
(1990) 10 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 182, 188 and 189 of 1981

Indian Oil Corporation Limited

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 17-10-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 9

Himachal Pradesh Motor Spirit (Taxation of Sales) Act, 1968 — Section 22, 3(1)

Citation : (1991) 1 ShimLC 217

Hon'ble Judges : P.C.B. Menon, C.J.; Davinder Gupta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Deepak Gupta, for the Respondent

Judgement

P.C. Balakrishna Menon, C.J.—These writ petitions are by the Indian Oil Corporation Limited, (I.O.C), a company incorporated under the Companies Act, 1956, and fully owned by the Government of India. The I.O.C. had entered into contracts with M/s. Mandi Kullu Road Corporation, Beas Sutlej Link Project, Pandoh, and the H.P. Government Transport, Una, (hereinafter referred to as the consumers) for the supply of petrol and high-speed diesel. According to the respective agreements between the I.O.C. and the consumers, the consumers are to place supply orders to the I.O.C's depots situated outside the State of Himachal Pradesh. Supply-orders in respect of the consumers, i.e., Mandi Kullu Road Transport Corporation and the B.S.L Project are to be placed at the I.O.C depot at Pathankot in Punjab, and in respect of the H.P. Government Transport, supply orders are to be placed at the I.O.C's depots at Jullundur or Ambala. Supplies are effected from these depots situated outside the State to the consumers in the State of Himachal Pradesh. The delivery-challan-cum-invoice prepared at the I.O.C's. depots outside the State includes also the Central Sales Tax leviable under the transaction which amount is paid or deposited with the Excise and Taxation Authorities at Pathankot, Jullundur or Ambala, as the case may be. Invoice is prepared at the rate applicable at the depot of supply and agreed upon in the rate contract including also the Central Sales Tax at the rate

applicable from time to time.

2. The Petrol Taxation Officer, levied tax on these transactions under the H.P. Motor Spirit (Taxation of Sales) Act, 1968 (hereinafter referred to as the Act), as though these transactions amount to retail sales within the State of Himachal Pradesh liable to tax u/s 3(1) of the Act. The contention of the I.O.C that these transactions are inter-State sales not liable to levy u/s 3(1) of the Act, was not accepted by the Assessing Authority. The decision of the Taxation Officer was upheld in appeal by the Deputy Excise and Taxation Officer and the appellate order was confirmed by the Excise and Taxation Commissioner in revision u/s 22 of the Act.

3. The only point for decision in these writ petitions is, as to whether the sale of Motor-Spirit by the I.O.C. to the respective consumers is inter-State sale not liable to tax u/s 3(1) of the Act as a retail sale within the State?

4. The terms of the contract between the I.O.C. and the consumers are extracted in the revisional order of the Excise and Taxation Commissioner. As per the agreement, the I.O.C, is to instal, at its cost, a bulk-out-fit in the premises of the consumer for which the consumer is to pay a nominal rent of rupee one per month. The supplies by the I.O.C. are to be effected through the said bulk-out-fit. The consumer is to pay for the supply in cash at the rates fixed by the I.O.C. before delivery or on such terms as may be agreed upon between the parties. The consumer is required to have a proper storage licence under the Petroleum Act 1934 and the Rules framed thereunder. The revisional authority, has, however, found that the bulk-out-fit belonged to the I.O.C, the storage licence under the Petroleum Act was also issued to the I.O.C. and a provision in the agreement for payment of nominal rent of rupee one per month by the consumer was only a device to circumvent the provisions of the Act. According to the Statutory Authorities, the property in the goods passed only, at the time when the motor spirit was delivered for use in the vehicles belonging to the consumers from the bulk-out-fits installed within the State of Himachal Pradesh. It was accordingly held that these were retail-sales of motor-spirit liable to tax u/s 3(1) of the Act and were not inter-State sales within the meaning of the Central Sales Tax Act.

5. The Central Sales Tax Act, 1956, is an Act of Parliament falling within the legislative Entry 92-A of List-I of the seventh schedule of the Constitution. If, therefore, transactions in the present cases are inter-State sales falling u/s 3 of the Central Sales Tax Act, the State legislation does not extend to such transactions and the levy of tax on the motor spirit as retail sales under the Act is clearly unsustainable. Section 3 of the Central Sales Tax Act, enacts that 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. The transactions in these present cases are in pursuance to the contract between the I.O.C. and the respective consumers for the sale of motor-spirit for the use of the latter. It is not disputed, that delivery is

effected in pursuance to supply-orders placed by the consumers even though the delivery is from the bulk-out-fits located within the State of Himachal Pradesh. It is also not disputed that the requisite quantity of motor-spirit is transported from I.O.C's. depots located outside the State even though the supplies are effected from out of the bulk-out-fits within the State. The mere fact that the goods are transported at the expense and risk of the seller and the property in the goods passes to the buyer only on delivery, does not, in our view, alter the position that the transaction amounts to an inter-State sale within the meaning of Central Sales Tax Act, 1956. The Supreme Court in (1981) 47 STC 47 Indian Oil Corporation Ltd and Anr. v. Union of India and Ors. states at page 5:

Section 3(a) of the Central Sales Tax Act, 1956, provides that "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". It is now well-settled by a series of decisions of this Court that a sale shall be an inter-State sale u/s 3(a) 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. Some of these decisions are: Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, Oil India Ltd. Vs. The Superintendent of Taxes and Others, ; Balabhagas hulaschand v. State of Orissa (1976) 37 STC 207, and Union of India v. K.G. Khosla & Co. (P.) Ltd. (1979) 43 STC 457.

6. In that case the transaction related to the sale of Naphtha by the I.O.C., produced at its refinery at Bihar and supplied from its depot at Kanpur, U.P. It was of course that the sales under the agreement between the parties were not possible without the inter-State movement of goods and the fact that the supplies were effected through the depot of the seller in the State of U.P. does not empower the State of U.P. to assess sales tax under the State Act. It was accordingly held at page 6:

On the facts of the present case the sales are clearly inter-State sales and the State of U.P. had therefore no jurisdiction to assess the Petitioners to sales tax under the State Act. As the movement of naphtha commences from Barauni in Bihar, the sales tax payable on the sales of naphtha under the agreement dated February 9, 1970, can be assessed and collected only by the authorities in the State of Bihar on behalf of the Government of India in view of Section 9 of the Central Sales Tax Act.

7. The same principle is reiterated by the Supreme Court in (1985) 60 STC 301, Sahney Steel and Press Works Ltd. and Anr. v. Commercial Tax Officer and Ors. The Assessee company in that case was engaged in the manufacture and sale of stampings and laminations made out of steel sheets and had its registered office and factory in Hyderabad. Its branches at Bombay, Calcutta and Coimbatore received orders from customers from within and outside their respective States

for the supply of goods and the company manufactured the goods at its factory at Hyderabad and despatched them to the respective branches by way of transfer of stock. Such goods were booked to "self and sent by lorries. The goods received at the branches were entered in the stock accounts of the branches and kept in stock for the ultimate delivery to the customers. The branches raised the bills and received the sale price. The question before the Supreme Court was whether these transactions amounted to inter-State Sales not liable to sales tax in the States of Maharashtra, West Bengal and Tamil Nadu where the branches were located. The Supreme Court held that the transactions amounted to inter-State sales and are not liable to tax under the Sales Tax Acts of the respective States. The Supreme Court held at page 305:

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 another 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.

It is observed at page 305 -

The law was clarified in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, , where this Court observed 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 another, provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of that contract.

8. In the light of the above decisions of the Supreme Court, we are clearly of the view that the transactions involved in these cases are inter-State sales and the State of Himachal Pradesh has no jurisdiction to impose tax on such sales as retail sales falling u/s 3(1) of the Himachal Pradesh Motor Spirit (Taxation of Sales) Act, (1968). We declare accordingly and quash the orders of assessment impugned in these writ petitions. The writ petitions are allowed. The parties are left to bear their own costs.