mutual agreement to the change of character distinct from the original contract of carriage. So long as the goods are in the hands of carrier/ transporter, they are not and they cannot be in the actual and/or constructive possession of the purchaser, despite their reaching at the destination and/or even the destination of the buyer/purchaser. After arrival of the goods at the destination, the delivery of goods takes place when the same are delivered to the buyer and/or his agent. This is actual or physical delivery. However, when carrier agrees to hold goods for the purchaser, which means that there comes into existence an agreement between the carrier and the buyer to that effect by agreeing to hold goods not as carrier but as an agent of the buyer, there may be constructive delivery and transit may come to an end. It is not the department's case. The only basis is making of entries, invoice, challan, etc., by the appellant for records and accounting purposes. The appellant without taking delivery of goods effected subsequent inter-State sales by endorsing bilties in favour of the subsequent buyers which resulted in transfer of property in goods during the course of inter-State movement. Further the fact that the subsequent buyers obtained delivery from the same transporter on or about the same day, clinches the point of termination of movement in terms of Section 3(b) of the CST Act. Thus, the appellant's act, viz., making of entries in the records, making of

invoices, challans, etc., bearing factum of endorsement for accounting and record purposes cannot be construed as resulting in constructive delivery in any manner. Thus, we conclude that all the subsequent sales effected by the appellant during the course of inter-State movement of the subject goods are exempt in terms of Section 3(b) and Section 6(2) of the CST Act. The subject sales is governed by the CST Act and, therefore, beyond the scope of the RST Act. The proceedings initiated by the authorities under the RST Act are wholly without jurisdiction and without authority of law.

32. It is relevant to mention here that the learned single Judge dismissed the writ petition on September 18, 2000 and the assessing authority took up the matter on September 19, 2000. A request was made before him to adjourn the matter to enable the appellant to challenge the said judgment before the division Bench but the same was declined. This fact is noted in the order dated September 22, 2000. In view of the post judgment development, the amendment was granted whereby a prayer has been made to quash the order of the assessing authority dated September 19, 2000.

33. Consequently, all the three special appeals being D.B. Civil Special Appeal Nos. 907 of 2000, 938 of 2000 and 933 of 2000 are allowed ; the judgments of the learned single Judge dated September 18, 2000, September 20, 2000 and September 25, 2000, passed in S.B. Civil Writ Petition Nos. 3345 of 2000, 3624 of 1999 and 3202 of 1999 respectively are set aside ; and the impugned notices dated September 1, 2000, August 19, 1999 and March 16, 1998, issued by the Assistant Commissioner, Special Circle-II, Commercial Taxes Department, Jodhpur, are quashed and set aside. The order of assessment dated September 19, 2000 is also quashed and set aside. Cost easy.