(2000) 01 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 599 of 1998 and 823 of 1999

Pataka Biri Manufacturing Co. Ltd. and Another — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 — Section 11
Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1965 — Rule 8

Citation : (2002) 128 STC 71

Hon'ble Judges : Shahi Kant Kulshreshtha, J

Bench : Single Bench

Advocate : H.S. Shrivastava, for the Appellant; R.S. Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kulshrestha, J.—Both these petitions raise a common question as to whether the sale of tendu leaves within the State of Madhya Pradesh under the provisions of the "M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964" and the rules of 1966 framed thereunder constitutes inter-State sale or intra-State sale for the purposes of charging sales tax. The case of the petitioners is that they are registered as manufacturers of bidi under the provisions of Section 11 of the M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (hereinafter referred to as the "Tendu Patta Adhiniyam") read with Rule 8 of the "M.P. Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966" ("Tendu Patta Rules") and purchase tendu patta in the State of Madhya Pradesh for the purpose of manufacture of bidis in their industries located outside the territories of Madhya Pradesh in West Bengal. In W.P. No. 599 of 1998, order of the Managing Director, M.P. State Minor Forest Produce (respondent No. 3) dated May 23, 1994, by which sales tax/commercial tax has been charged at 20 per cent and the bill No. 12 dated October 28, 1997 issued to the petitioner company charging tax at 20 per cent and surcharge at 15 per cent has been challenged on the ground that since the sale of tendu patta to the petitioners constitutes inter-State sale, the sales tax is chargeable under the

Central Sales Tax Act, 1956 at the rate of 4 per cent and not under the State Act. In W.P. No. 823 of 1999 various bills dated November 20, 1998 raised by the Federation for the sale of various lots of tendu leaves in the year 1998-99 and the order dated May 23, 1994 charging tax as per the State Act have been challenged on the same ground. Since controversy raised in both the petitions is identical, the petitions are being disposed of by this common order.

2. For regulating in public interest, the trade of tendu leaves by creation of State monopoly in such trade, the Madhya Pradesh Legislature enacted the Tendu Patta Adhiniyam. The said Adhiniyam, inter alia, requires appointment of agents u/s 4 for the purpose of purchase of, and trade in, tendu leaves on behalf of the State Government on such terms and conditions as may be determined by the State Government from time to time. Section 5 prohibits any person other than the State Government or an officer of State Government authorised in this behalf or an agent in respect of the unit of the tendu leaves, to purchase or transport tendu leaves. Sub-section (3) of Section 5 requires a person desirous of selling tendu leaves to sell the same to the Government officer or agent only at any depot situated within the unit. Section 7 requires the State Government, after consultation with the committee constituted in this behalf u/s 6, to fix the price at which tendu leaves shall be purchased from growers of tendu leaves other than the State Government during the year while Section 8 provides for opening of depots and publication of price list, etc., at the depots. Section 10 deals with registration of every grower of tendu leaves if the quantity of leaves grown by him during a year is likely to exceed such quantity as may be prescribed while Section 11 requires every manufacturer of bidis and every exporter of tendu leaves to get himself registered within such period as may be prescribed and such registered manufacturer or exporter to furnish declaration in such form as may be prescribed. Section 12 provides for disposal of leaves and lays down that tendu leaves purchased by the State Government or by its officer or agent under the Act shall be sold or otherwise disposed of in such manner as the State Government may direct. Section 12-A contains restriction on the resale of tendu leaves and requires the manufacturer of bidis or exporter of tendu leaves to re-sell such excess quantity of tendu leaves only with the permission of the State Government and a like permission is required to be obtained by the manufacturer or exporter for purchase of such excess quantity from the other manufacturer or exporter. Under the scheme of the Act, thus, a complete monopoly with regard to the sale and purchase of tendu leaves has been created in favour of the State and the trade is regulated by the provisions of the Act.

3. Learned counsel for the petitioners, in the above referred scheme of the Act, has contended that in so far as the purchasers registered u/s 11 of the Act are concerned, although they purchase the tendu leaves in accordance with their requirement within the State of Madhya Pradesh, the tendu leaves are sold to them for the purpose of manufacture of bidis in their own industries located outside the territory of Madhya Pradesh and notwithstanding that property in goods passes to the petitioners immediately upon sale of the tendu leaves, since

the purpose of purchase as per the statutory provisions is the manufacture of bidis for which tendu patta is exported from the State to the place where industries of the petitioners are located, it constitutes inter-State sale and is chargeable to sales tax only under the Central Sales Tax Act and not under the State Act. According to the learned counsel, since the purchase of tendu leaves could not have been subjected to sales tax under the M.P. General Sales Tax Act, 1958, presently the Commercial Tax Act, the bills issued/raised by the respondent-federation charging tax under the provisions of the State Act deserve to be quashed/modified, so as to include only the tax chargeable under the Central Act. Learned counsel has invited attention to the decision of this Court in Orient Paper and Industries Ltd., Orissa v. State of M.P. [1982] 15 VKN 272 and the decision in Orient Paper and Industries Ltd. v. State of Madhya Pradesh [1997] 30 VKN 324 of a single Bench following the earlier decision in support of his contention that once the goods moved from one State to another, it is an inter-State sale under the statutory provisions on which sales tax can be charged only under the Central Sales Tax Act and not under the State Act. Learned counsel for the respondent-federation has, on the contrary, contended that in so far as the sale of tendu leaves which is similar to that of sale of timber under the "M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969", is concerned, the sale is complete within the State of Madhya Pradesh when the bid of the purchaser is accepted and it is, therefore, intra-State sale exigible to sales tax under the State Act.

4. In Orient Paper and Industries Ltd. [1982] 15 VKN 272, a Division Bench of this Court while dealing with the question of sales of bamboos purchased within the State of Madhya Pradesh for transportation to the State of Orissa, observed that when under the agreement, the purchaser was required to take delivery of the bamboos made available by the Forest Department at the mutually agreed rail head depots in Madhya Pradesh for onward transportation to Orissa, the sale itself occasioned the movement of goods from one State to another, thus constituting inter-State sale as defined in Section 3(a) of the Central Sales Tax Act. It was further observed that it was not necessary that contract of sale must itself provide for and cause the movement of goods or that the movement of goods must occasion specifically in accordance with the terms of the contract for sale. Learned counsel for the federation has placed reliance on the decision in Maharashtra Timber Laghu Udyog Mahasangh v. State of M.P. [1985] 18 VKN 195 (MP) in support of his contention that where sale of timber in auctions in various forest depots in Madhya Pradesh under the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam which is similar to the Tendu Patta Adhiniyam has been held to constitute intra-State sale, the sale of tendu patta in identical circumstances and situation cannot be said to constitute inter-State sale attracting tax only under the Central Sales Tax Act. In Maharashtra Timber Laghu Udyog Mahasangh [1985] 18 VKN 195 (MP), the members of association had contended that since they had purchased the timber from the Forest Department in auction for being taken to the places outside the territory of Madhya Pradesh, they were not liable

to pay sales tax under the State law but only under the Central Act. It was pointed out that the movement of the goods was under the transit passes duly issued by the Forest Department immediately after the purchase of the timber and since the sale constituted movement of the goods from the State of Madhya Pradesh to states outside its territory, the sale was inter-State sale and not an intra-State sale. It was observed that the sale or purchase should occasion the movement of goods, i.e., the movement of goods should be a part of the transaction of sale or purchase and so long as it was not established that the movement of goods from the State of M.P. to the State of Maharashtra or Gujarat took place because of the sale or purchase or as a part of the contract of sale or purchase, it was not possible to hold that this movement of goods was occasioned because of the sale or purchase. Learned counsel for the federation has submitted that while it is true that the petitioners were registered as manufacturers of bidis, it was also permissible for the petitioners to have sold the quantity of tendu leaves within the State of Madhya Pradesh to other manufacturers or exporters subject to the permission as required under the provisions of the Tendu Patta Act and, therefore, it was not a case where the sale or purchase had occasioned the movement of goods from within the State to other State. Learned counsel has further submitted that since under the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam also agents are required to be appointed u/s 4, there is restriction on purchase or transport of specified forest produce and growers and manufacturers, traders and consumers of specified forest produce are required to obtain registration, there is no difference between the provisions of Tendu Patta Adhiniyam and the said Van Upaj Adhiniyam of 1969. Even with regard to the disposal, similar provisions are contained in Section 12 of both the Acts and re-sale of excess specified forest produce is restricted by Section 12-A of the Van Upaj Adhiniyam in the same manner as in Section 12-A of Tendu Patta Adhiniyam. Learned counsel has, therefore, contended that when in respect of identical provisions, the Division Bench of this Court in Maharashtra Timber Laghu Udyog Mahasangh [1985] 18 VKN 195 has held such sale to be intra-State sale chargeable to tax under the State laws and the facts of the case of Orient Paper and Industries [1982] 15 VKN 272 are distinguishable, there is no escape from the conclusion that the sale of tendu leaves to the petitioners was intra-State sale chargeable to tax under the State law.

5. From the provisions of the Tendu Patta Act and the Van Upaj Adhiniyam as referred to above, it is clear that under both the enactments, State monopoly has been created in respect of the forest produce covered by the said Acts and Regulations provide for appointment of agents registration of manufacturers, etc., and restriction on sale and purchase in identical terms. Since the Division Bench in relation to the sale of timber under the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 has held such sale to be intra-State sale in Maharashtra Timber Laghu Udyog Mahasangh [1985] 18 VKN 195, the claim of the petitioners based on the decision in Orient Paper and Industries [1982] 15 VKN 272 is mis-conceived especially when in the said case, it was patent from

the nature of the contract and the covenants with regard to the delivery of the goods for onward transmission to place outside the State that sale itself had occasioned the movements of goods. In this view of the matter, the petitioners are not entitled to any relief.

6. Consequently, both the petitions fail and are dismissed but with no order as to costs.