
(1989) 08 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 1 of 1981

Haryana Iron and Steel Rolling Mills

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-08-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6A, 9

Citation : (1990) 77 STC 211

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

Bench : Division Bench

Advocate : Viney Mittal, for the Appellant; S.K. Sood, D.A., for the Respondent

Judgement

Jai Singh Sekhon, J.—The Sales Tax Tribunal, Haryana (herein after referred to as "the Tribunal"), had referred the following questions of law for the opinion of this Court :

(i) Whether the Tribunal was justified in relying on Section 6A of the Central Sales Tax Act in deciding the case and, if not, whether in the facts and circumstances of the case it would materially affect the decision arrived at by the Tribunal ?

(ii) Whether the appellate authority was justified in enhancing the taxable turnover on account of inter-State sales tax from Rs. 2,65,134.56 to Rs. 5,10,664.90 and whether the Tribunal was correct in upholding this enhancement though no appeal was filed by the Revenue against the order of the Assessing Authority asking for enhancement of the taxable turnover ? and

(iii) Whether the Tribunal was justified in coming to the conclusion that it was a case of inter-State sales in the facts and circumstances of the case, even though the stock position statement was on record of the case ?

2. The brief facts figuring in the statement of facts drawn by the Tribunal are that Haryana Iron and Steel Rolling Mills, Hissar, the assessee-petitioner, is a

partnership firm engaged in the manufacture of various items of iron and steel in its factory situated at Hissar. The assessee indulges in the sale of manufactured items in the State of Haryana as well as outside the State. It has its head office at Hissar and a branch office at Delhi. It is registered under the General Sales Tax Act, applicable to Haryana (hereinafter referred to as "the Haryana Act") as well as under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). The assessee filed four quarterly returns relating to the assessment year 1972-73, declaring a gross turnover of Rs. 17,15,860.10, out of which it claimed exemption regarding transactions of the value of Rs. 5,10,664.90 as transfers by the assessee from its head office at Hissar to its branch office at Delhi where the sale of the goods of the above value are claimed to have been made to various purchasers. The Assessing Authority while framing assessment for the assessment year 1972-73, on the basis of pro forma "B" furnished by the dealer found that goods were moved from Hissar to Delhi in full truck loads and the goods were disposed of on the same day in the same lot. Although there was slight variation in the weighment of goods at Hissar and at Delhi, the Assessing Authority explained the marginal difference in weight because of use of two different weighing scales. The dealer did not produce contracts under which the movement of goods took place nor the purchasing dealer produced order book confirming the true nature and character of the transactions. The Assessing Authority did not believe the statement of the dealer regarding the payment of unloading charges at Delhi office by holding that this evidence was created in order to hoodwink the department because no wise man would like to incur such heavy expenses on unloading of trucks and again in reloading the goods for sending the same to the dealer at Delhi on the same day on which these were received and in the same lot. An adverse inference was drawn against the assessee due to its non-production of the stock register of the branch office and that its account does not contain the expenditure incurred on the weighment of these truck loads of goods. Consequently, the Assessing Authority disallowed the claim of the assessee of transfer of goods amounting to Rs. 2,65,134.56, It was held that the goods were moved from Hissar in pursuance of the prior existing contract of sale. Being aggrieved against the order of the Assessing Authority, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner under the Haryana Act and the Central Act. The Deputy Excise and Taxation Commissioner confirmed the findings of the Assessing Authority that the goods were moved under a pre-existing contract of sale to Delhi and as such were liable to inter-State sales tax. On the other hand, the appellate authority disallowed the entire claim of the transfer of goods of the value of Rs. 5,10,664.90 of the assessee by holding that all the goods were moved and sold in the similar lots to different purchasers on the very day on their receipt at the branch office at Delhi. The assessee then preferred second appeal before the Sales Tax Tribunal against the order of the appellate authority. The Tribunal rejected the appeal of the assessee on the ground that in view of the provisions of Section 6A of the Central Act, the burden of proof that the movement of these goods was not occasioned as a result of prior contract of

sale, was on the assessee. The conduct of the assessee in not producing the stock register of its Delhi branch office was used as basis for raising the presumption that the goods were never received by the Delhi office and were delivered directly to the buyers at Delhi. The selling of goods in the same lot on the same day to the dealer at Delhi also weighed with the Tribunal.

3. The assessee then claimed a reference to the High Court on the ground that the Tribunal while rejecting the appeal had wrongly resorted to the provisions of Section 6A of the Central Act which came into force on 1st April, 1973. It was claimed that the provisions of Section 6A of the Central Act would be operative prospectively only and not retrospectively. It was also maintained that the Tribunal had wrongly drawn the inference that the goods having moved in pursuance of a pre-existing contract solely on the ground that the goods were sold on the day on which these were received in the branch office at Delhi and in the same lot of truck loads and also from the failure of the assessee to produce the relevant records. Taking the above referred facts into consideration, the Tribunal had referred the three questions, as reproduced above, for the opinion of this Court.

4. The first question referred by the Tribunal for the opinion of this Court comprises of two parts, the first being whether the Tribunal was justified in relying on Section 6A of the Central Act in deciding the case or, in other words, whether the provisions of Section 6A of the Central Act would be prospective in nature or would operate retrospectively. The second part of the question is as to whether the non-application of the provisions of Section 6A of the Central Act, would materially affect the decision arrived at by the Tribunal in the facts and circumstances of the case.

5. Mr. Viney Mittal, learned counsel for the assessee-petitioner contended that a special rule of evidence shifting the onus on the dealer to prove the movement of goods otherwise than by way of sale, u/s 6A of the Central Act being an exception to the general rule that the onus lies on the Revenue to prove the tax liability of the assessee, should be construed prospective in nature because otherwise the legislature would have made it specifically operative from an earlier date. It was also maintained that the prescribed pro forma and the time-limit for applying to the Assessing Authority claiming exemption u/s 6A of the Central Act having been framed or amended after the substituted Section 6A came into force also supports the contention that the operation of this section was prospective. Mr. S.K. Sood, learned District Attorney, Haryana, on the other hand maintained that Section 6A of the Central Act imbibes a rule of procedure and thus would be applicable to all the assessments framed after 1st April, 1973, even though these might relate to the period earlier in point of time.

6. The provisions of Section 6A of the Central Act inserted vide Section 3 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), which came into force on 1st April, 1973, read as under :

"6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.--(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority, may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under Sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

Explanation.--In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act."

7. The statement of objects and reasons for enacting this section read as under :

"(1) Central sales tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or vice versa as these do not amount to sales. This aids evasion in that dealers try to show even genuine sales to third parties as transactions of this type. Accordingly, it is proposed to provide that the burden of proving that the transfer of goods in such cases is otherwise than by way of sale shall lie on the dealer who claims exemption from tax on the ground that there was in fact no sale."

8. The notes on clauses accompanying the statement of objects and reasons refer to Clause 3, which added this section, thus ;

"This clause seeks to insert a new Section 6A in the principal Act for the purpose of providing that the burden of proving that any movement of goods from one State to another was occasioned otherwise than by way of sale shall be on the dealer making such claim. For the purpose of discharging this burden the dealer may produce a declaration in the prescribed form from the person in the other State to whom the goods have been sent along with evidence of such despatch of goods."

9. The perusal of the statement of objects and reasons in enacting this provision

leaves no doubt that the legislature wanted to avoid the evasion of tax by the dealers by showing the genuine sales of goods to third party as transfers from the head office of the assessee to its branch office or to an agent or vice versa otherwise than by way of sale. Accordingly, the onus was placed upon the assessee to prove this fact as the facts regarding claiming exemption from tax were within its special knowledge. It is further provided in Sub-section (1) that for claiming exemption on such transfers the dealer has to furnish to the Assessing Authority within the prescribed time or within such further time as the authority may for sufficient cause permit a declaration duly filed by the principal officer of the other place of business or his agent or member as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence for deciding such a case. Sub-section (2) of this section provides the passing of the relevant order by the Assessing Authority on its satisfaction. Obviously, the Central Sales Tax (Registration and Turnover) Rules, 1957, were required to be amended in the light of the provisions of Section 6A. Rule 12(5) was inserted in order to provide that the declaration referred to in Section 6A shall be in form "F". It was further provided that form "C" in force before the commencement of the said rules may continue to be used up to 31st day of December, 1980, with suitable modifications. Thus, in view of the contents of the provisions of Section 6A, there is no escape but to conclude that the legislature intended the operation of this special provision to be applicable prospectively and not retrospectively.

10. There is considerable force in the contention of Mr. Viney Mittal, learned counsel for the assessee, that the burden of proof regarding the tax liability prior to the insertion of Section 6A above was on the Revenue and that mere non-production of documents should not in itself lead to the presumption that the assessee was liable to tax on inter-State sales or absolves the department to prove that the movements of goods from one State to the other was on the basis of pre-existing contract of sale. However, in the circumstances of the case, it appears that the Tribunal had not upheld the order of the Assessing Authority on the ground of presumption arising against the assessee only due to non-production of relevant record, but also on the ground that 33 lots of goods were sold in the same lots and on the same day of their receipt by the Delhi office to different purchasers at Delhi. The slight variation in weight in different lot of goods can be well said to be the result of using different weighing scales at Hissar and at Delhi. Mr. Viney Mittal tried to explain this aspect of the matter on the ground that due to great demand in the market of the saria patti, the purchasers might have purchased the entire lot available at the branch office of the assessee and that this coincidence is not sufficient to infer the existence of prior contract of sale or that the goods were moved from Hissar on the basis of the pre-existing contract of sale. We fail to agree with him because a coincidence of selling the goods on the same day on its receipt at Delhi office and in the same lot may take place once or twice but it is not acceptable that such a coincidence took place on 33 occasions during the period ranging from 4th April,

1972 to 23rd February, 1973, during the assessment year 1972-73 as exhibited by annexure F. In the face of the above referred circumstantial evidence of outstanding nature, vis., the selling of the truck loads of goods in the same lot and on the same day of their receipt at Delhi branch office of the assessee to one purchaser on each occasion except in the case of sale on four occasions where the goods were said to two persons, lead to irresistible conclusion that the movement of goods from Hissar took place in pursuance of a pre-existing contract of sale with the prospective purchasers. These circumstances along with the conduct of the assessee in withholding the original stock register of its branch office at Delhi as well as in not producing the actual contract of sale with the purchasing dealers at Delhi do spell out a case of removing the goods from Hissar in pursuance of pre-existing contract of sale.

11. There is no dispute that the ratio of the decision of the Division Bench of Andhra Pradesh High Court in *Ram Krishna Kalwant Rai Vs. The State of Andhra Pradesh*, , relied upon by the learned counsel for the petitioner that mere adverse inference drawn by the Assessing Authority for non-production of the relevant record is not itself sufficient to prove the taxability of the assessee because the ultimate burden of proving the taxability lay upon the department, but it is of no help to the assessee in the case on hand as the taxability of the assessee to inter-State sales tax is not solely based on the presumption of an adverse inference due to the non-production of the relevant records by the assessee, but on other circumstances also like the goods having been sold in the same lot and on the same day on which they were received at the branch office at Delhi.

12. Simply because the octroi cess on the goods and that the goods were booked with the carriers in the name of the assessee branch at Delhi, it cannot be said that the goods were moved by the head office of the assessee from Hissar to its branch office at Delhi in view of the ratio of the decision of the Supreme Court in *English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others*, to the following effect :

"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, 1956. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale."

13. In the light of the above observations, question No. 1 posed by the Tribunal

is answered as under :

The provisions of Section 6A of the Central Act being prospective in nature, would not be attracted in fixing the taxability of the assessee to the inter-State sales tax for the assessment year 1972-73, as these provisions came into force on 1st April, 1973, but in view of the facts and circumstances of the case referred above, the non-application of the provisions of Section 6A of the Act would not materially affect the decision arrived at by the Tribunal.

14. The second and third questions referred by the Tribunal for the opinion of this Court do not arise out of the decision of the Tribunal. The perusal of the decision of the Tribunal reveals that the assessee had not even assailed the finding of the appellate authority in enhancing the turnover from Rs. 2,65,134.56 to Rs. 5,10,664.90, even though from the statement of facts drawn up by the Tribunal it appears that the Assessing Authority had disallowed the claim of the assessee regarding transfer of goods worth Rs. 2,65,134.56 only, whereas the appellate authority in appeal by the assessee had disallowed the transfer of goods worth Rs. 5,10,664.90, even though the Revenue had not filed any appeal before the appellate authority against the above referred order of the Assessing Authority. Thus, it appears that the assessee had not assailed the order of the appellate authority in enhancing the amount of alleged transfer of goods to the above referred extent. If that is so, then even though this question has been referred to this Court for opinion by the Tribunal and the statement of facts do reveal that the appellate authority had enhanced the taxability to the inter-State sales tax of the assessee than the one assessed by the Assessing Authority had the Revenue having failed in appeal, but all the same this Court is not required to answer this question as it did not arise out of the order of the Tribunal. The findings of the Supreme Court in *Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi*, , can be safely referred in this regard. In that case the High Court had passed an erroneous order u/s 66(2) of the Income Tax Act, 1922, directing the Tribunal to state case on the question not arising out of the order of the Tribunal. Under these circumstances, while reversing the order of the Calcutta High Court, the Supreme Court held as under :

"It cannot be said that if an order is passed by the High Court calling upon the Tribunal to state a case on a question which does not arise out of the order of the Tribunal, High Court is bound to advise the Tribunal on that question even if the question does not arise out of the order of the Tribunal. The High Court may only answer a question referred to it by the Tribunal : the High Court is however not bound to answer a question merely because it is raised and referred. The High Court may decline to answer a question of fact or a question of law which is purely academic, or has no bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the tax-payer and the department. If the power of the High Court to refuse to

answer questions other than those which are questions of law directly related to the dispute between the tax-payer and the department, and which when answered would determine qua that question the dispute, be granted, there is no ground for restricting that power when by an erroneous order the High Court has directed the Tribunal to state a case on a question which did not arise out of the order of the Tribunal. Therefore, it cannot be held that at the hearing of a reference pursuant to an order calling upon the Tribunal to state a case, the High Court must proceed to answer the question without considering whether it arises out of the order of the Tribunal, whether it is a question of law, or whether it is academic, unnecessary or irrelevant."

15. Similarly, question No. 3 referred by the Tribunal whether the Tribunal was justified in coming to the conclusion that it was a case of inter-State sale in the facts and circumstances of the case, even though the stock position statement was on record of the case, does not call for any opinion of this Court, as this question does not arise out of the order of the Tribunal. Suffice it to note here that the statement of stock register in the face of non-production of the register itself appears to have been altogether ignored by the Tribunal.

16. The questions are answered accordingly.