
(2016) 04 JH CK 0181
In the Jharkhand High Court
Case No : Writ Petition (T) No. 993 of 2015

M/s Laxmi Narayan Trading Co.

APPELLANT

Vs

Central Coalfields Limited

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

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

Citation : (2017) 1 JBCJ 96

Hon'ble Judges : Mr. D.N. Patel and Ananda Sen, JJ.

Bench : Division Bench

Advocate : M/s. Nitin Kumar Pasari, Sudhir Kr. Singh and Vishal Kr. Singh, Advocates, for the Petitioner; Mr. Rajesh Shankar, G.A. and Mr. Dheeraj Kumar, J.C. to A.G, for the State; Mr. Amit Kr. Das, Advocates, for the Respondent Nos. 1 to 5

Final Decision : Allowed

Judgement

D.N. Patel, J. - This writ petition has been preferred for quashing and setting aside the Tax-cum-Excise Invoice raised by respondent no.5 in which amount of tax at Rs. 5,19,284/- has been raised as a Central Sales Tax @ 5% of the sale price.

2. Being aggrieved by this Tax-cum-Excise Invoice (Annexure-3) more particularly for raising Central Sales Tax to be paid by this petitioner @ 5% this petition has been preferred and it is submitted by the counsel for the petitioner that instead of Central Sales Tax @ 5% it should have been Jharkhand Value Added Tax @ 5% as the sale between this petitioner and respondent no.5 is an intra-State Sale i.e. respondent no.5 has treated first sale between this petitioner and respondent 5 as a inter-State sale.

3. Looking to the counter affidavit filed by the State of Jharkhand in paragraph nos.12 and 14 it has been observed:-

"12. That in view of the said information given by the petitioner, it is an admission of the fact that there had been two transactions. In the first transaction, the petitioner had been the purchasing dealer of coal from the Central Coalfields Limited which occurred in the State of Jharkhand and in the other transaction, the petitioner was selling dealer of coal to a purchaser outside the State i.e. Uttar Pradesh. Thus, the first transaction was intrastate sale and the second transaction was interstate sale for which the statutory forms are to be submitted before the Assessing Authority.

14. That admittedly in the present case, there had been two transactions of sale i.e. intrastate as well as interstate, the petitioner is duty bound to submit two different statutory forms before the assessing authority. The assessment proceeding of the petitioner for financial year 2012-13 is continuing, which would be done in accordance with law."

(Emphasis supplied)

4. Having heard counsels for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner is an auction purchaser of the coal from respondent-C.C.L. Petitioner is also a registered dealer within the State of Jharkhand. Respondent no.5 has sold the commodity viz. coal to this petitioner within the State of Jharkhand. Thus, it is intra-State sale and hence, under the Jharkhand Value Added Tax Act the petitioner is liable to make payment of Jharkhand Value Added Tax @ 5% of the sale price.

5. It further appears from the facts of the case that the coal is not a consumable commodity by the petitioner. Coal is bound to be re-sold by the trader like this petitioner.

6. This petitioner after purchasing the goods from respondents-C.C.L, within the State of Jharkhand now entering into another sale.

7. Thus, in 2nd sale the coal is sold by this petitioner to Kamakhya Traders, Gorakhpur, Uttar Pradesh and to another party which is also situated in the State of Uttar Pradesh.

8. Thus, the movement of the goods from one State to another i.e. from the State of Jharkhand to the State of Uttar Pradesh is not because of the first sale (intra-State sale), but, the movement of the goods from one State to another State is because of 2nd sale between the petitioner and the purchaser in the State of Uttar Pradesh (inter-State sale).

9. As per Section 3 of the Central Sales Tax Act, 1956 sale or purchase of goods shall be deemed to have been taken place in course of inter-State trade or commerce if the movement of goods is from one State to another.

10. As stated herein above, the movement of goods from one State to another is not because of A-Sale, but, the movement of goods from one State to another is because of 2nd sale. This aspect of the matter has not been properly appreciated

by respondent no.5 while issuing Tax-cum-Excise Invoice at Annexure-3 and has wrongly demanded Central Sales Tax @ 5%. Instead of Central Sales Tax @ 5% it should have been Jharkhand Value Added Tax @ 5%.

11. Thus, it makes no difference to respondent no.5 so far as the quantum of tax is concerned, but, it will make a difference in nomenclature that instead of Central Sales Tax, respondent no.5 will levy Jharkhand Value Added Tax @ 5%. Neither it will make any difference to the State of Jharkhand in this case because the amount of tax is the same.

12. It has already been decided by this Court in the case of <Atilde;?>M/s Amit Enterprises v. Central Coalfields Limited and others, reported in 2015 (4) JCR 129 (Jhr.) that movement of goods from one State to another State is not due to incidence of e-auction of coal between the respondents and the petitioner and therefore, Central Sales Tax cannot be levied by the respondent no.5, but, only Value Added Tax can be levied. The movement of goods-coal from Jharkhand to Uttar Pradesh is independent of incidence of education.

13. Petitioner is a registered dealer within the State of Jharkhand. During the e-auction of coal proposed by respondent no.5-Coal Company, this petitioner, who is situated within the State of Jharkhand, had participated in the e-auction of coal.

14. Petitioner being the highest bidder was a purchaser of coal from respondent no.5 which is also situated within the State of Jharkhand. Now, consideration has also been moved from petitioner to respondent No.5 and the sale was completed between the petitioner and respondent no.5 within the State of Jharkhand.

15. Looking to the provision of the Jharkhand Value Added Tax Act, 2005, the petitioner is liable to make payment of VAT which is at the rate of 5% of the sale price of the coal, as the sale is an intra-State sale. These facts are admitted facts so far as the present case is concerned.

16. It further appears that the coal is not a consumable item which can be consumed by human being like a milk or fruit. It ought to have been kept in mind by respondent no.5 that they are selling coal and not fruits. The purchaser is bound to further sell the goods either;

- (a) within the State of Jharkhand, or;
- (b) outside the State of Jharkhand, or;
- (c) he may even export the coal after fulfilling certain criteria under existing laws.

17. It is none of the concern of respondent no.5 where the e-auction purchaser i.e. the petitioner, is selling the coal. There is no privity of contract between respondent No.6 and the purchaser of the coal in a second sale from the petitioner. This aspect of the matter has not been properly appreciated by respondent no.5.

18. It further appears that respondent no.5 has to levy Value Added Tax at the rate of 5% and not Central Sales Tax at the rate of 5%.

19. Because of sale of coal, between the petitioner and respondent no.5, there is no movement of coal from one State to another State. Therefore, no Central Sales Tax can be levied. The goods in question has moved out of State i.e. from one State to another, due to subsequent sale (between petitioner and purchaser from Uttar Pradesh), with which respondent no.5 has nothing to do, as there is no privity of contract between respondent no.5 and subsequent purchaser of coal of Uttar Pradesh. Therefore, respondent no.5 cannot levy Central Sales Tax, but, it can levy only Value Added Tax.

20. It is submitted by the counsel for the respondents that as per Section 3 of the Central Sales Tax Act, 1956, they have levied Central Sales Tax at the rate of 5% on the sale value. This is a misconception in the mind of respondent no.5 that Central Sales Tax is applicable in a transaction between the petitioner and respondent no.5. The movement of the goods which has taken place from one State to another State is not in one sale or in a first sale. This movement from one State to another State of the coal has taken place due to second sale between this petitioner and the purchaser from the State of Uttar Pradesh. Thus, the sale is as under: -

21. Thus, the present matter is between A and B i.e. the first sale which is inter-State sale, whereas transaction between B and C i.e. from the petitioner and Uttar Pradesh Sale, which is the second sale. For the ready reference, Section 3 of the Central Sales Tax Act, 1956 reads as under: -

"3. 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."

(Emphasis supplied)

22. In view of the Section of the Central Sales Tax Act, 1956, the presumption of inter-State will come into existence only upon fulfilling the following two conditions: -

(a) There must be one transaction of sale or purchase of goods.

(b) In this one transaction of sale or purchase of goods, movement should be from one State to another State.

In the facts of this case, in first sale between petitioner and respondent no.5, goods have never moved out of State. But the goods have moved out of State in second transaction of State.

23. In the facts of the present case, as stated herein above, there is no privity of facts between A and C i.e. between respondent no.5 and the purchaser of the Uttar Pradesh, nor from one sale or purchaser of coal, there is a movement of goods from one State to another State. Coal is not such a commodity which will be consumed by the purchaser, always. He may purchase for captive consumption or he may not. Sometimes, petitioner may be a trader also. A trader is bound to further sell the coal, within the State, outside the State or even outside the country. In the fact of the present case, in the second sale, the movement of goods has taken place from one State to another State and, therefore, respondent no.5 could not have levied Central Sales Tax under Section 3 of the Central Sales Tax Act, 1956. This aspect of the matter has also not been properly appreciated by respondent no.5 while levying Central Sales Tax at the rate of 5% as stated in Tax cum Excise Invoice (Annexure 3).

24. Moreover, it makes no difference to respondent no.5 financially, because the rate of Central Sales Tax as well as the rate of tax of Value Added Tax are similar. Both are at the rate of 5%, but, it will surely make a difference to the petitioner, because if he is paying Value Added Tax, he will get Input Tax Credit under Section 18 of the Jharkhand Value Added Tax Act, 2005 together with Rule 26 of Jharkhand Value Added Tax Act, 2005. There is one more advantage to the petitioner to the effect that subsequent purchaser at Uttar Pradesh will have to pay Central Sales Tax at the rate of 2% instead of 5%, because the petitioner is a registered dealer and he has paid Value Added Tax at the rate of 5% within the State of Jharkhand. Respondent no.5 will have to now issue JVAT-404 Form as prescribed under the Act of 2005.

25. The movement of goods from one State to another is not due to incidence of e-auction of coal between respondent no.5 and petitioner. Therefore, Central Sales Tax cannot be levied, by respondent no.5, but, only Value Added Tax can be levied. The movement of goods-coal from Jharkhand to Uttar Pradesh is independent of incidence of e-auction.

26. It has been held by High Court of Madras in the case of Surya Vinayaka Industries Limited and others v. District Forest Officer, Salem Division, Salem and another reported in [2013] 58 VST 474 (Mad):-

"Therefore, the sale in the present case either to a dealer or to a casual trader or agent is liable to be taxed as there is no dispute of sale within the State of Tamil Nadu. The petitioners in all cases have bound themselves by the terms and conditions contained in the tender-cum-auction sale notification and the provisions of the TNVAT Act, 2006, for payment of tax on sale of goods within the State of Tamil Nadu. Therefore, they cannot resile from their contract nor does the law provide for payment of lesser tax, as the sale in the present case attracts the provisions of the TNVAT Act, 2006 as set out above.

Merely because there is movement of goods from the State of Tamil Nadu to another State at the instance of the buyer, that would not take it out of the

purview of the term sale within the State. There are certain rules which provide for transportation of goods in question after the sale. But that does not change the character of the sale within the State consequent to tender-cum-auction sale. The benefit which the petitioners may get out of the provisions of the Income-tax Act is totally alien to the payment of tax under the TNVAT Act, 2006, as the two enactments operated in different fields. There is no scope or provision for reading one Act into the other, unless there is an express provision. Since the sale in this case was effected within the State of Tamil Nadu on the basis of the tender-cum-auction sale and the petitioners in all these cases have agreed to abide by the terms and conditions unconditionally, there cannot be any manner of doubt that the case squarely falls within the mischief of section 3 of the TNVAT Act, 2006.

Therefore, the demand for payment of value added tax under the TNVAT Act, 2006 is justified. There is no basis to justify the claim as inter-State sale. The said plea is specious and not as per law. The petitioners have not made out a case for the relief sought for both in law and on facts.

15. A similar issue was decided by a Division Bench of this court in <Atilde;?>Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam [2005] 140 STC 112 (Mad), wherein it was held as under: (pages 122 and 123 in 140 STC) :

"11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders who wanted to purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P. or some other State, or remains within Tamil Nadu.

Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale.

13. In the present case, there is no conceivable legal link between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the option of the petitioner and not under any legal

obligation. Hence, the decision in *South India Viscose Ltd. v. State of Tamil Nadu* [1981] 48 STC 232 (SC); AIR 1981 SC 1604 is clearly distinguishable."

The decision of the Division Bench, cited supra, fortifies the view now taken by this court. For the reasons stated supra and in view of the decision of the Division Bench of this court, the plea of the petitioners that it is an inter-State sale has no legal basis and hence, the said contention is rejected. The challenge to levy of Tamil Nadu value added tax therefore fails."

27. In view of the aforesaid decision, even if the movement of goods have taken place out of one State to another State, by per se, Central State Tax is not leviable. One has to draw his attention, whether the movement of goods from one State to another has taken place due to e-auction or not. If answer is negative, the Central Sales Tax is not leviable. There may be second sale. Subsequent purchaser may purchase the same goods. Now, if due to subsequent sale, if, the very same goods are moving from one State to another, therefore seller of goods of first transaction cannot levy Central Sales Tax, but, he can levy only Value Added Tax.

28. The earlier decision rendered by this Court on the very same point between *M/s Amit Enterprises v. Central Coalfields Limited* reported in 2015 (4)JCR 129 (Jhr.) was challenged before the Hon'ble Supreme Court by the Central Coalfields Limited in Special Leave to Appeal No. 12633 of 2015 which was dismissed by the Hon'ble Supreme Court vide order dated 16th July, 2015. The said order is at Annexure-6 to the rejoinder affidavit filed by the petitioner.

29. In view of the aforesaid facts, reasons and judicial pronouncements, the Central Sales Tax levied at the rate of 5% by respondent no.5 is impermissible in the eyes of law. Instead of that, it should have been Value Added Tax under the Jharkhand Value Added Tax Act, 2005. We, therefore, direct the respondents to make necessary suitable changes at Annexure-3 which is Tax Cum Excise Invoice (Rail Sale). There will be no change in the amount of tax whether it is Central Sales Tax or Value Added Tax. The rate of tax is the same i.e. 5%. Therefore, instead of Central Sales Tax in Column 11 at Annexure 3, it should be Value Added Tax. This change shall be carried out by the respondent no.5 within a period of four weeks from today. We, therefore, direct the respondents-authorities to issue form JVAT-404 under Jharkhand Value Added Tax Act, 2005 within a period of four weeks from today.

30. This writ petition is allowed without imposing cost upon the respondents.