
(2010) 07 MP CK 0075

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 16775, 16782, 16783, 16785, 16787, 16788 and 16790 of 2007, 619, 2052, 2053, 2054, 12790 and 13822 of 2008, 1345, 1347, 2051, 7018, 7511 and 8289 of 2009, 7562 and 8996 of 2010.

M.M. Traders

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4
Income Tax Act, 1961 — Section 206(C)
Madhya Pradesh Commercial Tax Act, 1994 — Section 5(2), 6, 9
Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 — Section 11
Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1965 — Rule 8
Madhya Pradesh Value Added Tax Act, 2002 — Section 26, 27, 35, 79
Sales of Goods Act, 1930 — Section 2(6)

Citation : (2011) 1 MPJR 187 : (2010) 4 MPLJ 515 : (2010) 36 VST 356

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra J.

The question for consideration in these writ petitions is whether the sale could be said to be inter-State sale.

In some of the writ petitions, the Petitioners are based in Madhya Pradesh. They are also holding the export licence and they are the dealer registered under the provisions of the M. P. Commercial Tax Act/VAT Act.

The Petitioners/purchasers are based at Gujarat or some other State in Writ Petition Nos. 16782 of 2007, 16783 of 2007, 16785 of 2007, 16787 of 2007, 16788 of 2007, 16790 of 2007, 8996 of 2010, 2054 of 2008, 7018 of 2009, 2052 of 2008, 2053 of 2008.

It is averred in Writ Petition No. 12790 of 2008 that the Petitioners are registered dealers in Madhya Pradesh and they purchased tendu leaves (tendupatta) sold by the M. P. State Minor Forest Product (Trading and Development) Cooperative Federation Limited (hereinafter referred to as, "the Federation"). They are also registered under the M. P. Tendupatta Vyapar Viniyaman Regulation, 1966 to sell tendu leaves in other States in the course of inter-State trade and commerce after paying the prescribed registration fee. They are also registered as exporters and they are required to sell tendupatta in the course of inter-State trade and commerce also. They are also registered under the M. P. Commercial Tax Act and Central Sales Tax Act as dealers. Entry No. 5 in Part III to Schedule II of the VAT prescribes payment of 25.30 per cent of tax on tendupatta. In case sale is within the State the said tax is paid to the State and in case it is inter-State trade and commerce then the Central sales tax is required to be paid in absence of C form. The State is realizing the VAT on the transaction in question. Their right is adversely affected in carrying out inter-State trade. The rate of tax on tendupatta was revised as per the Schedule (P5). The transaction was of inter-State sale. The transaction is covered by the decision of the apex court in the case of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., The State tax is not payable in case of such transaction. The goods are purchased for the purpose of export. The Petitioners are also required to transport the goods after receiving the transit passes. Challan for transportation is also endorsed to the purchasers of another State. The movement of goods is incidental to purchase and cannot be disassociated with the transaction of sale. Respondent No. 2 very well knew that the tendupatta is being purchased for inter-State sale. An agreement was also entered into. A prayer has been made to declare that levy, assessment and collection of tax under the State Act is unauthorised without jurisdiction and the transaction falls within the purview of the Central Sales Tax Act. A prayer has also been made to refund the excess tax realised.

In Writ Petition No. 7562 of 2010, though the question of ultra vires of provision of Sections 26, 27 and 35 of the M. P. VAT Act, 2002 has been raised but it has not been pressed.

In Writ Petition No. 16782 of 2007, it is averred that the Petitioner belongs to the State of Gujarat and transports bamboos from State of Madhya Pradesh to the State of Gujarat for manufacturing process. The transit passes were issued. The work order was also issued by the Forest Department. Form 27 issued by the Income Tax Department u/s 206C of the Income Tax Act, 1961 was also submitted. The movement of goods fulfils the precondition essential for a sale in the course of inter-State trade and commerce, therefore, the transaction is inter-State transaction within the meaning of Section 3(a) of the Central Sales Tax Act, 1956. The collection of commercial tax on inter-State sale is not permissible u/s 79 of the Commercial Tax Act, 1994 or VAT Act, 2002 which came into force with effect from April 1, 2006.

The tender notice dated October 31, 2005 (P1) was issued. Advertisement (P2) was issued on October 31, 2005. Tender form (P3) was issued. Acceptance letter (P4) was also issued on December 5, 2005. The purchaser agreement (P5) dated December 19, 2005 was also entered into. The work order (P6) was issued. The Petitioner has submitted form 27C for not collecting the TDS from the Petitioner. Alternatively, it is submitted that the Petitioner could have been held liable for tax under the M. P. VAT Act, 2002 and not under the M. P. Commercial Tax Act, 1994 as the work orders were issued after April 1, 2006.

In the return filed by the Respondents which has been adopted in other writ petitions also, it is contended that the inter-State sale has been defined u/s 3 of the Central Sales Tax Act. The transaction in question is intra-State sale. Reliance has also been placed on Section 4 of the Central Sales Tax Act, 1956 which provides that when a sale or purchase of goods is determined in accordance with Sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States. From the purchase agreement, it is apparent that it is not the case of inter-State sale. The movement of goods is not incidental to the sale. There was no condition expressed or implied to that effect in the agreement. None of the conditions to make it as inter-State sale stands satisfied ; it cannot be inferred from Section 11 of the M. P. Tendupatta Adhiniyam, 1964 (hereinafter referred to as, "the Adhiniyam 1964") read with Rule 8 of the M. P. Tendupatta (Vyapar Viniyaman) Niyamawali, 1966 (hereinafter referred to as, "the Regulation 1966"). The only requirement is that every manufacturer of bidi and every exporter has to get himself registered under the provisions of the Act. It is nowhere provided that being a registered exporter of sale, such export will be treated as inter-State sale. The decision of the apex court and this Court have been relied upon.

Shri Sumit Nema, counsel for the Petitioner, has submitted that purchasers are based in Madhya Pradesh as they hold the exporter licence as per Section 11 of the Adhiniyam, 1964 read with Rule 8 of the Regulation, 1966. The sale to them has to be treated as inter-State sale as essentially for the purpose of export in inter-State sale, they have purchased the tendupatta/bamboos. It is also submitted that in the cases where the dealers are based outside Madhya Pradesh and are carrying on their business outside the State of Madhya Pradesh, they have purchased the bamboos/ tendupatta in the course of inter-State sale which is apparent from the transit passes, challan and Income Tax form 27 issued u/s 206C of the Income Tax Act. Thus, the movement of goods has taken place incidental to the transaction of inter-State sale in both the cases. The State was not competent enough to levy commercial tax or the VAT.

In Writ Petition Nos. 16782 of 2007, 16783 of 2007, 16785 of 2007, 16787 of 2007, 16788 of 2007, 16790 of 2007 Shri Sumit Nema, counsel for Petitioner-M/s. J. K. Paper Limited, has raised additional point that as the goods were unascertained goods, the sale is deemed to have been completed when the work orders were issued. Accordingly, the accessibility of State tax ought to have been

worked out. Up to April 1, 2006, the M. P. Commercial Tax Act was in force in which the rate of tax was eight per cent whereas under the VAT Act which came into force with effect from April 1, 2006, the rate of tax was four per cent as such the State tax could have been exacted at the rate of four per cent.

The main question for consideration is whether the transaction can be said to be of inter-State sale. Inter-State sale has been defined in Section 3 of the Central Sales Tax Act, 1956. Section 3 is quoted below :

When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.--

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.

Explanation 1: Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2: Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

It is necessary that the sale or purchase transaction must occasion the movement of goods from one State to another State as required u/s 3(a) of the Central Sales Tax Act, 1956. Such movement may be express, implied or incidental and inseparably connected with the transaction. At the outset, it is considered appropriate to state that it is the question of fact depending upon the transaction in question whether it would be a case of inter-State sale or intra-State sale. It is determined in the facts of each case in the light of the provisions and the principles laid down by the apex court and other courts. It is considered appropriate to refer to various decisions of the apex court on the question of inter-State sale.

In *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , the apex court considered Section 3 of the Central Sales Tax Act and held that a sale becomes taxable u/s 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and the two clauses of Section 3 are mutually exclusive. A sale taxable as falling within Clause (a) of Section 3, will be

excluded from the purview of Clause (b) of Section 3. Following is the relevant extract (at page 666 of STC) :

. . . A sale being by the definition, transfer of property, becomes taxable u/s 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and that indicates that the two clauses of Section 3 are mutually exclusive. A sale taxable as falling within Clause (a) of Section 3, will be excluded from the purview of Clause (b) of Section 3; otherwise certain sales may be liable to tax under both the clauses and two States may, in respect of a single sale, claim to levy the tax contrary to the plain intendment of Sections 6 and 9 of the Act.

In *The Cement Marketing Co. of India Ltd. and Another Vs. The State of Mysore and Another*, the apex court has laid down the tests to bring a sale within the inter-State sales which provide that the transaction must involve movement of goods across the border. Transactions are inter-State in which as a direct result of such sales the goods are actually delivered for consumption in another State. A contract of sale must involve transport of goods from one State to another under the contract of sale. On the facts, it was found that the contract itself involved the movement of goods from the factory to the purchaser, i.e., across the border from one State to another because the factories were outside the State of Mysore and, therefore, the transactions were clearly transactions of sale of goods in the course of inter-State trade or commerce.

In *Singareni Collieries Co., Ltd. Vs. State of Andhra Pradesh and Others*, , the Assessee-company in Andhra Pradesh supplied coal to allottees outside the State pursuant to the directions of Coal Commissioner issued under the Colliery Control Order, 1945 and it was held to be a transaction to be that of inter-State sale. In the said case, the coal was transported from the colliery of the company to the consumers outside the taxing State, as a result of the covenant or incident of the contract of sale and, therefore, the sale must be regarded as an inter-State sale and not liable to be taxed under the said Act.

In *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, , it was quite clear from the contract that it was incidental to the contract that the axle-box bodies were to be manufactured in Belgium, inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the Assessee and the Director-General of Supplies. There was no possibilities of these goods being diverted by the Assessee for any other purpose. Consequently, the sale was held to have taken place in the course of import of goods within Section 5(2) of the Act and, therefore, exempt from taxation.

In *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co.*

Ltd., , the apex court considered the circumstances under which sale becomes sale in the course of inter-State trade or commerce. The factual backdrop of the case indicated that the dealers were required to move the trucks, buses, chassis and other spare parts purchased by them from State of Bihar to places outside Bihar. They were required by the terms of the contract entered into by them with the Assessee. They would have committed breach of their contracts and incurred penalty prescribed in their dealership agreements, if they had failed to abide by the term requiring them to move the goods outside the State of Bihar. The apex court also considered the decision in the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, in which it was laid down that a sale could be a sale in the course of inter-State trade only if two conditions concur: (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. The apex court has also referred to the decision rendered in *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, . The apex court in *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd.*, has held thus (at pages 147-149 of 27 STC) :

In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, Venkatarama Ayyar, J., observed that a sale could be a sale in the course of inter-State trade only if two conditions concur: (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale.

In *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, this Court had to consider what sales are sales in the course of export and what sales are for the purpose of export. In the course of the judgment, Shah, J. (one of us) observed :

"A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export."

The decided cases establish that sales will be considered as sales in the course of export or import or sales in the course of inter-State trade and commerce under the following circumstances:

- (1) When goods which are in export or import stream are sold ;
- (2) When the contract of sale or law under which goods are sold require those

goods to be exported or imported to a foreign country or from a foreign country as the case may be or are required to be transported to a State other than the State in which the delivery of goods takes place, and

(3) Where as a necessary incidence of the contract of sale goods sold are required to be exported or imported or transported out of the State in which the delivery of goods takes place.

The decision of Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras [1970] 25 STC 528 has been considered by the apex court of The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd., The apex court has held thus (at page 150 of 27 STC) :

17. This finding clearly brings out the distinction between the facts of the Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, and the facts of the cases wherein this Court held that the sales in question were sales in the course of export or import. In the Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, this Court found that what was insisted on by the Coffee Board was that the coffee set apart for the purpose of the export must be exported ; it was not incumbent on the purchasers at the auction to export that coffee themselves ; they may do it themselves or they may sell it to somebody who may export it outside India. On that basis, this Court came to the conclusion that the sales effected by the Coffee Board are not sales in the course of export ; they are only sales for the purpose of export. The ratio of that decision does not bear on the facts before us. Herein under the terms of the contracts of sale, the purchasers were required to remove the goods from the State of Bihar to other States. Hence the sales with which we are concerned in this case must be held to be sales in the course of inter-State trade or commerce.

In Oil India Ltd. Vs. The Superintendent of Taxes and Others, , the construction of pipeline was undertaken by the Petitioner in pursuance of the agreement and that was for the specific purpose of transporting crude oil to Barauni from Assam. On facts, it was held that there should be movement of goods from the State of Assam to the State of Bihar in pursuance to the contract of sale. In other words, the movement of crude oil from the State of Assam to the State of Bihar was incidental to the contract of sale. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of the sale.

In Balabhagas Hulaschand Vs. State of Orissa, Reported as Balabhagas Hulaschand Vs. State of Orissa, , the apex court considered the purpose of sale

in Section 2(g) of the Central Sales Tax Act and held that it is not necessary that the goods be ascertainable. There could be an agreement to sell jute still being grown. The apex court also considered the conditions necessary for a sale to become an inter-State sale and also considered Section 3(a) of the Central Sales Tax Act which defines inter-State sale. It has been observed that when the goods start moving from one State to another in pursuance of the agreement to sell they cease to be future goods because they are in existence and also ascertainable. Following three 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 move 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.

In Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, the factual backdrop of the case indicated that the contracts of sales were finalised at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. Those were "future goods" within the meaning of Section 2(6) of the Sale of Goods Act, 1930. The despatch of the goods to Delhi was but a convenient mode of securing the performance of contracts made at Delhi. Goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by the Respondent only by the movement of the goods from Faridabad with intention of delivering them to the purchasers. Thus, the movement of goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi. It is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. If the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale.

In Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., the apex court laid down the requirement of inter-State sale to be a movement of goods from one State to another. It must be a case of cause and effect ; cause being the sale/ purchase and the effect being the movement of goods to another State. To fall u/s 3(a) of the Central Sales Tax Act, the sale and the movement of goods must be parts of the same transaction. "A sale which occasions the movement of goods from one State to another is a sale, in the course of the inter-State trade, no matter in which State the property in the goods passes." Even if the goods move in pursuance of an agreement of sale and the sale is completed in the State in which the goods are received, it will be an inter-State sale. Further, it is

immaterial whether a completed sale precedes the movement of goods or follows the movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected. The question whether a sale/purchase is an inter-State transaction depends on the facts of each case. The principles are well-settled ; it is only a question of application of these principles to the facts found in each case. On facts, it was found that the purchase of goods and their despatch to ex-State principal were parts of the same transaction and was result or incident of the purchase. Such movement of goods though not proved to have been expressly stated in the contract of sale was yet held to have been agreed upon between the parties. Thus, the sale cannot be taxed by the Legislature of the State of U. P. though it is taxable only under the Central Sales Tax Act. The situation could have been different on behalf of ex-State principal and thereafter in pursuance of the subsequent instructions, the goods were despatched. In such an event, instructions to despatch the goods are independent of the instructions to purchase.

In State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., , the apex court referring to the various decisions on facts of the said case came to the conclusion that it was a case of inter-State transaction of sale. The apex court took note of Clause 3.13 of the agreement which was entered into between the State of Orissa and K.B. Saha and Sons Industries Pvt. Ltd., which provided for security deposit at 25 per cent of the full purchase price of the lot(s) within fifteen days of issue of ratification order provided that where the tenderer makes purchase for the purpose of export outside India, he may, if he so elects and on furnishing the requisite papers in support thereof, tender the security deposit in the form of bank guarantee (BG) to the extent of 20 per cent of the full sale value of the stock purchased in the prescribed form valid for a period of not less than one year and the said BG shall be released after finalisation of the export deal. Clause 3.13 reads thus :

The successful tenderer shall pay security deposit at 25 per cent of the full purchase price of the lot(s) within 15 days of issue of ratification order provided that where the tenderer makes purchase for purpose of export outside India, he may, if he so elects and on furnishing the requisite papers in support thereof, tender the security deposit in the form of bank guarantee (BG) to the extent of 20 per cent of the full sale value of the stock purchased in the prescribed form valid for a period of not less than one year and the said BG shall be released after finalisation of the export deal.

The aforesaid Clause 3.13 mainly clinched the issue in the said decision. It is contemplated in the agreement itself which was entered into between the parties that the security deposit of 25 per cent of the full purchase price was to be furnished in case the tenderer wants to purchase for the purpose of export outside India. Besides that there were transit passes which were issued, Income Tax form was also issued u/s 206C of the Income Tax Act and the challan was

also prepared. However, what tilted the balance on facts in the said case is the existence of the aforesaid agreement which envisaged the inter-State sale as provided in Clause 3.13. The apex court has reiterated the law that in order to decide whether the sale is inter-State, it is sufficient that the movement of goods could have been occasioned by sale or should be incidental thereto. What is important that the movement of goods and sale must be inseparably connected. The emphasis of their Lordships is that the factum of movement of goods must be inseparably connected with sale. It has also been laid down that it is not necessary that there should be an existence of contract of sale incorporating the express or implied provisions regarding movement of goods.

In the light of the aforesaid decisions, what emerges is that the sale would be inter-State sale in case there is stipulation express or implied in the agreement of sale or the movement of goods is incidental and must be the necessary consequence of sale or purchase. It must be a case of cause and effect; cause being sale and purchase and effect being movement of the goods from one State to another. The sale and movement of goods must be a part of same transaction. As emphasized by their Lordships in *State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc.*, the movement of goods and sale must be inseparably connected. In pursuance of the contract of sale, the goods in fact moved from one State to another. There has to be integrated activity resulting into the goods being put in movement.

Coming to the facts of the instant case, tender notice (P1) was issued in Writ Petition No. 16782 of 2007. The tender notice did not contemplate the inter-State sale. The schedule mentioned in the tender notice indicates that it was for the purpose of disposal of cut and collected industrial Bamboos. Advertisement (P2) was issued on October 31, 2005. The tenders were to be submitted by November 16, 2005. Schedule II (P3) indicates that the address was required to be mentioned by the dealer along with the rate for the concerned lot and its number. There was agreement to purchase 25 per cent additional quantity of bamboos which are delivered in excess of the quantity of bamboos referred to in tender notice Schedule I at the rate tendered above. The situation of the registered office was also required to be mentioned along with postal address. Mere mention of address outside Madhya Pradesh is not going to make it inter-State transaction at all. Schedule III contained tender agreement for purpose of cutting and collecting industrial bamboos. Condition No. 3(i) of the tender notice also required the aforesaid information to be submitted along with call deposit receipt number about the validity of the tender and penalty applicable in case of failure to abide by the conditions of the tender. Pursuant to the terms and conditions of purchase agreement (P5), the purchaser shall have to purchase bamboos up to the quantity mentioned in Schedule I or such lesser part of it, as may be offered to him by the Corporation or by its officer during the period ending June 30, 2006 at the rate specified. The purchaser shall take delivery of cut and collected bamboos. The purchaser is required to furnish bank guarantee for the amount equivalent to 10 per cent of the total purchase price of the

notified quantity of bamboos as per Clause 9(i) of the tender notice from any nationalised bank as security in the prescribed form which will be issued by the bank in favour of concerned RGM for the due performance and observance of the agreement. Bank guarantee should be for a period up to October 31, 2006. Remaining amount is to be paid in instalments within 120 days. It was also a stipulation that in addition to the purchase price, the purchaser shall pay the commercial tax, forest development cess and any other tax at the time when purchase price is being paid. Following is the stipulation in Clause 6(v) of the purchase agreement (P5) :

6(v) In addition to the purchase price payable by the purchaser, vanijyik kar, forest development cess and any other tax shall be paid by the purchaser along with the purchase price at the time when the purchase price is being paid.

Clause 6(vi) provides that the amount or the payment of purchase price, as the case may be, shall not be deemed to have been paid unless the commercial tax or other taxes payable along with it, has also been fully paid. Clause 6(vii) further provides that the purchaser shall also be responsible for subsequent liabilities of payment, if any, including payment of additional sums on account of Sales Tax Department or any other tax of the State or Central Government or the Forest Department in respect of bamboos sold to him under this agreement.

What can be culled out from the aforesaid purchase agreement (P5) is that there was no stipulation with respect to movement of goods outside the State of Madhya Pradesh. There was no express or implied condition. Relationship between the cause and effect is absolutely missing in the instant case. On the contrary, what can be culled out from clause Nos. 6(v), 6(vi) and 6(vii) of the purchaser agreement (P5) is that there was an agreement to pay commercial tax in the State of Madhya Pradesh on such purchase and any other tax and it was to form part of the purchase price. Without payment of taxes, the purchase price shall not be deemed to have been paid. Thus, there was express stipulation entered into as per purchase agreement (P-5) to make the payment of commercial tax/VAT as may be applicable. Merely by the fact that the transit pass was issued from Madhya Pradesh to Gujarat would not make movement of goods incidental to the transaction of sale. The movement was independent to the sale. It could not be said that the movement of goods and sale was inseparably connected. The movement of bamboos was not at all connected with the sale.

Similarly, the income tax form of Gujarat issued u/s 206C of the Income Tax Act is also not going to change the complexion of the case as there was no such stipulation like Clause 3.13 reproduced above. It was in the agreement in the case of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., which contemplated export outside India and security to be furnished of the full amount. On facts of the said case, their Lordships have given the finding and in each case it is a question of fact to be determined on the basis of settled principles of law.

Coming to the agreement entered into in the case of purchase of tendupatta, the factual position remains the same with respect to inter-State movement of goods and with respect to the bamboos. We find certain orders have been placed on record by some of the Petitioners/exporters of Madhya Pradesh which were, obtained by them from outside the State of Madhya Pradesh but they are also running their business in the State of Madhya Pradesh. What is of utmost significance whether the movement of tendupatta has taken place pursuant to the transaction in question or one incidental thereto or formed inseparable part. Our answer is in negative.

Merely by issuance of transit passes to the purchasers, in our opinion, it would not be a case of inter-State sale. The purchase agreement (P5) contained in Schedule IV in the case of sale of tendu leaves provides the detail, method of sale, delivery. It is nowhere contemplated that the goods were to move from outside the State of Madhya Pradesh expressly or impliedly nor it was incidental thereto. In our opinion, the sale of tendupatta is not inseparably connected with the movement. There is no relationship in cause of sale and effect of movement. Merely by the fact that the exporter licence is held by some of the dealers is not enough to make it a case of inter-State sale on the settled principles of law laid down by the apex court in various decisions.

There was stipulation in the agreement with respect to tendupatta for payment of commercial tax, forest development cess and any other tax, which was to form part of sale price without payment of these taxes, the payment of price shall not be deemed to have been made. In view of the aforesaid discussion, in our opinion, the liability of tax could not have been escaped by the Petitioners.

In view of the aforesaid discussion, we are of the considered opinion that the sale in question with respect to bamboos and tendupatta could not be said to be an inter-State sale as defined in Section 3(a) of the Central Sales Tax Act. Thus, they were liable to be taxed under the State Act.

In Writ Petition Nos. 16782 of 2007, 16783 of 2007, 16785 of 2007, 16787 of 2007, 16788 of 2007, 16790 of 2007, Shri Sumit Nema, counsel appearing for the Petitioners has prayed for liberty to raise the question of applicability of VAT Act, 2002 before appropriate authority. In case any representation is filed, the same be dealt with in accordance with law.

Resultantly, we find that the transactions of sale of bamboos and tendupatta not to be in the inter-State trade or commerce as contemplated u/s 3(a) of the Central Sales Tax Act. Thus, the commercial tax/ VAT was payable in accordance with law on the transactions in question.

The writ petitions being devoid of merits, deserve dismissal, they are hereby dismissed. The parties to bear their costs as incurred of the petitions.