(1992) 09 PAT CK 0041

In the Patna High Court

Case No : Taxation Case Nos. 118, 119, 120, 121 and 122 of 1981

Indian Explosives Ltd. APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Citation : (1992) 09 PAT CK 0041

Judgement

G.C. Bharuka, J.—These five references u/s 33(1) of the Bihar Sales Tax Ordinance, 1979 (hereinafter referred to as "the Ordinance") have been made by the Commercial Taxes Tribunal seeking opinion of thus Court on the following questions of law:

(1) Whether on the facts and in the circumstances of the case the Tribunal is right in holding that the sales resulting in delivery to customers in West Bengal by the Petitioner''s vans were sales that occasioned the movement of materials from one State to Anr. ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was correct in drawing adverse inference against the Petitioner?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding the Petitioner liable to pay tax in Bihar on the concerned transactions holding them to be inter-State sales after spelling out a case of deemed contract between the parties on the basis of adverse inference drawn by it against the Petitioner?

2. All the five references in hand relate to the same Assessee giving rise to the above common questions of law under identical facts for the periods 1966-67, 1967-68, 1968-69, 1969-70 and 1970-71.

3. The relevant facts as found by the Tribunal may be set out in short. The Assessee is a Public Limited Company, incorporated under the Indian Companies Act, 1913, having its registered office at Calcutta. It is inter alia, engaged in the manufacture and sale of explosives having its factory at Gomia in the State of

Bihar. It has its magazines spread over in other states including those at Calcutta in the State of West Bengal. The sale of explosives are affected by the Assessee both from its factory as well as from its magazines. The Assessee is a registered dealer under Bihar Sales Tax Act as well as under the Central Sales Tax Act (hereinafter in short the ''Central Act'').

4. It appears that during the periods under consideration the Assessee through its Head Office in Calcutta had entered into contracts with its purchasers of West Bengal for sale of explosives. According to the Assessing Officer none of the contracts had a stipulation in respect of place from where the explosives were to be supplied. Admittedly part of the sale of explosives had been affected by transporting the same from the factory of the Assessee at Gomia in the State of Bihar to the place of business of the customers in the State of West Bengal. These sales have been held to be inter-State sales by the Assessing Officer making the Assessee liable to pay Central sales tax. The appeal of the Assessee having failed, the dispute was carried to the Tribunal by way of filing a revision application. The Tribunal also confirmed the views of the lower authorities.

5. Before the Tribunal it was, inter alia, urged on behalf of the Assessee that since there is no material on record to prove that there was any covenant in the contracts for supply of explosives from the factory at Gomia to the site of the customers, therefore, the transaction cannot be deemed to be that of inter-State sale. To repudiate this part of the submission, the Tribunal by placing reliance on various circumstances appearing in the case, held that from the conduct of the parties an implied contract can be inferred to the above effect. The Tribunal has recorded in its revisional order that I though as noticed by the assessing authorities, copies of the agreement and Mother relevant papers including the instructions issued by the Assessee to its factory at Gomia for dispatch of goods to the site of its customer in West Bengal had been placed on record but except one document all Ors. were missing. It also appears that in spite of repeated opportunities given to the Assessee to produce the said documents relating to the transactions in question for proper adjudication of the issues involved, the Assessee did not comply with the same on the plea of non-availability because of long lapsle of time. The Tribunal found the plea of the Assessee unacceptable since, according to the Tribunal, a limited company like the Petitioner, fully vigilant about the stakes involved, could not have dealt carelessly with such relevant documents. As a matter of fact, as noticed by the Tribunal,'' the explosives in question were transported from Gomia to the sites of the customers in the vans of the Assessee, the cost whereof was borne by the customers. The consignment notes, accompanying the goods clearly showed the Assessee as the consigner and the customers as the consignees. On these facts the Tribunal drew an inference of an implied contract between the parties for supply of goods from the State of Bihar to West Bengal pursuant to an agreement for sale.

6. Mr. K.D. Chatterji, learned Counsel appearing for the Petitioner, submitted that as a necessary ingredient for treating a sale to be an inter-State sale within the

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meaning of Section 3 of the Central Act, it has to be established by the Revenue that the movement of goods from one State to Anr. has occasioned because of an obligation cast on the seller to that extent in the contract for sale entered into between the parties. According to him since there is no material on record from which any such obligation can be inferred either express or implied, therefore, the Tribunal has gone wrong in rejecting the claim of the Petitioner. In support of his submission, he has placed reliance on a Full Bench decision of this Court in the case of Shankerjee Raut Gopalji Raut Vs. State of Bihar, . According to him though this case related to exports but the underlying principles and the ratio of the case will also apply to inter-State sales in view of the Supreme Court judgments in the case of Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner, Commercial Taxes, Jamshedpur and Anr. reported in (1970) 26 STC 354 (376) and in the case of Tata Iron and Steel Co. Ltd., Bombay v. S.R. Sarkar and Anr. reported in (1960) 11 STC 655 (679). He has also placed reliance on the case of Kerala Small Industries Development Corporation Ltd. v. Commercial Tax Officer, Second Circle, Mangalore reported in (1991) 83 STC 356 (Karnataka) (367) and in the case of Kelvinator India Ltd. v. The State of Haryana reported in 32 STC 629 (SC).

7. On the other hand, Mr. K.N. Jain, learned Additional Advocate General appearing for the State of Bihar, placed reliance on two decisions of the Supreme Court in the case of Union of India and Anr. v. R.C. Khosla and Co. Ltd. and Ors. reported in (1979) 43 STC 457 and in the case of Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, , which according to him finally and conclusively clinches the issue involved in this reference and therefore, it is futile to examine the cases referred to on behalf of the Assessee. We agree with Mr. Jain.

8. In the case of Union of India v. K.G. Khosla and Co. Ltd. (supra) it has been held by the Supreme Court that "a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to Anr. , provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of that contract".

9. In the case of Sahney Steel and Press Works Ltd. (supra) the Assessee Company had its factory at Hyderabad and branches at Bombay, Calcutta and Chembur. The branches, inter alia, used to receive orders for supply of goods conforming to the definite specifications and drawings (referred to as ''non-standard goods''). On receiving advise from the branches, the factory at Hyderabad used to manufacture the goods as per the specification and dispatch the same to the branches. Subsequently the branches used to deliver the goods to the customers and receive the prices. These sales affected by the branches were assessed as inter-State sales by the Commercial Taxes Officer, Hyderabad on the ground that the movement of goods from Hyderabad to the stations outside the State were the incidents of the contracts incorporating in the specific orders procured by the branch offices, and therefore the transactions were inter-

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State sales within the terms of Sub-section (a) of Section 3 of the Central Sales Act. The matter having gone to Supreme Court their Lordships were pleased to hold that:

Even if, as in the present case, the buyer places an order with the branch office and the branch office communicates the terms and-specifications of the orders to the registered office and the branch office itself is concerned with the sales, dispatching, billing and receiving of the ''sale price, the conclusion must be that the order placed by the buyer is an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer. We must not forget that both the registered office and the branch office are offices of the same company, and what in effect does take place is that the company from its registered office in Hyderabad takes the goods to its branch office outside the State and arranges to deliver them to the buyer. The registered office and the branch office do not possess separate juridical personalities. The question really is whether the movement of the goods from the registered office at Hyderabad is occasioned by the order placed by the buyer or is an incident of the contract. If it is so, as it appears no doubt to us, its movement from the very beginning from Hyderabad all the way until delivery is received by the buyer is an inter-State movement. In English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, , this Court held that when the movement of the goods from one State to Anr. is an incident of the contract it is a sale in the course of inter-State sale, and it does not matter which is the State in which property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to Anr. .

(Emphasis supplied)

10. In the present case it is not in dispute that the Assessee Company had entered into a contract for sale through its Head Office at Calcutta, with its customers of West Bengal and the movement of explosives in question had occasioned from the Assessee''s factory at Gomia (Bihar) to the site of the customers in West Bengal. Therefore, the transactions in question are necessarily inter-State sales within the meaning of Section 3(a) of the Central Act. As held by the Supreme Court it is wholly immaterial whether there was any contractual obligation on the part of the seller to move the goods from one State to Anr. . The decisive factor is the movement of goods from the State of Bihar to the State of West Bengal, pursuant to and as an incident of the contract for sale.

11. Accordingly, we answer the first question in favour of the Revenue and against the Assessee. Keeping in view the discussions made above, the answers to question Nos. 2, and 3 are inconsequential and accordingly, no opinion is being recorded in respect of those questions. We also award cost of Rs. 750/-, in each case, to be payable by the Assessee within three months from today.

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12. Let a copy of this order be transmitted to the Commercial Taxes Tribunal, Bihar, Patna.

S.K. Chattopadhyaya, J.

13. I agree.

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