

(1981) 10 DEL CK 0016
In the Delhi High Court
Case No : Civil Writ No. 1299 of 1975

Pandit Brothers

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-10-1981

Acts Referred:

Citation : (1982) ILR Delhi 791 : (1982) 50 STC 67

Hon'ble Judges : S.S. Chadha, J;Prakash Narain, J

Bench : Division Bench

Advocate : G.C. Sharma, R.D. Helmes, Randhir Chawla, Anoop Sharma, R.C. Chawla and Adarsh Goel, for the Appellant;

Judgement

Chadha, J.—The short question raised in this petition under article 226 of the Constitution of India is whether the sales of motor spare parts, viz., spring leaves, made by the petitioner were made at Bahadurgarh in the State of Haryana in the course of inter-State trade or whether they were intra-State sales effected within the Union Territory of Delhi. The answer would depend on the nature of the transactions construed in the light of section 3 of the Central Sales Tax Act, 1956, which provides as to when is a sale or purchase of goods said to take place in the course of inter-State trade or commerce in these words :

"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 the 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"

2. M/s. Pandit Brothers, the sole proprietorship concern of the petitioner, is carrying on business of manufacture and sale of motor spring leaves within the Union Territory of Delhi in this way. The general administration of the business is carried on from the head office at Delhi but the actual manufacture is entirely

done at its factory at Bahadurgarh in the State of Haryana. The petitioner is a registered dealer having registration certificate No. 21390 in the Union Territory of Delhi under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi (hereinafter referred to as the local Act), with effect from 24th May, 1958. The registration originally was for the resale of motor parts. The petitioner is also a registered dealer under the Central Sales Tax Act, 1956 (hereinafter called the Central Act), vide registration No. 9610 since 24th May, 1958, with the sales tax authorities at Delhi. The petitioner started its own manufacturing at Bahadurgarh in the State of Haryana in the year 1966, when the registration certificate was accordingly amended as manufacture of motor spare parts, namely, spring leaves, etc. The petitioner under the impression that the sales effected from its head office at Delhi were liable to tax in Delhi only had been filing sales tax returns with the authorities in Delhi and had been paying the full amount of the tax due according to the returns to the sales tax authorities both under the local Act and under the Central Act. The Sales Tax Officer in Delhi had been framing assessments in pursuance of the returns. The assessment orders both under the local Act and the Central Act for the financial year 1966-67 were passed on 15th March, 1971, for the financial year 1967-68 on 3rd January, 1972, and for the financial year 1969-70 on 15th March, 1974, by the assessing and notified authority appointed under the local Act and the Central Act. The assessments were framed as per the returns in which the petitioner had included the sale of goods produced at its factory at Bahadurgarh but made from the head office at Delhi. The aforesaid four orders are now impugned in the petition on the main ground that the sales were inter-State sales assessable to sales tax under the Central Act by the sales tax authorities of Bahadurgarh.

3. In the meantime, the petitioner had to purchase for the purpose of manufacturing of goods in its factory at Bahadurgarh large quantities of materials within the State of Haryana and, Therefore, thought it fit to have it registered as a dealer under the Punjab General Sales Tax Act, 1948, as applicable to the State of Haryana (hereinafter called the Haryana Act) also. The petitioner submitted on 23rd October, 1969, an application under the Haryana Act for registration as a dealer. On 30th November, 1969, a registration certificate was issued to the petitioner as a result of which the petitioner became entitled to make tax-free purchases for the purpose of manufacture of goods for the sale of certain goods as specified in the registration certificate issued to it as a dealer in Haryana. The petitioner then started filings its returns with the authorities in Haryana and paying the tax due according to those returns which for some years included the transactions to which the movement of the goods was caused from Bahadurgarh to Delhi. By an order dated 24th August, 1972, the Assessing Authority appointed under the Haryana Act fixed the liability of the petitioner to pay tax under the Haryana Act as well as under the Central Act with effect from 29th September, 1966. Having fixed the liability of the petitioner to pay tax within the State of Haryana both under the Haryana Act and the Central Act, the Assessing Authority under the Haryana Act then proceeded to assess the

petitioner for the year 1966-67. It was found that during the year 1966-67 no local sales were made and, Therefore, the case was filed with no demand. For the assessment year 1967-68, the Assessing Authority under the Haryana Act by its order dated 1st September, 1972, held that no local sales were made and filed the case with no demand. But the Assessing Authority at Haryana made an assessment under the Central Act by its order dated 1st September, 1972, wherein it treated all the transfers to Delhi as inter-State sales from Bahadurgarh at Haryana and raised against the petitioner a demand of tax of Rs. 24,708.41 under the Central Act for the financial year 1967-68. In the same manner, the Assessing Authority at Haryana assessed for the assessment year 1968-69 similar transitions to tax under the Central Act vide its order dated 1st September, 1972, and raised a demand against the petitioner of Rs. 32,484.77. Similarly, for the assessment under the Central Act vide its order dated 9th January, 1973, and a demand of Rs. 47,500 was created against the petitioner. For all these years the Assessing Authorities under the Haryana Act rejected the contention of the petitioner that the situs of the sales was Delhi and not from Bahadurgarh. The petitioner filed appeals to the Deputy Excise and Taxation Commissioner, Rohtak. One of the grounds in the appeals was that in case it was finally held that the transfers from Bahadurgarh to Delhi were sales in the course of inter-State trade or commerce as within the meaning of the Central Act, then the C form which the petitioner had submitted to the sales tax authorities in Delhi he called for and Central sales tax at Bahadurgarh be levied only at concessional rates. Another ground taken was that in case it was held to be a sale in the inter-State trade and commerce at Bahadurgarh, then the tax paid on the same transactions to the sales tax authorities at Delhi should be appropriated and not demanded twice over on the same transaction. The Deputy Excise and Taxation Commissioner vide his order dated 3rd April, 1973, after setting aside the order under appeal directed the Assessing Authority under the Haryana Act to call for the C forms from Delhi and then to complete the assessment pertaining to the assessment years 1967-68, 1968-69 and 1969-70 after allowing the concessional rate of tax on the basis of C form filed. The contention of appropriation of the tax paid by the petitioner to the authorities at Delhi was, however, rejected. The assessment orders were subsequently passed on 4th August, 1975, by the Assessing Authority under the Haryana Act. No credit was given to the petitioner for the sales tax paid at Delhi.

4. The case of the petitioner before us is that being under a bona fide impression that the goods produced at Bahadurgarh but transferred to and sold at Delhi were liable to tax at Delhi, the petitioner had been filing its quarterly returns of turnover and depositing the tax due with the sales tax authorities at Delhi. It is only after the issuance of the notice by the Assessing Authority at Haryana that the petitioner had stopped making payments of tax to the assessing authorities at Delhi and had thereafter deposited all the taxes with the authorities at Haryana. This petition thus raises a controversy at the instance of the petitioner between the sales tax authorities in the Union Territory of Delhi and those in

Haryana as to which of the two authorities are competent to assess the petitioner in respect of the sale transactions. The Union of India on whose behalf the collection of the tax was made by the two authorities has not chosen to appear before us. The petitioner's stand on the jurisdictional facts now is that the authorities in the Union Territory of Delhi have no jurisdiction and Therefore, a writ of certiorari is claimed for quashing the assessment orders passed by the assessing authority in the Union Territory of Delhi for the assessment years 1966-67 to 1969-70 under the central Act and for a mandamus directing respondents Nos. 1 and 2 to refund the amount of Rs. 46,582.91 paid as tax.

5. The modus operandi of the business of the petitioner as disclosed in the petition is like this. The manufacturing is entirely done at the factory at Bahadurgarh in the State of Haryana. The general administration of the business of the petitioner is carried on from the head office at Delhi situated at Chabi Ganj, Kashmere Gate, Delhi. The orders for the supply of the goods of various sub-specifications from various parties are received by the petitioner at its head office in Delhi. The head office thereafter draws up the production programme and sends advice to the factory to manufacture goods in accordance therewith, particularly in view of the sub-specifications mentioned therein. After that, goods are transferred to the head office at Delhi. From its head office the goods are then dispatched to various respective customers in and outside Delhi in pursuance of the orders which had been procured earlier. In other words, except the manufacturing of goods at the factory in Bahadurgarh, all other activities including that of booking of orders, sales, dispatch and billing and receiving sale proceeds are carried out from the head office at Delhi. This stand of the petitioner is supported by the counter-affidavit of respondents Nos.3 and 4 (the Haryana authorities) wherein it is stated that admittedly the manufacturing is done according to specifications and movement of goods takes place thereafter in pursuance of the orders already received and as such, the inter-State sales take place from Haryana. The counsel for the State of Haryana submits that the movement of the goods from Bahadurgarh to Delhi and onwards was caused as a necessary incident of the contracts of sale made by the petitioner and thus the sale had taken place at Bahadurgarh during the course of inter-State trade. A finding of fact is also recorded by the Assessing Authorities of Haryana after a detailed examination of each and every individual item of dispatch of goods. In each invoice, order number was quoted besides other particulars regarding transportation, price and the like. The finding is recorded in these words :

"As far as the spring leaves, these are got manufactured by him at Bahadurgarh factory, in accordance with the orders with reference to the specific number and quality of spring leaves, and the manufactured goods were sent to Delhi/Delhi Border covered by the chalans issued from the factory and the same goods were rebooked from Delhi/Delhi Border covered by invoices replacing the chalans."

6. It is, Therefore, clear from the stand of the petitioner in the writ petition, the counter-affidavit of respondents Nos. 3 and 4 and the findings recorded by the

Assessing Authorities of Haryana that the spring leaves were manufactured by the petitioner in its factory at Bahadurgarh (Haryana) in pursuance of specific orders received by its head office at Delhi. The contracts of sale were made in Delhi and in pursuance of those contracts, the goods were manufactured at Bahadurgarh (Haryana) according to the specifications mentioned in the contract. After the goods were manufactured according to specifications, they were dispatched to the head office at Delhi/Delhi Border for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The goods conforming to agreed specifications having been manufactured at Bahadurgarh (Haryana) with the intention of delivering them to the purchasers. The movement of the goods was occasioned from Bahadurgarh to Delhi as a result of or incidental to the contracts of sale made in Delhi. In our view, the sales effected by the petitioner occasioned the movement of the goods from Haryana to Delhi and, Therefore, are deemed to have taken place in the course of inter-State trade and commerce within the meaning of section 3(a) of the Central Act.

7. The counter-affidavit of respondent No. 2 (authority in Delhi) is that the petitioner never produced any evidence or documents or raised any grievance at the time of assessment before the assessing authorities in Delhi and that is the reason of no determination of facts in the impugned orders. The modus operandi adopted by the petitioner, as stated in the writ petition, is merely denied for want of knowledge. This denial cannot be accepted to support the situs of the sales at Delhi. Respondent No. 2 admits that regular books of account were maintained by the petitioner at the head office at Delhi and no separate books of account were maintained at Bahadurgarh. The impugned orders show that the petitioner produced the books of account, namely, cash books, ledger, sale and purchase vouchers, at the time of assessment and those were examined and found correct. There was no jurisdiction to tax under the Central Act unless it was found that the goods were brought from Bahadurgarh to Delhi and were thereafter sold by the petitioner to various purchasers outside Delhi. Unfortunately, for respondent No. 2, there is no finding that the goods are manufactured at Bahadurgarh in the general course of business for being sold later as and when the orders are received. In the absence of these findings, the findings recorded by the Assessing Authorities in Haryana have to be accepted as correct for resolving the dispute.

8. On these findings, the case is covered by the law laid down by this Court in *K. G. Khosla and Co. Pvt. Ltd. v. Chief Commissioner* [1972] 30 STC 13 and affirmed by the Supreme Court in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, . In that case *K. G. Khosla & Co.* had its head office in the Union Territory of Delhi and carried on the business of air compressors and garage equipment in its factory at Faridabad in the Haryana State. Orders for the supply of goods from the parties were received by *K. G. Khosla & Co. Ltd.* at its head office in Delhi. The head office drew out a production programme and advised the factory to manufacture the goods in

accordance therewith. After the goods were so manufactured in the factory, they were brought to the head office in Delhi and dispatched from the head office to various customers whether outside or inside. The question that arose for decision was whether the sales made were made at Faridabad in the course of inter-State trade or whether they were intra-State sales effected within the Union Territory of Delhi. This Court held that the sales were inter-State sales assessable to sales tax under the Central Act by the sales tax authorities at Faridabad. On appeal to the Supreme Court, it was affirmed. It was held that if a contract of a sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale. But for the purposes of section 3(a) of the Central Act 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. A sale can 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 but such movement is the result of a covenant in the contract of sale or is an incident of that contract and that goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by K. G. Khosla & Co. Ltd. only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Although the contracts of sale did not require or provide them to the purchasers. Although the contracts of sale did not require or provide that the goods should be moved from Faridabad to Delhi, the movement of the goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi. The Supreme Court held that the High Court was, Therefore, right in holding that the sales were inter-State sales and that the turnover of such sales was assessable to sales tax under the Central Act by the sales tax authorities of Faridabad.

9. We, Therefore, have no hesitation in holding that the transfers of goods manufactured at Bahadurgarh (Haryana) to Delhi and transported for sale there are inter-State sales taxable under the Central Act within the State of Haryana only. The assessing authorities in the Union Territory of Delhi by exercising power under the local Act and taxing the goods under the Central Act have acted in excess of their jurisdiction. The assessing authorities in the Union Territory of Delhi had no jurisdiction to bring to tax the goods manufactured at Bahadurgarh and transferred to and sold from Delhi. The petitioner is, Therefore, entitled to a writ of certiorari to quash the impugned orders and for direction in the nature of mandamus for the refund of the tax levied and collected from the petitioner on those sales. But in exercise of our extraordinary jurisdiction under article 226 of the Constitution, we are restricting the order of refund to the extent of the amount doubly recovered on the inter-State sales by the Assessing Authorities at Haryana. We, Therefore, order no refund for the assessment year 1966-67. We could order the refund to the extent of Rs. 11,402.25 for the assessment year 1967-68, Rs. 14,220.88 for the assessment year 1968-69 and Rs. 23,054.38 for the assessment year 1969-70, which comes to Rs. 48,677.51, but as the

petitioner in the writ petition has claimed the refund of Rs. 46,582.91, we are restricting our mandamus to this figure.

10. In all fairness to the counsel for the assessing authorities in the Union Territory of Delhi, we may notice two preliminary objections. The first objection is that the writ petition filed by the petitioner suffers from laches and there is no Explanation for the inordinate delay. There is no merit in it. The writ petition was filed on 6th October, 1975, for quashing the orders of respondent No. 2 for four financial years from 1966-67 to 1969-70 dated 15th March, 1971, 3rd January, 1972, 31st May, 1972, and 15th March, 1974, respectively. The assessments were framed by the Assessing Authorities under the Haryana Act for the financial years 1967-68 to 1968-69 on 1st September, 1972, and for the financial year 1969-70 on 9th January, 1973. Thereafter the petitioner had filed the appeals, which were allowed by the Haryana authorities on 9th April, 1973, and the cases remanded with certain directions. The assessments were finally completed pertaining to these years on 4th August, 1975, in which the Assessing Authority under the Haryana Act allowed the concessional rate of tax on the basis of C form filed but the Central sales tax paid for the same transaction at Delhi was not appropriated. Section 9 of the Central Act attracts the machinery provisions of the local sales tax law. Section 9(2) creates the authorities in the State or Union Territory of Delhi as agencies to carry out the assessment, etc., of a dealer under the Central Act. But the incidence of tax arising out of the same transaction could not accrue in the two States. If a sale occasions the movement of the goods from Haryana to Delhi, then it can be deemed to have taken place in the course of inter-State trade and commerce within section 3(a) of the Central Act and the tax collected by the authorities in Haryana. The authorities in Delhi have no power to tax such sales, and this position became clear when the authorities in Haryana finally passed the assessment orders. It is at that time when the petitioner was advised to file the present writ petition. There is valid Explanation for the delay in approaching this Court.

11. The second preliminary objection is that no facts have been found by the Assessing Authorities as the petitioner did not agitate before the Assessing Authorities in the Union Territory of Delhi that the transfers of goods manufactured at Bahadurgarh to Delhi are inter-State sales taxable under the Central Act within the State of Haryana. Reliance is placed on *Kelvinator of India Ltd. Vs. The State of Haryana*, wherein, on the facts and circumstances of the case there, it was found that the transactions between the assessed and the distributors were merely agreements for the distribution of refrigerators and were not agreements of sale. The movement of the goods from Faridabad could not be under a contract of sale and, Therefore, did not constitute sales in the course of inter-State trade or commerce. The counsel contends that similar findings could possibly be recorded in this case, if the facts had been investigated. Another facet of this submission is that the petitioner conceded before the Assessing Authorities under the Haryana Act that its sales are liable to tax under the Central Act in Haryana, but did not agitate the same question

before the Assessing Authority in Delhi when the assessments were completed, particularly the last assessment for the financial year 1969-70 made on 15th March, 1974. The contention further is that whether the sales are in the course of inter-State from Delhi or Bahadurgarh can only be decided on the appreciation of the evidence and that too before the assessing authority and as this process involves the investigation of facts, this Court should not go into it. Reliance is placed on *Kamala Mills Ltd. Vs. State of Bombay*, wherein it was held that all questions pertaining to the liability of the dealers to pay tax in respect of their transactions are expressly left to be decided by the appropriate authorities under the Acts as matters falling within their jurisdiction. It is further urged that if the petitioner had later realised that for the same transaction it has to pay the tax both to the authorities at Haryana and Delhi, the proper course should have been to have either appealed or applied for revision against the impugned orders accompanied by an application for condensation of delay and not filed the petition in this Court. A sale becomes taxable u/s 3(a) of the Central Act if the movement of goods from one State to another is under a covenant or incident of the contract of sale. In respect of an inter-State sale, the tax is livable only once. As already pointed out, section 9 of the Central Act creates the State authorities as agencies to carry out the assessment. It involves the initiation of proceedings by issuing notice for production of books, examination of books, qualifications of the tax due and lastly intimating to the dealer the amount of the tax payable. The books of account, i.e. cash book, ledger, sale and purchase vouchers were seen by the assessing authorities at Delhi and only then assessment framed. If the assessing authorities have failed or neglected to determine the jurisdictional facts before framing the assessments, then the order is bad on that ground. If the assessing authorities have made the assessments without considering the course and nature of the transactions in relation to which the movement of the goods was caused or ignored completely the relevant and germane material, then the impugned orders are vitiated on those grounds. The determination of the jurisdictional facts to bring the sales to tax is the sine qua non of the liability to tax. If the assessing authorities have decided the facts perversely, even then they are also bad and are entitled to be quashed. In whatever way one may look, the impugned orders cannot be allowed to stand. Before the Assessing Authorities in Haryana, there is a determination on facts and not on any alleged concession of the petitioner as is argued before us. The copies of the orders passed by the Assessing Authorities in Haryana belie the stand of respondent No. 2. The mere fact that an alternative remedy may be available is no bar to the exercise of jurisdiction under article 226. It is one of the considerations that may weigh with the court in entertaining the petition and granting the relief. Since the tax under the Central Act has been collected by the Haryana authorities and Delhi authorities on behalf of the Union of India on the same transactions twice and there is liability once only, it is the fittest case that the petitioner should not be asked to avail alternative remedy.

12. The result of the above discussion is that the impugned orders (annexures B,

C and D only) are quashed. A mandamus is also granted against respondent No. 2 to refund to the petitioner a sum of Rs. 46,582.91 within six months from today. The petitioner shall also have costs against respondent No. 2. Counsel's fee Rs. 500.

13. Ordered accordingly.