
(1975) 08 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 8031 of 1974

Indian Explosives Ltd.

APPELLANT

Vs

Commissioner, Sales Tax and Others

RESPONDENT

Date of Decision : 27-08-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 5
Constitution of India, 1950 — Article 226

Citation : (1978) 41 STC 315

Hon'ble Judges : K.B. Asthana, C.J; R.L. Gulati, J

Bench : Division Bench

Advocate : A.K. Banerji, S.P. Srivastava and A.K. Basu, for the Appellant; Chand Kishore, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution by a company, called the Indian Explosives Limited, having its registered office at Calcutta. It runs a factory for the manufacture of fertilizers at Panki District, Kanpur, within the State of Uttar Pradesh. The principal raw material used in the manufacture of fertilizer is raw naphtha, refined from crude oil at the refinery of the 5th respondent, the Indian Oil Corporation Limited at Barauni in the State of Bihar. For the regular supply of raw naphtha the petitioner-company entered into an agreement with the Indian Oil Corporation Limited (hereinafter referred to as the IOC) on 9th February, 1970. The terms of the agreement, which are relevant for our purposes, are to the following effect:

(a) The duration of the agreement is for a period of 10 years beginning from 10th September, 1969 and ending on 31st December, 1970 (sic). The agreement, however, will continue thereafter also unless it is terminated by either party by giving not less than one year's notice.

(b) The naphtha to be supplied to the petitioner-company is to be of specified quality.

(c) The quantity of naphtha to be supplied will be 95,000 tonnes in the first year, 1,70,000 tonnes in the second year, 2,00,000 tonnes in the third year, 2,25,000 tonnes in the fourth year and 2,50,000 tonnes in the subsequent years. The supply is to be made in parcels of agreed size against the petitioner's indent in writing.

(d) Naphtha is to be supplied through a pipe-line constructed at the cost of the IOC from Barauni to Kanpur. At Kanpur it has to be first stored in the storage tank built by the IOC and from this storage tank it will be piped to the storage tanks of the petitioner.

(e) The price of naphtha is to be fixed by the Government of India, failing which it is to be fixed by mutual negotiation.

(f) Besides the price fixed or agreed, the petitioner-company has to pay to the IOC freight/transfer charges, excise duty and all other taxes including the sales tax.

(g) The cost of transfer of naphtha through pipe-line from Barauni refinery to the petitioner's factory at Kanpur is to be borne by the petitioner in addition to the price.

(h) The IOC is to provide at its own cost storage facility at Panki installation adequate to meet 30 days' requirements of naphtha of the petitioner. The petitioner has to provide its own storage tanks adequate to meet 20 days' requirements of naphtha. The storage tank thus provided by the two parties are to be connected by a pipe-line.

(i) Sampling and testing is to be done in the storage tank of respondent No. 5.

2. For the assessment year 1969-70 the turnover of naphtha supplied by the IOC to the petitioner-company was subjected to tax under the U. P. Sales Tax Act in the hands of the IOC on the ground that the sale of naphtha had taken place at Kanpur. In accordance with the agreement the IOC has realised the amount of sales tax from the petitioner-company. The petitioner-company has been protesting to the IOC that the sales of naphtha under the agreement amount to inter-State sales and no tax is leviable under the U. P. Sales Tax Act and in the alternative sales tax can be charged only at the price of naphtha as fixed or agreed and not on the amount of freight, octroi and excise duty, etc. According to the petitioner, the IOC has not paid much heed to the petitioner's protest and has been charging sales tax from the petitioner in accordance with the agreement in all its invoices sent from time to time. The petitioner made a representation to the sales tax authorities, but did not succeed. Thereupon in 1973 the petitioner filed Civil Misc. Writ No. 5562 of 1973 challenging the proposed levy of tax. That petition was dismissed as premature on the ground that no assessment order had yet been passed deciding any of the points raised in the writ petition. On 15th March, 1974, an assessment order for the year 1969-70 was passed by the third respondent, the Sales Tax Officer (Special

Circle), Agra, treating the sales in question as liable to be assessed under the U.P. Sales Tax Act. The petitioner has now challenged the assessment order by this petition in so far as it relates to the levy of tax on the turnover of naphtha purchased by the petitioner on the grounds, amongst others, that the sales in question are inter-State sales not liable to be taxed under the U.P. Sales Tax Act. Such sales can be taxed, if at all, under the Central Sales Tax Act and that too by the sales tax authorities in Bihar. In other words, the challenge is that the tax levied under the U.P. Sales Tax Act on the turnover of naphtha is wholly without jurisdiction inasmuch as the provisions of the U.P. Sales Tax Act do not apply at all.

3. The first hurdle that the petitioner-company has to cross is whether it is entitled to maintain this petition. Under the U.P. Sales Tax Act, tax is levied on a dealer effecting sale. The dealer in the instant case is the IOC and the tax has been levied upon it. Ordinarily it is the dealer alone who can question the validity or quantum of tax. The petitioner is not the dealer even though it is liable to pay tax to the IOC under the agreement. The contention of Mr. Basu, the learned counsel for the petitioner, is that even though the company is not a dealer, as defined in the U.P. Sales Tax Act, yet it is the aggrieved person because the tax has ultimately to be borne by it. It is, therefore, entitled to maintain this petition. It is further urged that because the petitioner is not a dealer it cannot avail of the statutory remedies of appeal, etc., provided under the U.P. Sales Tax Act nor can it file a suit to challenge the assessment order by virtue of the prohibition contained in Section 17 of the U.P. Sales Tax Act and the only course available to the petitioner is to approach this court under Article 226 of the Constitution. In our opinion, there is a good deal of force in this contention. In *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , the Supreme Court while dealing with the scope of Article 226 of the Constitution has made the following observation:

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by P Art III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder.

4. This observation has been quoted with approval by the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . Directly bearing on the point are the following observations of Lord Danning, J., in *R. v. Thames Magistrates' Court, Ex p Arte Greenbaum* (1957) 55 L.G.R. 129 at 132, as reproduced at page 228 in a book called "A Source Book of English Administrative Law" by D. C. M. Yardley, second edition:

There is one other matter which was taken before us and that is this. It was said that Mr. Greenbaum had no locus standi to come before the Court of Queen's Bench because he was not a party to the proceedings before the Magistrate; that the only people before the Magistrate were Mr. Gritzman and the borough council

and, therefore, Mr. Greenbaum had no place from which to come before the court and ask for a certiorari to quash the Magistrate's decision. Upon that matter I would say that the remedy by certiorari is not confined to the parties before the lower court. It extends to any person aggrieved and, furthermore, to any stranger. The Court of Queen's Bench, by virtue of its inherent jurisdiction over the inferior tribunals, has always the right to interfere if it sees that the lower tribunal is going or has gone beyond its jurisdiction, or has acted in a way contrary to law, or appears from the record to have fallen into error in point of law; and it can so interfere, not only at the instance of a party or a person aggrieved but also at the instance of a stranger if it thinks proper. When application is made to it by a party or a person aggrieved, it will intervene *ex debito justitiae*, in justice to the applicant. When application is made by a stranger it considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the court.

5. Lord Parker, J., in a concurrent judgment, added the following observations:

As regards the second point, that certiorari will not lie here in that Mr. Greenbaum was not a person aggrieved, I am unable to accept Mr. Lawson's argument. One starts with this that the remedy by way of certiorari is a discretionary remedy. Anybody can apply for it—a member of the public who has been inconvenienced, or a particular party or person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito justitiae* and that I think, has always been the position from 1869....The remedy will be granted whenever the applicant has shown a particular grievance of his own beyond some inconvenience suffered by the general public.

6. These observations have been approved by the Supreme Court in *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, in the following words :

In England also the courts have taken the view that when the application is made by a party or by a person aggrieved the court will intervene *ex debito justitiae*, in justice to the applicant and when it is made by a stranger the court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the court (see *R. v. Thames Magistrates' Court, Ex parte Greenbaum* (1957) 55 L.G.R. 129 extracted in Yardley's "Source Book of English Administrative Law", 1970, page 228)

7. From the foregoing discussion it is clear that the relief under Article 226 of the Constitution may be claimed not only by a party to the proceedings or by a person aggrieved but also by a stranger. When the intervention of the Supreme Court is sought by a party to the proceedings or by a person aggrieved, the court will intervene *ex debito justitiae*, but when it is sought by a stranger the court will intervene only if the public interest demands. Now in the instant case, the

petitioner-company is indeed not a party to the proceedings but it is definitely a person aggrieved inasmuch as the burden of tax is ultimately borne by it. It cannot be said that the petitioner is a rank stranger. This court will, therefore, intervene *ex debito justitiae* to do justice between the parties.

8. Before we leave this topic we might as well refer to a decision of Grover, J., of the High Court of Punjab, as he then was, which deals directly with the point arising before us. It was held in that case that relief under Article 226 of the Constitution can be sought not only by a dealer as defined in the Sales Tax Act, who is liable to pay the tax, but also by a purchaser or a consumer from whom the tax is charged by the dealer (see *Dr. Diwan Chand Aggarwal v. Commissioner of Sales Tax, Delhi* [1963] 14 S.T.C. 51.S.C. The preliminary objection is accordingly overruled and it is held that the petitioner-company is entitled to maintain the present writ petition.

9. On merits, the case does not present much difficulty. The power of the State Legislature to levy tax on sales is restricted to the sales taking place within a particular State. Any sale taking place in the course of inter-State trade or commerce is taxable only by a law framed by the Parliament. The Parliament has since enacted such a law called the Central Sales Tax Act, 1956. This Act seeks to levy tax on sales or purchases of goods taking place in the course of inter-State trade or commerce. Section 3 of that Act defines an inter-State sale or purchase of goods in the following words :

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

- (a) occasions the movement of goods from one State to another ; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

10. A plain reading of this definition shows very clearly that if the movement of goods takes place from one State to another in pursuance of or as a consequence of sale or an agreement of sale, such a sale is an inter-State sale. It is immaterial where the sale materialises, namely, where the property in goods passes from the seller to the buyer. In the instant case, there is a standing agreement between the petitioner-company and the IOC under which certain stocks of raw naphtha are supplied to the petitioner-company from time to time. The stock of naphtha moves from Bihar to U.P. as a direct result of such an agreement of sale. The fact that stocks are first stored in the storage tanks of the IOC and thereafter transferred to the storage tank of the petitioner-company makes no difference. The whole process of transportation of naphtha from Bihar to U.P. and its ultimate delivery to the petitioner-company is the direct result of the agreement of sale subsisting between the parties. The goods, therefore, move from one State to another as a result or in consequence of the agreement of sale between the parties and the fact that the property in goods passes from the seller to the buyer at Kanpur where testing, etc., is done is absolutely of no

consequence. In *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, , the assessee entered into a contract with the Director-General of Supplies and Disposals, New Delhi, for the supply of axle-box bodies, which were to be manufactured in Belgium. They were first to be inspected at London and thereafter at Madras. A question arose whether such sales were sales in the course of import and exempt from levy of tax under the State law or under the Central sales tax law. Section 5 of the Central Sales Tax Act defines a sale taking place in the course of import and export into the territory of India by saying that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. The Supreme Court held :

(i) that the expression "occasions the movement of goods" occurring in Section 3(a) and Section 5(2) had the same meaning ;

(ii) that before a sale could be said to have occasioned the import it was not necessary that the sale should have preceded the import; and

(iii) that the movement of goods from Belgium into India was incidental to the contract that they would be manufactured in Belgium, inspected there and imported into India for the consignee and was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of the goods being diverted by the assessee for any other purpose and, therefore, the sale took place in the course of import of goods within Section 5(2) of the Act and exempt from taxation.

11. The same is the situation here. The stocks of raw naphtha were put into the pipe-line in Bihar and ultimately delivered to the petitioner-company at Kanpur under a prior agreement of sale. There was no chance of the goods being diverted to any other person. The contract of sale between the parties, therefore, occasioned the movement of goods from Barauni to Kanpur. Such sales are, therefore, clearly inter-State sales as defined in Section 3(a) of the Central Sales Tax Act.

12. A recent decision of the Supreme Court in *Oil India Ltd. Vs. The Superintendent of Taxes and Others*, completely covers the present case. There crude oil was carried from Assam through the pipe-lines specially constructed by the assessee to the refinery at Barauni in Bihar and there the oil was pumped and delivered to the Indian Oil Corporation. The construction of the pipelines was undertaken in pursuance of an agreement and for the specific purpose of transporting crude oil. It was held that the parties contemplated that there should be movement of crude oil from one State to another. Therefore, the sale of crude oil was in the course of inter-State trade liable to tax under the Central Sales Tax Act and the Government of Bihar had no jurisdiction to tax the sales under the sales tax law of that State. The learned standing counsel conceded

that in view of this decision of the Supreme Court he could not object to the claim of the petitioner-company that the sales were of the nature of inter-State sales and were not liable to tax under the U.P. Sales Tax Act.

13. In the result, the prayer of the petitioner-company to quash the impugned assessment order to the extent that it seeks to levy tax under the U.P. Sales Tax Act on the sales of naphtha is granted and the assessment order is accordingly quashed in part. The petitioner-company has further prayer for a refund of the tax to the IOC so that the same may in turn be refund to the petitioner by the IOC. In our opinion, this prayer is also a reasonable and proper prayer and we have no hesitation in granting the same. We accordingly direct the Sales Tax Officer concerned to modify the impugned assessment order in the manner and to the extent indicated above and refund the tax on the turnover of raw naphtha to the IOC. The petitioner is entitled to the costs which we assess against respondents Nos. 1 to 4.