
(2002) 06 AP CK 0098

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 54 of 1991

Hyderabad Engineering Industries Limited

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22
Central Sales Tax Act, 1956 — Section 2

Citation : (2003) 1 ALD 283 : (2002) 128 STC 1

Hon'ble Judges : S.R. Nayak, J; S. Ananda Reddy, J

Bench : Division Bench

Advocate : P. Srinivas Reddy, for the Appellant; Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This Tax Revision Case is filed by Hyderabad Engineering Industries Limited, Hyderabad u/s 22 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") questioning the correctness of the order dated 30.3.1990 passed in T.A.No.712 of 1987 on the file of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad. This Tax Revision Case relates to the assessment year 1981-82. According to the petitioner, the following questions are said to arise in this revision.

1. Whether, having regard to the documents and material on record the Tribunal was right in holding that orders were being placed by UIL on HEI ?

2. Whether, having regard to the documents and materials on record, the Tribunal was right in holding that there was no provision in the contract between HEI and UIL for market survey and forecasting of requirements or that the plea of forecast was raised only after the Commercial Tax Officer sought to assess the sales to UIL as inter-state sales ?

3. Whether, having regard to the documents and materials on record the Tribunal

was right in holding that goods of specific sizes and specific varieties were manufactured by HEI in the quantities specified and were sent to UIL ?

4. Whether, the Tribunal is right in holding that the sales made to UIL should be treated as inter-state sales and liable to be taxed as such in the hands of HEI ?

5. Whether, having regard to the documents and materials on record, the Tribunal was right in law and had jurisdiction in directing the assessing authority to decide whether sales made to parties other than UIL were branch transfers or inter-state sales, which were not taxed by the CTO and which were not subject matter of appeal?

2. Although the petitioner has raised the above questions in this revision, according to us, the primary question which would answer all the above questions is whether the disputed turnover relates to branch transfers or inter-state sales?

3. The material facts of the case in brief are as follows : The petitioner is a public limited company registered under the Indian Companies Act and the Company's registered office is situate at Door No.23, Kasturba Gandhi Marg, New Delhi. The petitioner-company has different manufacturing units and trading units throughout India and it has 22 godowns spread over in different parts of the country. The petitioner company manufactures different kinds/types of fans at Hyderabad. The goods, viz., electric fans, manufactured by the petitioner which are standard products and are in demand and have to be distributed and supplied all over India. There was an agreement dated 1.5.1979 between the petitioner and Usha Sales Limited (subsequently known as Usha International Limited and hereinafter referred to as UIL). According to the petitioner, under the said agreement, the main function of UIL was to organize sale and distribution of the products of the petitioner and to arrange for sales promotion measures of the products and to provide after sale service and such other services as might be required in the interest of sales of the said products. The agreement also contemplated that UIL would purchase the said products as an independent principal and maintain adequate stocks and sell the same as such. Before the Commercial Tax Officer, on behalf of the petitioner, it was contended that there are no inter-state sales and there is no binding contract between it and the UIL and the UIL purchase whatever products they want from the branches of the petitioner and there is no movement of goods in pursuance of a contract entered with them, as the movement of goods is in the routine course to their own branches, and therefore, the movement cannot be attributed to any order placed by UIL or an agreement entered into with UIL. It was also contended that the communication from the UIL indicating the quantities required at various places is only a forecast by them and not an order for supply and, therefore, the transfers to the branches cannot be treated as supplies made to UIL through the branch offices of the petitioner in pursuance of the firm order placed by UIL before the movement of the goods. The Assessing Authority, after verification of records and hearing the petitioner-dealer, came to a conclusion that the

agreement between the petitioner and the UIL and in pursuance of the orders placed by UIL, the goods were moved to various places in the country and delivered to them from the branches of the petitioner and, therefore, the said turnover could not be treated as branch transfers, but they have to be treated as inter-state sales. The Assessing Authority did not accept the above contentions of the petitioner and by his order dated 28.2.1986 held that the goods sold to UIL out of the goods dispatched by petitioner from its factory at Hyderabad to its various godowns were inter-state sales. Being aggrieved by the said order of the assessing authority dated 28.2.1986, the petitioner preferred an appeal to the Appellate Deputy Commissioner (Commercial Taxes), Hyderabad - I Division, Hyderabad being Appeal No.19 of 1986-87. The Appellate Deputy Commissioner (Commercial Taxes) by his order dated 7.1.1987 dismissed the said appeal. The petitioner being aggrieved by the said order dated 7.1.1987 preferred an appeal to the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (for short 'the Tribunal') being Appeal No.712 of 1987. The Tribunal also concurring with the view of the assessing authority and that of the appellate authority, dismissed the appeal by order dated 30.3.1990. Hence, this Tax Revision Case by the petitioner-dealer.

4. We have heard Sri P.Srinivas Reddy, learned counsel on behalf of the petitioner and the learned Special Government Pleader for Taxes on behalf of the Department.

5. Sri P.Srinivas Reddy, contended that the opinion of the authorities below and the Tribunal that the goods sold to UIL should be treated as inter-State sales and, therefore, are liable to be taxed as such in the hands of the petitioner cannot be sustained both on facts and in terms of law. Sri Srinivas Reddy also contended that the factual findings recorded by the authorities below cannot be sustained because those findings are recorded without properly taking into consideration all relevant materials and evidence on record. In support of his submissions, the learned counsel placed reliance on the judgments in *Kelvinator of India Limited v. State of Haryana*,¹ *Tata Engineering & Locomotive Company Ltd v. Assistant Commissioner of Commercial Taxes*,² *Balabhagas Hulaschand v. State of Orissa*,³ *Sahani Steel & Press Works Ltd v. Commercial Tax Officer*,⁴ *South India Viscose v. State of Tamil Nadu*⁵ and *English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer*⁶.

6. On the other hand, the learned Special Government Pleader for Taxes, while supporting the impugned order, contended that the assessing authority conducted a detailed enquiry and considered all relevant documents and recorded his finding and those findings recorded by the assessing authority are essentially findings on facts. The findings recorded by the assessing authority have been affirmed both by the appellate authority and the Tribunal and that under the Act, the Tribunal is the final fact finding authority and the findings recorded by it cannot be interfered with under revision u/s 22 of the Act unless in a given case the findings are found to be perverse and based on no evidence at

all. The learned counsel also contended that though the petitioner has heavily placed reliance on the judgment of the Supreme Court in Kelivnator's case (supra 1), that judgment has no application to the facts of this case. The learned Special Government contended that the evidence collected by the assessing authority clearly go to show that the transactions between the petitioner and UIL are inter-state sales not intra-state sales. By way of reply, Sri P.Srinivas Reddy, contended that the question whether transactions are inter-state sales or intra-state sales is a mixed question of fact and law. Therefore, it is permissible for this Court to decide whether the findings recorded by the authorities below on such a mixed question of fact and law is justified and legal.

7. The petitioner placing reliance on the two agreements entered into between it and UIL contended that the transactions between the two are not inter-State sales. Therefore, it becomes necessary for us to refer to the relevant recitals of the agreements entered into between the parties. There are two agreements between the petitioner and UIL. The petitioner, as said above, manufactures varieties of fans. They are as follows :

Type of fans Sweep Model

Ceiling fan36"-Prima Mark II

- Diplomat
- Kohinoor
- Taj Deluxe

42"-Prima

- Diplomataa

48"-Prima

- Kohinoor

56"-Prima/Prima Deluxe

- Kohinoor
- Diplomat/Taj Deluxe

Table Fan16"-Kohinoor

- Prima Deluxe
- Excella

Cabin fan16"-Diplomat

- Prima

Exhaust fan12"-Ventillating

16"-Ventillating

R.C.Fans12"-Fixed

- Tilting

16"-Fixed

- Tilting

8. The agreement entered with UIL relates to all States of India excluding West Bengal and Andaman & Nicobar Islands. The petitioner supplies its products to West Bengal through its own trading unit Eastern India Usha Corporation, Calcutta. The UIL is having 16 divisional offices at various places of the country and with different names. The agreement was effective up to 30th April, 1984 and it relates to Sewing Machines, Fans and their component parts. The agreement was entered into on 1st May, 1979, at New Delhi. Clauses 3, 4, 5, 6, 8, 9 which are relevant for the decision-making are as follows :

"3. Usha Sales Functions

Usha Sales Shall undertake to:

Organise sale and distribution of agreement products in the market.

Maintain adequate stocks at all time in its godowns in different regions.

Arrange for sales promotion measures as may be necessary from time to time, on mutually agreed basis.

Provide after sale service.

Provide such other services as may be required in the interest of sales on mutually agreed basis from time to time.

4. PURCHASE

Usha Sales shall make all purchases of agreement products as an independent principal and sell the same as such.

5. PRICES

a) JE's selling prices to Usha Sales shall be intimated by JE from time to time. The prices at which Usha sales shall sell the agreement products to their agents/dealers shall be determined by them so however that Usha Sales mark up on their purchase price shall not exceed:-

Sewing Machines/Accessories 10.00%+ Rs. 5/- (per top)

Component parts 13.35%

The prices so computed shall be the maximum prices and Usha sales shall be free to sell at prices lower than the said maximum.

b) Consumer price (except for hire purchase sales) shall not exceed the maximum authorized by JE from time to time. However, Usha sales/their dealers/agents shall be free to charge prices lower than the said maximum.

c) Any sales tax/other taxes payable may be charged additionally by Usha Sales.

d) JE's selling prices shall be fixed on FOR destination basis. In case of reconsignment of goods Usha sales/their dealers, freight/ handling charges shall be reimbursed on an agreed basis.

e) In the event of any reduction in prices by JE, corresponding rebate shall be allowed on unsold stocks by Usha Sales/their dealers/agents.

6. ORDERS PROCURED BY USHA SALES

In case it is considered expedient by JE to entertain orders procured by Usha Sales, and to undertake to supply/bill the goods against such orders directly to any third party. Usha sales, will be allowed a procurement margin which would be equal to the difference between JE's subsisting selling prices to Usha Sales and the invoice value of such supplies exclusive of sales tax and other local taxes. However, if any sales or supplies are made by JE in respect of which orders are procured by parties other than Usha Sales or by themselves, Usha Sales will not be entitled to receive any payment in respect thereof.

8. SALES/DELIVERIES

Sales/deliveries shall be made to Usha Sales/their nominees at any factories/regional godowns at the Company's option.

9. SALES PROMOTION

JE shall bear the cost of such sales promotion measures including publicity, off season discount and/or turnover bonus etc., as may be considered necessary and authorized by it from time to time."

9. On the same day, there is another agreement between the parties in respect of bulk orders that might be booked by UIL on such sales. This contract is also relevant for considering the plea of the petitioner that it had made sales to other than UIL, from its branches. Clauses 3, 4, 5, 6, 7 and 8 of this agreement are as follows :

"3. AGENT'S FUNCTIONS

The agent shall undertake to:

Canvass and procure orders on account of Government/bulk institution buyers and exports.

Arrange for sales promotion measures as may be necessary from time to time on mutually agreed basis.

Provide after sale service throughout India in the agreement.

Provide such other services as may be required in the interest of sales on mutually agreed basis from time to time.

4. Government Bulk Institutional/Export sales.

The Agent shall act on the Company's behalf for procurement of orders on account of Government/bulk institutional buyers and export sales at such prices as may be authorized by the Company from time to time such sales the company shall pay a commission @ 6% of invoice value exclusive of excise duty, sales tax and other local taxes in case of sales within India, and @7% of FOB value in case of export sales.

Commission on export sales shall be paid in proportion to the sales proceeds realized by the regional godowns at the Company's option.

6. SALES PROMOTION

The company shall bear the cost of such sales promotion measures including publicity, off season discount and/or turnover bonus etc., be considered necessary and authorized by its from time to time.

7. AGREEMENT PERIOD

This agreement shall have effect from 1st May 1979 and shall end on 30th, 1984. However, notwithstanding any other provision, either part may terminate it at any time by giving six months notice in writing.

8. FORCE MAJEURE

This agreement is subject to usual force majeure factors including statutory regulations applicable from time to time."

10. It is the case of the petitioner that the agreement was only for purchasing their goods and selling goods generally and there was no movement of goods in pursuance of any firm commitment by a firm order for supply of goods, and the letters of allocation referred to by the Tribunal are merely forecasts of requirements and not firm commitments and, therefore, there are no inter-State sales. On the other hand, according to the department, from reading of the letters of allocations by UIL issued from time to time and the replies thereto by the petitioner, it is abundantly clear that the UIL placed orders for supply of particular brand, particular quality, particular size and particular quantity of fans in each month in respect of each of their depots and that the movement of the goods was in pursuance of such placement of orders and, therefore, they are clear cases of inter-State sales. It was also contended by the department that the petitioner who is at Hyderabad was raising hundies against UIL on Canara Bank and collecting the amount through Canara Bank and this clearly shows that the transactions were handled by the petitioner with UIL and the only limited part played by the branches was to receive the consignment and deliver the consignments to UIL and raise invoices and forward the copies to the petitioner. It was also contended on behalf of the department that the correspondence

between the parties clearly shows that dispatches were being intimated to UIL with clear intention that they should take delivery of the goods directly from the branches. However, according to the petitioner, there were no orders placed by the UIL on them and the communications to which reference is made by the authorities below and the Tribunal are only forecasts of the needs of the areas after making export study of the needs of each area and, therefore, it cannot be called as orders. The petitioner also contended that there are no agreements of sale between them.

11. The Tribunal on consideration of the relevant clauses in the agreements between the parties and also large number of correspondence between the parties, recorded its findings on the factual controversies between the parties. They are :- (i) The documents to which reference is made by the Tribunal in its order dated 30.3.1990 indicate that orders were being placed by UIL and they were being complied with and acknowledgements were being made and replies were being sent reporting compliance of those orders. (ii) There was no provision in the contract between the petitioner and the UIL for any market survey and forecasting of requirements. The plea of forecast was raised only after the assessing authority sought to assess the sales to UIL as inter-State sales. No such word "forecast" or "market survey" was used anywhere in the contract between the petitioner and UIL or in their correspondences. (iii) The amount representing the sale prices of goods sold to UIL was being realized by the petitioner at its head office in Hyderabad and not by its branches. (iv) The goods of specific sizes and specific varieties were manufactured by the petitioner in the quantities specified and were sent to UIL in compliance with the placement of orders.

12. In the light of these factual findings, the Tribunal held that all sales made to UIL were to be treated as inter-State sales and liable to be taxed as such in the hands of the petitioner. So far as the sales made to parties other than UIL were concerned, the Tribunal held that unless there was evidence to show that they were inter-State sales, they should be treated as branch transfers only. In that view of the matter, the Tribunal directed the assessing authority to decide whether they were branch transfers or inter-State sales.

13. The Tribunal in recording the above finding has referred to and considered not only the relevant clauses in the agreements between the parties; but also large number of documents which are correspondence between the petitioner and the UIL.

14. The Tribunal out of very large number of communications/correspondence between the petitioner and the UIL have extracted and considered 22 documents/correspondence between the petitioner and the UIL in its order as examples and considered the same in support of its conclusion that the UIL used to place orders with the petitioner for supply of the subject goods and the petitioner used to send reports complying with those orders and to hold that there was no provision in the agreements between the parties for any market survey and

forecasting of requirements in different areas of the country.

15. The learned Special Government Pleader for Taxes drew our attention specifically to the document Nos.1, 2, 13, 14, 15, 16, 21, 22 referred to and considered by the Tribunal in its order and contended that the above documents as well as other documents to which reference is made by the Tribunal clearly go to show that the transactions between the petitioner and the UIL are clear cases of inter-State sales and not branch transfers.

16. The documents/correspondence to which references are made by the Tribunal in the order clearly show that the orders were placed by the UIL and they were complied with by the petitioner. There is no provision in the agreement between the petitioner and the UIL for any market survey and forecasting of requirements as claimed by the petitioner. It needs to be noticed that the plea of forecast was raised only after the Commercial Tax Officer sought to assess sales to UIL as inter-State sales. The expressions "forecast" or "market survey" do not find any place in the agreement. The letters extracted by the Tribunal also indicate that sometimes complaints were lodged for non-compliance of the required allotments. It is seen from the correspondence that the copies of transfer of goods from Hyderabad to their branches at various places were communicated to UIL and that is a clear indication that the stocks as required by their letters of allocations were being transferred to the branches and they took delivery. The contract between the parties provided for delivery of the goods either at the factory or any other point chosen by the petitioner. The assessing authority on the basis of the materials on record quite rightly has stated that on receipt of the goods at the depot outside the State, the Depot in charge used to prepare invoices for the constituents of UIL such as Nalanda Western Sales, United Sales Corporation etc., and all the invoices were sent to the Hyderabad factory and in the books of account of the factory, the account of the above constituents of UIL was debited with the invoice value, and the sales tax borne was credited to the amount of the respective State. Then, the invoices were discounted by the petitioner with Canara Bank, Secunderabad and the full amount was received by drawing hundi on M/s.UIL, Delhi for ten days, and on the due date UIL made payment to Canara Bank, Delhi. Thus, it is quite clear that UIL by its letters of allocation indicated the quantities to be supplied to each place, and accordingly, the goods were sent to the Branches of the petitioner, and from there, the delivery was made and the amount was also realized by the petitioner at its head office in Hyderabad and not by branches. Thus, it is quite clear that goods were moved in pursuance of the letters of allocation issued by UIL to the places indicated therein and delivered to them at those places. Although in the agreement, there is no firm commitment to make any particular purchase, the agreement coupled with letters of allocations are taken into consideration together, it could be said that there was a firm commitment to purchase specific number of specified varieties of fans from the petitioner during the concerned period. The evidence on record satisfactorily establishes that the requests for dispatches to particular places outside the State for delivery were

made and such requests were acknowledged and acted upon by the petitioner and, therefore, it is satisfactorily proved that the transactions between the parties are sales and not branch transfers. If that is so, there is nothing wrong on the part of the Tribunal in holding that the transactions are inter-State sales, and not Branch transfers.

17. However, learned counsel for the petitioner placing reliance on certain judgments sought to contend that the transactions in question are only branch transfers and cannot be treated as inter-State sales for the purpose of levy of tax. In *Tata Engineering & Locomotive Company Ltd.* (supra 2), the appellant company which manufactured trucks and buses in Jamshedpur in the State of Bihar, transferred the vehicles to stock-yards operated by its own personnel in other States and supplied them to the dealers. After the promulgation of the Commercial Vehicles (Distribution and Sale) Control, 1963 the appellant issued a circular dated June 14, 1963, to the dealers asking them to submit monthly statements regarding fresh applications registered, retail sales, applications cancelled and stock and sales. A new form of dealership agreement was also introduced under which the appellant agreed to sell from its works in Jamshedpur or its depots and stock-yards outside the State of Bihar to the dealer the vehicles which shall be allotted at its discretion. Clause 11(b) of the agreement provided that "the dealer shall mail to the company on the 15th of each month..... his firm order for purchases to be effected during the next succeeding month and his estimated requirements ... for the two months following the next succeeding month..." In fact however no firm order was called for by the company. Pursuant to authorization issued by the sales office of the appellant in Bombay, vehicles were transferred from its works at Jamshedpur to the various stock-yards in the States. The stocks available in the stock-yards were then distributed from time to time to dealers for which purpose an allocation letter was issued each month by the sales office. There were many instances where vehicles had been actually delivered from the stock-yards prior to the issue of the allocation letter. It was also found that on some occasions vehicles had been moved from a stock-yard in one State to a stock-yard in another. Treating the allocation letters together with their confirmation as transactions of sale, and the movement of vehicles from the works to the stock-yards as the direct result of the allocation so made, the Assistant Commissioner imposed tax under the Central Sales Tax Act, 1956, in relation to the sales during the period April 1, 1964, to March 31, 1966, of vehicles which had moved from Jamshedpur to the stock-yards in the various States to dealers in those States. In those circumstances, the Constitution Bench of the Apex Court held that (i) the procedure followed by the appellant together with the proved absence of any firm orders, indicated that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of section 2(g) of the Act. The completion of the sales to the dealers did not take place at the works at Jamshedpur, appropriation of the vehicles was done at the stock-yards and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer a vehicle

from one stock-yard to another. It could not therefore be said that the movement of the vehicles from the works to the stock-yards was occasioned by any covenant or incident of the contract of sale. Even assuming that any firm orders had been received by the appellant they could not be regarded as anything but mere offers ; (ii) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place, which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract, the Assistant Commissioner wrongly based his order on mere generalities. The Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter-State sale exigible to tax under the provisions of the Act. In view of the above finding, the Supreme Court set aside the order of the High Court and of the Assistant Commissioner insofar as the letter related to the assessment in dispute, observing that it would be open to the Assistant Commissioner to make fresh assessment in accordance with law.

18. In the above case, their Lordships of the Supreme Court having regard to the facts of the case opined that the procedure followed by the appellant therein together with the proved absence of any firm orders, indicated that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of Section 2(g) of the Act and the completion of the sales to the dealer did not take place at the works at Jamshedpur, and appropriation of the vehicle was done at the stock-yard and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer a vehicle from one stock-yard to another, and therefore, their Lordships held that the movement of vehicles from the works to the stock-yards cannot be held to be occasioned by any covenant or incident of the contract of sale. Their Lordships of the Supreme Court further held that even assuming that any firm orders has been received by the appellant, they could not be recorded as anything but mere offers.

19. The facts of this case are distinguishable. In the instant case, not merely there were firm orders but those orders were acknowledged and complied with and goods were supplied. Therefore, there is nothing wrong on the part of the Tribunal in holding that that the movements of goods were in pursuance of the agreement of sale between the parties.

20. In *Kelvinator of India Ltd.*'s case (supra 1), the assessee company, having its factory at Faridabad in Haryana, manufactured refrigerators, deep-freezers, compressors and other similar articles. Its registered office, sales office and godown were in Delhi. It was registered as a dealer at Faridabad both under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956. The refrigerators manufactured by the assessee were marketed under the trade marks of "Kelvinator", "Leonard" and "Gem" respectively. The prices of the refrigerators were fixed as mutually agreed upon from time to time. They were

not settled for individual machines but periodically. The prices quoted were ex assessee's works at Faridabad and the distributors had to pay the assessee all charges on the transport of the goods from the assessee's works at Faridabad to the assessee's registered office in Delhi. The purchase orders were placed by the distributors after the goods reached the head office in Delhi and the property in the goods passed at Delhi after delivery. Clause 6 of the distribution agreement with Spencer & Co., Ltd., in respect of refrigerators and other products contained the following provision: "All goods leaving the company's factory will pass through rigorous inspection procedures laid down by the company. No responsibility for shortage or damage occurring in transit will be accepted by the company." Clause 8 of the distribution agreement with Blue Star Engineering Company (Bombay) Pvt. Ltd. and General Equipment Merchants Ltd., in respect of Leonard Refrigerators and Gem Refrigerators respectively was as follows : "All the goods leaving the company's factory will pass through rigorous inspection procedure laid down by the company, and will be packed in crates and will be delivered to the distributors packed as such. The company in no case shall be responsible for any shortage or damage that may occur in further transit once the goods have been delivered and inspected by the distributors in Delhi." The following facts were asserted by the assessee but nothing was said on them by the departmental authorities : After the goods were manufactured in the factory, an excise clearance pass was obtained after payment of excise duty for the transport of the goods from the factory to the assessee's godown in Delhi. The excise pass was always for movement of goods in favour of self. During the transport of the goods from Faridabad to Delhi, the octroi at the barrier was paid by the assessee. The goods were received by the assessee's staff at the destination and taken in its godown. In pursuance of the orders, the Delhi staff gave delivery of the goods at Delhi to the customers under challans prepared at Delhi. The bill was raised from Delhi and the price of the goods was received by the assessee at Delhi and deposited in the assessee's account in its Delhi Bank. The Tribunal held that the agency contracts entered into by the assessee with the distributors were in fact as well as in law contracts of sale and, therefore, the transactions between them were inter-State sales liable to tax under the Central Sales Tax Act, 1956. The High Court on a reference held that the Tribunal was right in its conclusion that the movement of the machines had been occasioned by the agreements between the manufacturers and the distributors and the transactions were therefore inter-State sales. On appeal to the Supreme Court, a Division Bench of the Supreme Court speaking through Khanna, J held that, on the facts and circumstances of the case, the three agreements between the assessee and the distributors were merely agreements for the distribution of refrigerators and were not agreements of sale between the parties. It could not be said that there was any movement of refrigerators from Faridabad to Delhi under a contract of sale. The transactions between the assessee and the distributors did not constitute sales in the course of inter-State trade or commerce and, therefore, there was no liability to pay tax under the Central Sales Tax Act, 1956. Further, the Supreme Court held that in deciding the

question whether the transactions between the parties is in the course of inter-State trade or commerce, the Court should look not merely at the distribution agreements but regard should be had of the entire course of dealings between the parties. The Court also held that a sale of goods can be said to have taken place in the course of inter-State trade under clause (a) of Section 3 of the Central Sales Tax Act, 1956, if it can be shown that the sale has occasioned the movement of goods from one State to another. The Court held that a sale in the course of inter-State trade has three essentials: (i) there must be a sale, (ii) the goods must actually be moved from one State to another, and (iii) the sale and movement of the goods must be part of the same transaction. It was further held by the Supreme Court that the movement should be incident of and be necessitated by the contract of sale and thus be interlinked with the sale of goods. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of clause (a) of Section 3. If there is no contract of sale preceding the movement of goods, the movement cannot be ascribed to a contract of sale nor can it be said that the sale has occasioned the movement of goods from one State to the other. The above case decided by the Supreme Court also is distinguishable on facts. In this case, the agreement for distribution coupled with firm orders reflected by letters of allocations issued by the petitioner to comply with the requests of UIL clearly goes to show that the goods were moved to the destinations in pursuance of the contract of sale and the goods were delivered at the branches at various places in the country. In the above case decided by the Supreme Court, the finding is that there were no firm commitments. It is also relevant to notice that the Apex Court in the same case held that the subsequent orders placed by the dealers making a firm commitment for supply of certain quantities of goods resulted in agreement of sale and they constituted contracts of sale and not merely the agreements for distribution. In that view of the matter, the judgment of the Apex Court in *Kelvinator of India Limited* (supra 1) helps the department rather than the petitioner-dealer.

21. In *Balabhagas Hulaschand v. State of Orissa* (supra 3) the appellant was a firm dealing in buying and selling jute and had its head office in Calcutta. The appellant entered into a contract of sale with certain Calcutta firms by which the appellant agreed to sell raw jute of certain specifications of weight and quality to the buyers. At the time when the contract of sale was entered into, the raw jute was not in existence as it was being grown. After the goods were ready the appellant booked the goods in bags in the names of the buyers from certain railway stations in Orissa to the railway sidings of the buyers at Calcutta. The goods, on arrival in the buyers' railway siding at Calcutta, were inspected by the buyers and as they were found to be in accordance with the specifications mentioned in the contract of sale, they were accepted. The High Court held that the sales were inter-State sales and were, therefore, liable to be taxed u/s 3(a) of the Central Act. On appeal to the Supreme Court, it was held that even though the sale took place at Calcutta, since the movement of goods preceded the sale

in pursuance of the contract of sale, which contained a clear stipulation that the goods were to move from Orissa to Calcutta, the movement of goods was occasioned by the sale itself and it was, therefore, taxable u/s 3(a) of the Central Act. In the above case, the Apex Court dealing with the questions whether the word "sale" as appearing in Section 2(g) as also in Section 3(a) of the Central Sales Tax Act includes an agreement to sell also and what are the necessary conditions for holding a transaction as an inter-State sale held :

"(1) That the word "sale" appearing in Section 2(g) as also in section 3(a) of the Central Sales Tax Act includes an agreement to sell also provided the said agreement contains a stipulation regarding passing of the property. Even in the Bengal Immunity Company Ltd.'s case,⁷ this Court observed thus :

"..... the expression `contract of sale' in this context has the same meaning as the words `contract of buying and selling' in the definition of inter-State commerce given by Rottschaefer in the passage already quoted, and they both refer to the bargain resulting in the sale irrespective of whether it is in the stage of an agreement to sell, or whether it is a sale in which title to the goods has passed to the purchaser. That is also the definition of "contract of sale" in Section 5(1) of the Indian Sale of Goods Act."

(2) That the following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce :

(i) that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another;

(ii) that in pursuance of the said contract the goods in fact moved from one State to another; and

(iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move.

If these conditions are satisfied then by virtue of Section 9 of the Central Sales Tax Act is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act."

The Apex Court while laying down the above propositions gave certain illustrations at pages 214 and 215 of the judgment. Sri P.Srinivas Reddy, learned counsel for the petitioner, placing reliance on Illustration No.2 (Case No. II) given by the Supreme Court, contended that this case falls under Case No. II. Case No.II reads as follows:

"Case No.II. - A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A.

Thereafter the goods are directed to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale.

The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of section 3(a) of the Central Sales Tax Act not being an inter-State sale."

22. The Apex Court in the fact-situation of the case stated by it in Case No.II held that the transaction in question is purely an internal sale which takes place in State Y and falls beyond the purview of Section 3(a) of the Central Sales Tax Act not being an inter-State sale. That ratio is not at all applicable to the facts of this case for the reasons already stated above. We have found that in the present case, the movement of the goods was in pursuance of the contract of sale between the parties.

23. In *Sahney Steel and Press Works Ltd. v. Commercial Tax Officer*⁸ the petitioner-company engaged in the manufacture and sale of stampings and laminations made out of steel sheets which were utilized as raw material for making electric motors, transformers, etc., had its registered office and its factory in Hyderabad. Its branches at Bombay, Calcutta and Coimbatore were mainly engaged in effecting sales and looking after sales promotion and liaison work. Those branches received orders from customers within and outside their respective States for the supply of goods conforming to definite specifications and drawings and advised the registered office at Hyderabad. The company manufactured the goods according to the designs and specifications supplied by customers at its factory at Hyderabad and dispatched to the respective branches by way of transfer of stock. Such goods were booked to "self" and sent by lorries. The goods received by the Branches were entered in the stock accounts of the branches and kept in stock for ultimate delivery to the customers. On the goods reaching the branches, they were inspected by the customers and accepted by them where the customers were local parties. Where the customers were outside the State the branch dispatched the goods to them. The branches raised the bills and received the sale price. They also furnished form F to the registered office at Hyderabad u/s 6A of the Central Sales Tax Act, 1956 in the case of stock transfers to the branches. The petitioner-company was assessed to State sales tax in Maharashtra, West Bengal and Tamil Nadu in respect of those goods. The petitioner claimed that there was only a transfer of stock from Hyderabad to the branches outside the State of A.P. and that the sales effected to the customers by the branches were local sales in the respective States. The Commercial Tax Officer, Hyderabad, held the sales to be sales in the course of inter-State trade and made an assessment accordingly for the year 1979-80 and also issued notices for reopening the assessments for the two earlier years 1977-78 and 1978-79 to include such sales. The petitioner-company filed a writ petition in the Supreme Court claiming that the sales were not sales in the course of inter-State trade and praying that, in the event of the transactions being held to be inter-State sales, the petitioner be permitted to avail of the concessional rate envisaged by section 8(1) read with 8(4) of the Act; and that, in the alternative, the assessments to local sales tax be quashed in so far as they

included the turnover of the stock transferred by the registered office to the branches. The Supreme court held that even if the customer placed an order with the branch office and the branch office communicated the terms and specifications of the order to registered office and the Branch office itself was concerned with dispatching, billing and receiving of the sale price, the order placed by the customer was an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commenced their journey from the registered office in the State of Andhra Pradesh to the Branch outside the State for delivery of the goods to the customer. Both the registered office and the Branch office were offices of the same company: they did not possess separate judicial personalities. The movement of the goods from the registered office at Hyderabad was occasioned by the order placed by the customer and was an incident of the contract, and therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-State movement. The sale transactions were inter-State sales u/s 3(a) of the Act. In this case also, the petitioner manufactures various sizes and various varieties of fans and the sole selling agent UIL during the relevant period by its letters of allocation required the petitioner to supply specific sizes and specific varieties of fans for different stations and such quantities and such varieties were manufactured by the petitioner and sent to them. Therefore, it is quite clear that the movement of goods was in pursuance of the contract of sale between the parties. It is also relevant to note that though the petitioner is a manufacturer of varieties of goods, the demands placed by the UIL were for specific goods required by it and not merely for any unspecified goods which were readily available. In other words, the petitioner had to manufacture goods in accordance with the specifications of UIL and supply the same to them through Branches. Therefore, the law laid down by the Apex Court in *Sahney Steel and Press Works Ltd.*'s case (supra 8) fully supports the Department's view.

24. In *English Electric Company of India Ltd.* case(6 supra), the appellant-company, having its registered office at Calcutta and branches at Bombay, Delhi, Madras and Lucknow, had its main factory at madras where the appellant manufactured certain goods. A Bombay buyer wrote to the Bombay branch of the appellant asking for lowest quotation of the goods. The Bombay branch wrote to the Madras branch giving all the specifications and stating that the goods were for the Bombay buyer. The Madras branch in reply referred to the order of the Bombay buyer, gave the required particulars and mentioned that the price was f.o.r. Madras. The Bombay branch thereafter wrote to the Bombay buyer reproducing all the particulars, conditions of sale and mode of dispatch as stated by the Madras branch and further stated that the goods would be manufactured at the Madras branch factory. The Bombay buyer placed an order with the Bombay branch accepting all the terms and conditions. The Bombay branch placed an indent order addressed to the Madras branch giving all the particulars, the buyer's name, order number and date. On receipt of an invoice from the Madras branch, the Bombay branch wrote to the Bombay buyer that some of the

goods against the order were ready for despatch and asked for details of dispatch instructions. The Bombay branch thereafter wrote to the Madras branch giving despatch instructions and stating that the railway receipts and other documents should be sent to them for disposal. The Madras branch despatched the goods to Bombay by goods train and gave intimation to the Bombay branch. The goods were delivered to the Bombay buyer through clearing agents and the insurance charges were collected from the Bombay buyer. The appellant contended that there was no inter-State sale and that the sale was at Bombay inasmuch as the Bombay buyer placed the firm order at Bombay, payment was made at Bombay, railway receipt was in the name of the Bombay branch, the goods were delivered at Bombay and there was no privity of contract between the Madras branch and the Bombay buyer. The Madras High Court held that the sale was an inter-State sale falling u/s 3(a) of the Central Act. On appeal to the Supreme Court, the Supreme Court held that the appellant was one entity and it carried on business at different branches. Branches are not independent and separate entities. They are different agencies. The contract of sale was between the appellant and the Bombay buyer. When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. The steps taken from the beginning to the end by the Bombay branch in co-ordination with the Madras factory showed that the Bombay branch was merely acting as an intermediary between the Madras factory and the buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale caused the movement of goods from Madras to Bombay. The inter-State movement of the goods from Madras to Bombay was the result of the contract of sale and the fact that the contract emanated from correspondence which passed between the Bombay branch and the company could not make any difference. The sale was therefore liable to be taxed u/s 3(a) of the Central Act.

25. The above pronouncement of the Supreme Court also fully supports the claim of the department. In the instant case, the movement of the goods to the Branches was in pursuance of a contract of sale. It is found as a fact by all the three authorities below, that the goods were always moved to their destination in pursuance of the requests of UIL and under intimation to it. The Tribunal on perusal of all relevant documents and materials placed before it has concluded thus:

"We may also further state that on seeing R.100B document in the book of the appellant, it is clear that it is the same godown that is the godown for both the appellant as well as Usha Sales Ltd., clearly indicating that the sister concerns are having the present method in an attempt to evade Central Sales Tax and it is not a case of Branch transfers as being argued and on the other hand it is a case of transfer of goods and movement of goods in pursuance of a contract entered into between the two sister concerns, one a manufacturing unit and another the sole selling agent."

26. In terms of the second agreement entered into between the parties to which reference is made above, the goods were to be sold directly to the parties in case UIL procured orders from the companies or Corporations for bulk orders. Therefore, merely because certain deliveries from the Branches were sold to such bulk consumers, it cannot be said that all the supplies made to the Branches were Branch transfers. The evidence on record would disclose that the transfer of goods by the petitioner to the Branches were to comply with the firm orders placed by UIL in pursuance of the agreement entered into between them and also for the purpose of sales on bulk orders procured by UIL as per the second agreement.

27. It is true as contended by Sri Srinivas Reddy that the question whether a sale is an inter-State sale or not is a mixed question of fact and law as held in *Bharat Heavy Electricals Limited v. Union of India*.⁹ At the same time, it needs to be emphasized as held by the Apex Court in the above judgment that if a question arises whether a sale is an inter-State sale or not, it has to be answered with reference to and on the basis of section 3 and section 3 of the Central Sales Tax Act alone and that the provisions of Section 4, or for that matter the provisions of Section 5 are not relevant on the said question. This position is well settled by the judgment of the Constitution Bench in *Tata Iron and Steel Co. Ltd. v. S.R.Sarkar*,¹⁰ *Manganese Ore (India) Ltd. v. Regional Assistant Commissioner of Sales Tax*,¹¹ *Union of India v. K.G.Khosla and Co. Limited*.¹² Similarly, where the question arises as to in which State is the tax leviable, one must look to, and apply the test in Section 9(1) of the CST Act, as no other provision is relevant on that question. In *Manganese Ore (India) Ltd.*'s case (supra 11) having regard to the facts of that case, the Supreme Court held that so far as Section 3(a) of the Central Sales Tax Act is concerned, there is no distinction between unascertained and future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual physical existence. So opining, the Apex Court held that all the incidents of an inter-State sale were present in that case and therefore the sales were covered by Section 3(a) of the CST Act. In *Pandiya Vishwanath & Sons v. Commissioner of Sales Tax*,¹³ the Allahabad High Court held that the hypothetical situation that since the goods were not dispatched by rail or otherwise in the name of the buyer and therefore there was a possibility of being directed to any other person need not be considered to determine the question whether the movement of the goods was a result of a covenant or incident of a contract of sale. The facts that the assessee agreed to sell the items specified in the agreement at the agreed rates, that he caused them to be prepared according to specification and offered the delivery thereof unmistakably lead to the conclusion that the movement of the goods resulted from a covenant or was incident to contract of sale. The Court proceeded to hold that it is not necessary that the sale must precede the inter-State movement, but what is necessary is whether the movement of the goods was occasioned by a covenant or was incident of contract of sale. The above judgment of the Allahabad High Court, with which we respectfully concur, also

fully supports the conclusion reached by the Tribunal. In *South India Viscose Ltd.* case (supra 5) the Apex Court held that if there is a conceivable link between a contract of sale and the movement of goods from one State to another in order to discharge the obligation under the contract of sale, the interposition of an agent of the seller who may temporarily intercept the movement will not alter the inter-State character of the sale. This decision again fortifies the case of the Department. In *Indian Oil Corporation Ltd v. Union of India*,¹⁴ the Apex Court held that a sale shall be an inter-State sale u/s 3(a) of the Central Sales Tax Act, 1956, if there is a contract of sale preceding the movement of goods from one State to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-State sale it is immaterial whether the property in the goods passes in one State or another.

28. In the premise of the established facts, the position in law noticed above and in the facts and circumstances of the case, we hold that the movements of the goods to the Branches from Hyderabad were in pursuance of and incidental to the pre-existing orders received by the petitioner from the UIL. Therefore, the transactions are clearly inter-State sales and not Branch transfers as claimed by the assessee.

29. In the result and for the foregoing reasons, the view of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad in Tribunal Appeal No.712 of 1987 dated 30.3.1990 affirming the concurrent finding of the Commercial Tax Officer, Company Circle II, Hyderabad and the Appellate Deputy Commissioner (Commercial Taxes), Hyderabad - I Division, Hyderabad is upheld and the revision is dismissed. There will be, however, no order as to costs.