

(1995) 11 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 49 of 1994

Gupta Engineering Works and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Constitution of India, 1950 — Article 265

Citation : (1996) AWC 370 Supp

Hon'ble Judges : V.N. Khare, J;M. Katju, J

Bench : Division Bench

Advocate : Kavin Gulati and Sudhir Chandra Agarwal, for the Appellant; S.C. and S.P. Gupta, for the Respondent

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 3.1.1994, Annexure 6 to the petition and for quashing the impugned circular letter dated 5.10.1993, Annexure 5 to the petition.

2. We have heard Sri Sudhir Chandra, learned Counsel for Petitioner and Sri S. P. Gupta, learned Counsel for Respondent No. 3.

3. The Petitioner No. 1 claims to be a registered dealer having its place of business at Faridabad in Haryana. Petitioner Nos. 2 to 5 are partners of Petitioner No. 1 which is engaged in manufacture of wood wool, wooden boxes, etc. It is alleged in para 2 of the petition that the Petitioners have no works in Uttar Pradesh nor do the Petitioners have any business interest in Uttar Pradesh. The Petitioners purchase timber from the Uttar Pradesh Forest Corporation, Respondent No. 3 which is used as raw material by the Petitioners for manufacturing its products. The Petitioners have been participating in auction sales held by the Corporation in various places in U.P. It is alleged that the Petitioners take delivery of the goods in U.P. and send it to Faridabad in Haryana. Petitioners are required to give an affidavit to the Corporation to the effect that the goods which have been purchased by the Petitioners have in fact been taken

to Faridabad and for the purposes of manufacturing the products of the Petitioners. It is also alleged in para 9 of the petition that the sales made by the Forest Corporation are inter-State sales and hence only the Central Sales-tax applies and the Petitioners are liable to pay only 4% against Form C. However, as alleged in para 10, the Forest Department is charging 15% sales tax treating the transaction to be intra-State sales, which has been done in pursuance to the circular dated 5.10.1993 Annexure 5 to the petition is sued by the Commissioner, Sales Tax, U.P. There is another circular requiring the Petitioner to take transit passes before transporting its goods out of Uttar Pradesh. Petitioners claim that they are liable to pay 4% sales-tax under Central Sales Tax Act and they are not liable to pay 15% sales-tax under U.P. Trade Tax Act.

4. Counter-affidavits have been filed by the sales tax department as well as by Respondent No. 3. in para 3 (b) of the counter-affidavit of the sales-tax department, it is stated that whether the transactions of the Petitioners are inter-State sales or intra-State sales is purely question of fact. in para 3 (d), it is stated that the impugned circular dated 5.10.93 has been issued on the basis of different facts regarding the procedure of sales by the Corporation as collected by S.T.O. (S.I.B.) Bareilly. True copy of the enquiry report is Annexures CA-1 and CA-2. It is alleged in the said paragraph that the sales are intra-State sales. in para 6, it is stated that the purchaser is free to sell the goods within U.P. or to take it away outside U.P. The Forest Corporation has no control over the goods after the auction. in the counter-affidavit of the Corporation, it is alleged that the sales are intra-State sales.

5. Learned Counsel for the Petitioners submitted that the impugned G.O. dated 5.10.93 is invalid because the Commissioner of Sales Tax cannot make a general opinion that all these transactions entered into between the Petitioners and the Corporation are intra-State sales. in our opinion, it is correct that each individual transaction has to be examined to determine whether it is an inter-State sale or intra-State sale in accordance with the judgment of Supreme Court in AIR 1992 SC 1952. However, it seems to us that the impugned circular was Issued only as a protective measure to protect the interest of the Corporation. We have to consider the matter from a practical point of view. A certain purchaser may inform the Corporation that he is going to transport the goods outside U.P. but in fact he may sell the same within U.P. and thus benefit by the difference between 15% and 4% sales-tax, i.e., he may get benefit of 11%. Merely because the Petitioners have alleged that they are transporting the goods to Haryana that cannot be said to be conclusive of the matter. Each individual transaction has to be examined as to whether the transaction was in fact an inter-State sale or not in accordance with the principles laid down by the Supreme Court in the aforesaid decision and other relevant decisions. Moreover, the question whether a sale is an inter-State sale or intra-State sale is often a very difficult question to decide. It can hardly be expected of the Corporation's Officer who is not even trained in law to decide on the spot this difficult question which often perplexes even trained legal minds. Hence, in our opinion, the impugned circular dated

5.10.93 should be treated to be merely a protective measure and not a final decision that all sales by the Forest Corporation are intra-State sales.

6. It is true that a circular cannot be override an Act. The definition of Inter-State sale is given u/s 3 of the Central Sales Tax Act and it is that definition as Interpreted by various decisions of the Supreme Court which will be determinative of the question whether a particular sale is an inter-State or intrastate sale. However, in our opinion, it was open to the Respondents to take a protective measure in the matter and issue the impugned circular to protect the Interest of the Corporation as well as the sales-tax department. The realisation of 15% sales-tax by the Corporation from the Petitioners treating the transactions as intra-State sales, in our opinion, is only a provisional protective measure and as such, it is subject to the final assessment in sales-tax proceedings. in our opinion, the circular dated 5.10.1993 cannot be treated as binding on the sales-tax authority while adjudicating on the matter. The sales-tax authorities will decide after examining each individual transaction of sale as to whether it was inter-State sale or intra-State sale in the light of the judgment of the Supreme Court quoted above as well as other decisions bearing on the point. If the sales-tax authorities find that it is an inter-State sale, then balance of 11% will be refunded by the Forest Corporation to the Petitioners forthwith along with 10% per annum interest.

7. Sri Sudhir Chandra, learned Counsel for the Petitioners submitted that there is no provision under law to take such a protective measure and it would be violative of Article 265 of the Constitution. We are not in agreement with this submission. Protective measures are not unknown to law. For example, in Income Tax proceedings, very often protective assessments are made. It may be mentioned that the sales-tax has to be paid by the Forest Corporation, and if it realises only 4% tax from the Petitioners but the sales-tax department demands 15% from the Corporation, the interest of the Corporation will suffer because it would have to pay the balance of 11% from its own resources and it may have difficulty in realising the said 11% from Its purchaser. Hence a protective step has been taken by the Respondents in realising 15% from Petitioners but, in our opinion, if the sales-tax authorities find that transactions of sale by the Corporation to the Petitioners are inter-State sale, then the Corporation will refund the balance of 11% to the Petitioners forthwith with 10% Interest. Thus, we are not striking down the circular dated 5.10.93 but we are interpreting it in the manner indicated above and we make it clear that the said circular will not be binding on the sales-tax authorities which make the assessment.

8. Sri S. P. Gupta, learned Counsel for Respondent No. 3, submitted that in view of the interim order of this Court dated 14.2.94, the Petitioners have purchased the goods by paying only 4% and if ultimately it its held by the sales-tax authorities that 15% tax was payable, the interest of the Corporation will suffer. in our opinion, if it is held that the tax payable was 15%, then the Petitioners will have to refund the balance 11% to the Corporation forthwith.

The writ petition is disposed of finally.