(2008) 03 PAT CK 0065

In the Patna High Court

Case No : CWJC No. 9194 of 2007

M/s United Manufacturing Co. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 6A

Citation : (2008) 2 PLJR 302

Hon'ble Judges : Barin Ghosh, J;Abhijit Sinha, J

Bench : Division Bench

Advocate : Gautam Kejriwal and P.C. Aggrawal, for the Appellant; Sidharth Prasad for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. Writ petitioner, a partnership firm, has its principal place of business at New Delhi and has also a Branch Office at Patna. Writ petitioner is a registered dealer with the Sales Tax Department of the State of Bihar. Bihar Fire Service Headquarters, Patna, issued a short tender notice for supply of fabricated small water tenders in the tender notice it was mentioned that the tender will be accepted of those units, which are situated and registered with Sales Tax Department of the State of Bihar. The notice also mentioned that the units located outside the State of Bihar may submit tenders through local agents, who are registered with the Sales Tax Department of the State of Bihar. It was also mentioned in the notice that upto date Bihar Sales Tax Clearance Certificate should be submitted alongwith the tender papers.

2. As stated in the counter affidavit and not denied in the rejoinder, petitioner submitted tender in response to the said notice on the strength of Sales Tax Registration Certificate obtained by it from the State of Bihar. As was mentioned in the notice, so was also mentioned in the bid document that bids will be valid only of those manufacturers or their authorized agents, who are registered with the Sales Tax Department of the State of Bihar, with a rider that the

manufacturers located outside the State of Bihar may submit tender through local agents, who are registered with the Sales Tax Department of the State of Bihar. While submitting the technical bid the petitioner indicated its sales tax registration number as was accorded to it by the State of Bihar. In the price bid petitioner submitted its offer inclusive of taxes, but did not indicate what taxes were included in the rates so quoted.

3. The tender of the petitioner was accepted and the letter by which such acceptance was acknowledged was addressed to and sent at the Principal Office of the petitioner at New Delhi. Petitioner then effected supply of the goods manufactured at New Delhi, transported to the State of Bihar and delivered to Bihar Fire Service Headquarters at Patna.

4. Upon completion of sale of the subject goods, price therefor was paid to the petitioner at its office at New Delhi. At the same time the Fire Officer, Fire Service Headquarters, Patna, issued Form D under Central Safes Tax (Registration and Turnover) Rules, 1957, in respect of the transaction being the subject matter of the sale. While making such payment, the purchaser purported to deduct a sum of Rs. 6,85,388/-from the amount due to the petitioner on account of Bihar Sales Tax, deposited the same with the Sales Tax Authority of the State of Bihar and issued Tax Deducted at Source (T.D.S.) certificate to that effect to the petitioner.

5. This deduction is the reason for filing of the present writ petition.

6. According to petitioner, from the facts as above it would be evidenced that the subject sale occasioned movement of goods from the State of Delhi to the State of Bihar and, accordingly, in respect of the subject goods, impositions contained in the Central Sales Tax Act, 1956, are applicable and not those of the Bihar Act.

7. The learned counsel for the State submitted that the sale of the subject goods did not occasion movement of goods from the State of Delhi to the State of Bihar, as the contract between the parties did not contemplate such movement. It was submitted by the learned counsel for the State that the notice inviting tender as well as the bid document read with the commercial terms and conditions of the tender made it explicit that the sale contemplated under the contract to be entered pursuant to the tender would not occasion movement of goods from one State to other. It was submitted that only those manufacturers, who are within the State of Bihar and have become entitled to sell their products within the State of Bihar by obtaining appropriate sales tax registration from the State of Bihar, were entitled to respond to the tender notice. It was submitted by the learned counsel for the State that a person entitled to sell outside the State, but not within the State, for he has not obtained sales tax registration from the State of Bihar could also participate in the tender, but not directly. He could do so only through an agent, who is entitled to effect sale in the State of Bihar for he has been granted sales tax registration by the State of Bihar.

8. In reply to the submissions of the State, the learned counsel for the petitioner

submitted that it does not matter when and how the sale has been effected, but what matters is whether the sale has occasioned movement of the goods sold from one State to another. The learned counsel for the petitioner submitted that the petitioner was entitled to effect sale at New Delhi and it was also entitled to effect sale in the State of Bihar for it was registered at both places. He submitted that it does not matter whether petitioner was entitled also to effect sale in Bihar for the petitioner had sales tax registration from the State of Bihar, but what matters is whether the subject sale occasioned movement of goods from one State to another.

9. Section 3 of the Central Sales Tax Act, 1956, makes it clear that if the sale has occasioned movement of goods from one State to another, such sale shall be deemed to have taken place in the course of inter-State trade or commerce and accordingly Central Tax shall be applicable in relation thereto. Therefore, if a dealer is registered in various States, because it is registered with various States, it cannot be said that a particular sale effected by it from a State to another, in both of which it is registered, such sale is not an inter-State sale.

10. A Constitutional Bench of the Hon''ble Supreme Court in the case of State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, , has laid down in principle that in order to ascertain whether a sale is an inter-State sale, one is required to take note of the fact whether the sale intended movement of goods from one State to another.

11. A transfer by a dealer of goods from one State to another either to himself or to his agent is not an inter-State sale. That is dear from Section 6A of the Central Sales Tax Act, 1956. If such transferred goods are sold thereupon, the tax liability in respect thereof would then be attracted. If the sale is effected within the State, where the goods had been so transferred, the Sales Tax Law of that State will apply in respect of such sale. In the event goods so transferred are sold outside the State and such sale occasions movement of the goods from that State to another, then the Central Sales Tax Act, 1956, will apply.

12. In the instant case it was made clear before and at the time of entering into the contract for sale that an outsider shall have to transfer the subject goods to itself in the State of Bihar, if it is registered with the Bihar Sales Tax Department, and, if it is not so, to an agent in the State of Bihar, who is registered with the Bihar Sales Tax Department. It is, therefore, absolutely clear that the sale pursuant to the contract did not contemplate movement of goods from one State to another. That being the position there appears to be no scope of interference. The writ petition fails and the same is dismissed.