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(1983) 01 CAL CK 0013

In the Calcutta High Court

Case No : Matter No. 666 of 1975

Hooghly Docking and Engineering Co. Ltd. APPELLANT

Vs

Commissioner, Commercial Taxes RESPONDENT

Date of Decision : 17-01-1983

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 4, 9

Citation : (1983) 53 STC 198

Hon'ble Judges : Suhas Chandra Sen, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : G.C. Mukharji and S.R. Sen, for the Appellant;Sanjoy Bhattacharya and A.B. Bhattacharya, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 21(1) of the Bengal Finance (Sales Tax) Act, 1941, the following questions have been referred to this Court :

(1) Whether or not upon a true and proper construction of the relevant terms of the contract and in the admitted facts of the case, the inter-State movement of the components (valued at Rs. 4,27,200) was the result of a covenant or incident of the contract of sale ?

(2) If, in the facts and circumstances of the case, the inter-State movement of the components from West Bengal to Kashmir constituted inter-State sale within the meaning of Section 3(a) of the Central Sales Tax Act, 1956 ?

(3) If the sale should be deemed to take place inside Kashmir in view of what is contained in Section 4 of the Central Sales Tax Act, 1956 ?

(4) If, in the event of any conflict between Sections 3 and 4 of the Central Sales Tax Act, 1956, the provisions of Section 3 should prevail ?

2. The assessee is a registered dealer and the relevant assessment period is the year ended 31st December, 1961. The Commercial Tax Officer, Radhabazar Charge, by his order dated 10th November, 1965, completed the assessment by

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including in the assessee''s turnover his sales to Jammu and Kashmir Government amounting to Rs. 4,27,200 and charging the same to Central sales tax.

3. Being aggrieved the registered dealer preferred an appeal challenging the propriety of inclusion of the said sum of Rs. 4,27,200 in its turnover. The Assistant Commissioner, Commercial Taxes, Chowringhee Circle, by his order dated 5th October, 1967, confirmed the assessment. Being dissatisfied the registered dealer preferred a revision before the Commissioner of Commercial Taxes. The said revision was heard by an Additional Commissioner, who, by his order dated 25th January, 1972, partially modified the assessment. Being still dissatisfied the registered dealer went up in second revision before the Board of Revenue, West Bengal. The said revision was heard by the Additional Member, Board of Revenue, West Bengal, who, by his order dated 22nd January, 1974, dismissed the second revision. Being aggrieved by the said order of the Board of Revenue, the assessee had made an application u/s 21(1) of the Bengal Finance Sales Tax Act, 1941, read with Section 9(2) of the Central Sales Tax Act, 1956. Upon this the questions indicated above have been referred to us. It is an admitted position that under a contract the registered dealer was required to sell and supply dredgers in Kashmir and for the execution of the said contract the component parts of the dredgers were required to be taken to Kashmir from West Bengal, assembled there and thereafter delivery of the dredgers had to be given afloat in Kashmir. In order to appreciate the contention it is necessary to set out the contract. The contract contained, inter alia, the following :

Furnish all labour, equipment, tools, supervision and inspection necessary to completely erect two (2) 12-inch Ellicott ''Dragon'' model dredgers with floating and share discharge pipeline and pontoons, in accordance with drawings and specifications provided by Ellicott Machine Corporation.

Hooghly to furnish all materials and equipment described on bill of material dated 4th August, 1960, as revised 3rd on October, 1960, which is attached hereto and made a part of this purchase order. Ellicott to furnish the remainder of the materials and equipment required.

Painting : Each hull shall be given a base coat of zinc chromate primer inside and outside. A finish coat of red lead paint shall be applied to the inside of each hull and deck. The bottom and the sides outside each hull shall receive a coat of anti-corrosive brown paint before shipment. A sufficient supply of antifouling red paint shall be supplied to the customer to paint the bottoms and sides of the hulls just prior to launching. Frames, spuds and ladder shall have a base coat of zinc chromate primer and a final coat of Omaha orange enamel. All machinery shall be painted with machinery enamel in accordance with Ellicott''s standard practice. Sufficient extra paints shall be shipped with the dredgers to touch up any places scraped in shipment.

Delivery time : (1) The first dredger and half of the pipeline are to be delivered

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completely assembled and afloat at Sopure, Kashmir, by 21st April, 1961.

(2) The second dredger and remainder of the pipeline are to be delivered completely assembled and afloat at Ladura, Kashmir, by 21st May, 1961.

Deliveries subject to force majeure in accordance with annex ''B'' of the order from the Jammu and Kashmir Government.

You are to furnish us with five (5) copies of a detailed packing list for each shipment.

Prices Unit price Total price Rs. Rs. (1) For two (2) dredgers complete, including assembly work at the sites in Kashmir 2,10,000 (2) All freight and insurance charges, including those relating to the machinery and other items supplied by Ellicott, from unloading at the dock area in Calcutta, and of the complete dredgers from your plant at Howrah to the sites in Kashmir (Rupees sixty-four thousand) 64,000 (3) For 800 feet of of floating discharge pontoon line and 1,200 feet of shore discharge pipeline (Rupees one lakh and twenty-two thousand) 1,22,000 (4) All freight and insurance charges for transportation of the pipeline from your plant at Howrah including assembly at the sites in Kashmir (Rupees thirty-one thousand two hundred) 31,200 Total price (Rupees four lakhs, twenty- seven thousand and two hundred) 4,27,200 These prices exclude import and customs duties on items furnished by Ellicott. Terms of payment : Thirty percent (30%) of the contract price (Rs. 1,28,160) with the order. Fifty percent (50%) of the contract price (Rs. 2,13,600) when the dredgers and pipelines are ready for shipment from your yard. Twenty percent (20%) of the contract price (Rs. 85,440) sixty (60) days after delivery afloat at the site.

4. It is clear from the aforesaid clause set out hereinbefore, specially the clause for the payment of prices and the terms of payment that it was a composite contract which involved movements of components of goods from Howrah to Kashmir and for making the dredgers and supplying as completed dredgers in Kashmir. The payment clause envisaged payment of all freight, insurance charges including those relating to machinery and other items supplied for unloading at the dock in Calcutta of the complete dredgers from the plant at Howrah of the registered dealer to the site in Kashmir. Therefore for the entire transaction the payment was in respect of purchase of the goods, movement of the goods and delivery as complete dredgers in Kashmir. Now the relevant provision of the Central Sales Tax Act, Section 3(a) under which this question has to be resolved provides as follows :

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 occasions the movement of goods from one State to another.

5. It appears to us that in view of the terms of payment and specially the nature of the transaction the dredgers could not be bodily taken from Howrah to Kashmir for delivery and the component parts had to be taken in order to

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complete the contract and it was a composite contract. Therefore it must be held that the sale has occasioned or caused the movement from one State to another. If that is the position then in our view Section 3(a) of the Central Sales Tax Act, 1956, is attracted and the authorities below were not in error in deciding in the manner they did. Our attention was drawn to a decision of the Supreme Court in the case of The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., . There the Supreme Court reiterated that the expression "sale of goods" should be given the same meaning which it has in the Sale of Goods Act, 1930, and in the facts and circumstances of that case the Supreme Court found that there was no sale and as such it was a composite contract. In that view of the matter the Supreme Court was of the opinion that the provisions of the Central Sales Tax Act were not attracted to the contract in that case. But in this case we have found that the sale caused the movement of goods, the clause for the payment of price was for the entire transaction including the cost of transporting the components to Kashmir and freight, etc. Therefore in the background of the facts and circumstances of the case, in our opinion, the principles enunciated by the Supreme Court would not be of any assistance to the registered dealer.

6. The first question is answered by saying that on a true and proper construction under the relevant terms of the contract and in the facts and circumstances of the case there was inter-State movement as a result of or in the execution of the contract of sale, it is in favour of revenue. So far as the second question is concerned for the reasons indicated above it must be held that inter-State movement of components was a part of the sale contract in question. So far as the third question is concerned, in view of the actual terms and provisions of Section 3 and Section 4 of the Central Sales Tax Act, 1956, in our opinion, there is no conflict between the two sections. The third question and the 4th question are therefore answered by saying that Section 4 would not have application to the facts and circumstances of the case and there is no conflict between Sections 3 and 4 of the Central Sales Tax Act. These questions are answered also in favour of the revenue. In the facts and circumstances of the case, the parties will pay and bear their own costs.

Suhas Chandra Sen, J.

7. I agree.

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