(1979) 12 PAT CK 0011

In the Patna High Court

Case No : C.W.J.C. No. 444 of 1977

Ram Bahadur Singh and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 12-12-1979

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 9
Constitution of India, 1950 — Article 226, 227

Citation : (1979) 12 PAT CK 0011

Hon'ble Judges : M.P. Verma, J;B.P. Jha, J

Bench : Division Bench

Advocate : T.K. Jha and Rana Pratap Singh 2, for the Appellant; R.B. Mahto, Government Advocate and Ashutosh Jha, Junior Counsel to Government Advocate and T. Dayal and Shekhar Narayan Sahay for respondent Nos. 3, 4 and 6, for the Respondent

Judgement

M.P. Verma, J.—The Commercial Tax Officer of the District of Malda in West Bengal issued notice to the petitioners directing them to appear either personally or through their agent and to produce the books of account as mentioned in the notice with respect to the business of supplying stone boulders from Rajmahal in the District of Santhal Parganas in Bihar to the Department of Irrigation in West Bengal. This impugned notice (see annexure 12 of the writ application) is purported to have been issued u/s 11 read with Section 14 of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as "the Bengal Act"). The Commercial Tax Officer, by another order (as contained in annexure 11 of the writ application), held the petitioners liable for payment of sales tax under the Bengal Act and in the event of the failure to comply with the orders, the petitioners were threatened with prosecution u/s 22 of the said Act.

2. In this writ application filed under articles 226 and 227 of the Constitution of India the petitioners have challenged the validity of the two orders, referred to above, in annexures 11 and 12. In order to appreciate the points involved for a decision of this Court I am putting in short the facts of the case.

3. The petitioners happened to be partners in the business of M/s. Maskalaiya Stone Supplying Agencies, which is a partnership concern with their work site at village Maskalaiya in police station Rajmahal, District Santhal Parganas, in the State of Bihar. The firm has been obtaining permits under the Bihar Minor Minerals Concession Rules, 1964, for the quarrying and manufacturing stone boulders/ballasts by exploiting the plots at various sites of Rajmahal in Bihar. The petitioners have been carrying on the business of mining and supplying stone materials in the name and style of the said firm. In response to a tender issued by the Superintending Engineer, Central Irrigation Circle, West Bengal (respondent No. 5), the petitioners submitted tender and finally on acceptance of it, they entered into a contract and took up the work of supplying materials from Rajmahal to the Irrigation Department at Malda in West Bengal (see annexures 1 to 5). The petitioners were required to supply at site, as per direction of the engineers, pakur or similar quality of stone boulders which the petitioners were quarrying and manufacturing under permits held by them. It is the case of the petitioners that in response to the request and work-orders issued from time to time by respondent No. 6 and by the S. D. 0. of the department concerned the petitioners transported the stone materials on tugs and barges and through other means of transport from Rajmahal in Bihar to various work sites in West Bengal. Further case of the petitioners is that the materials so transported under the execution of the contract were unloaded and stacked under the supervision and control of the authorities of the Irrigation Department in accordance with the orders issued by respondent No. 6.

4. It further appears that in response to a notice issued u/s 16(5) of the Bihar Sales Tax Act, 1959, read with Rule 12 of the Central Sales Tax (Bihar) Rules, 1957, the petitioners were required to appear before the Superintendent of Commercial Taxes, Sahibganj, at Santhal Parganas (respondent No. 2), and as directed to produce documents and other papers and on consideration of the facts and circumstances of the case, it was held that the case of the petitioners was within the ambit of Section 3(a) of the Central Sales Tax Act, 1956, and was accordingly assessed under the Sales Tax Act and the department concerned in Bihar noticed the petitioners to deposit the assessed amount of sales tax under chalan within forty-five days from the date of the service of the notice (see annexure 8). It was contended that supplies of stone boulders to the Irrigation Department of the Government of West Bengal under a contract were sales in the course of inter-State trade or commerce as defined in Section 3(a) of the Central Sales Tax Act, 1956, and, in this view of the matter, it has been contended that the orders contained in annexures 11 and 12, as referred to above, under the Bengal Act are encroachments upon the Central Sales Tax Act, 1956, and are illegal.

5. Thus, on the facts of the case, as stated above, a short and simple point which arises for consideration by this Court is : whether the case of the petitioners, which is an inter-State sale, will be covered u/s 3(a) of the Central Sales Tax Act, 1956, and whether the Commercial Tax Officer of Malda in West Bengal has any

jurisdiction or is within his rights to make an assessment for payment of sales tax under the Bengal Act ?

6. The ordinary simple meaning of "sale" is exchange of anything for some consideration. To put it more clearly, "sale" means with all its grammatical variations any transfer of property in goods for cash or for deferred payments or for consideration and, consequently, "purchase" means acquisition of property in goods sold. So, the moot question, which would decide the controversy is to find out where the sale took place. It is quite well-known that even in case of hire-purchase or in case of any other instalment system of payment, notwithstanding the fact that the seller retains a title to any goods sold as security for payment, the transaction with all its cognate expression will be deemed to be sale. Similarly, it appears clear that the sale of goods in respect of a forward contract, whether the goods under such contract are actually delivered or not shall be deemed to have taken place on the date originally agreed upon for delivery and the goods are carried over and transported for the purpose. Keeping the transaction of sale in mind, I am of the view that the liability to be assessed to sales tax arises when the sale is completed under any agreement and not when the price is paid or is made payable. The result of the transaction is that the goods must pass and there is a transfer of ownership.

7. In the aforesaid context it has been contended on behalf of the petitioners that the supplies of boulders to the Irrigation Department of the Government of West Bengal were in the course of inter-State sale and were liable to pay tax to the State of Bihar under the Central Sales Tax Act. It has been stated that the petitioners have been supplying materials exclusively to the Irrigation Department of the Government of West Bengal in the District of Malda and to none else in the said State. The sale and supplies are the result of the acceptance of the tender of the petitioners by the West Bengal authorities. The learned counsel, Sri Tara Kant Jha, has contended that it is no doubt a case of inter-State sale, but in the instant case, the movement of goods from the State of Bihar to the State of West Bengal is under a covenant and is incidental to the contract for sale and this sale is covered by Section 3(a) of the Central Sales Tax Act, 1956. It has also been urged that finally the concluded sale takes place in the State where the goods were sent; it is different from the State from where the goods were extracted from the quarry site and despatched for sale and, as such, the learned counsel submits that u/s 9 of the Central Sales Tax Act it is the State from where the goods move, which will be competent to levy tax under the provisions of the Central Sales Tax Act, 1956, i.e., it will be levied by the State of Bihar and not by the State of West Bengal.

8. Sri T. Dayal, appearing on behalf of the Government of West Bengal, on the other hand, has contended that in pursuance of the contract entered into, the petitioners transported the goods in the name of self-consignment and stocked the same for inspection and measurement by the appropriate authority in the Department of Irrigation at the site in West Bengal. It is only after inspection and

measurement, which are noted in the books at site kept by the engineers the sale is completed. Mr. Dayal, Advocate, while making submissions, has relied on a decision laid down in the case of Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, . It has been urged that the transaction of sale is subject to taxation on the completion of sale. The learned counsel has also submitted that a mere contract will not amount to a concluded sale. In the instant case of the petitioners, according to Mr. Dayal, the counsel for West Bengal, the transfer of ownership passed on to the West Bengal Government only when the goods were transported to the site and not earlier and for all practical purposes, it will be deemed to be a sale in the State of West Bengal. In my view the case of Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, is based altogether on different facts. Tata Locomotives carried on the business of manufacturing trucks and buses and other accessories at Jamshedpur in the State of Bihar. These are sales to different States including the Government of India and other industrial and commercial undertakings and even to individuals. Tata Engineering and Locomotive Company did not maintain any stock-yard in the State of Bihar, but the stock-yards are being maintained in different States. Such stock-yards are maintained by the Tata Locomotives for the purpose of effecting sale and distribution of the vehicles and those stock-yards are owned and possessed by the company. The sales of the vehicles in the different States are effected from the different stock-yards maintained by the Tata Locomotives. So, in the case of Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, , it cannot be said that the movement of vehicles from Jamshedpur to the different stock-yards was occasioned by any incident of contract or any covenant of sale. In the case of the petitioners the facts are just the otherwise. It has been seen that transporting of stone boulders by tugs and barges are incidental to and have been occasioned by the contract entered into Between the parties. The petitioners transferred and stacked the materials for inspection and measurement at the site under the direction of the authorities of the Irrigation Department in West Bengal. It is not the case of respondents Nos. 2 to 6 that these petitioners were maintaining their own stock-yards and were making sale of the goods from the stock-yards for the purpose of making delivery to the Government in West Bengal. In paragraph 8 of the writ petition, it has been averred that a launch was provided by Farraka Barrage Department of Irrigation to the petitioners for actually transporting the boulders from Maskalaiya in Bihar to different work sites, for which hire charges were deducted from the bills of the petitioners (see also annexure 7).

9. It has to be appreciated that the petitioners were not supported at any place in the manner they liked. It is also clear that they did not despatch goods for sale to any purchaser other than the Department of Irrigation in West Bengal. I would be just repeating when I say that the petitioners have not got any stock-yard or business premises where the goods are carried over to West Bengal for storage or for stocking for the purpose of effecting sale or delivery at any other

stage. Admittedly there is an agreement to sell and from the different correspondence which have been shown at the Bar, vide annexures 1 to 6, I feel no hesitation in holding that the transport of the goods was occasioned by, and was incidental to, the contract entered into between the parties.

10. The court has held in numerous cases that if the movement of goods from one State to another is the result of any incident or a covenant either express or implied, then the sale is an inter-State sale. In the case of Oil India Ltd. Vs. The Superintendent of Taxes and Others, , crude oil was carried from Assam through the pipe-line specially constructed by the assessee to the refinery at Barauni in Bihar and the oil was pumped and delivered to the Indian Oil Corporation at Barauni. The construction of the pipe-line was undertaken in pursuance of an agreement and naturally the specific purpose was for transporting crude oil. Even though there was no supplemental agreement for the movement of the goods it was held in the said case that the parties envisaged the movement of the crude oil in pursuance of the contract from the State of Assam to the State of Bihar and their Lordships of the Supreme Court said that the Government of Bihar in such a situation had no jurisdiction to tax the sale under the sales tax law of the State of Bihar.

11. A similar view was held in the case of K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, .

12. Thus, on the facts of the case, I am of the view that the movement and transport of goods were occasioned by the contract entered into between the parties and the concluded sale took place in the State of Bihar, for which the deliveries were done at different sites at Malda in West Bengal. Since the concluded sales took place in the State from where the goods were sent, by virtue of Section 9, it is the State of Bihar, which will be competent to levy tax under the provisions of the Central Sales Tax Act, as the sale comes within the ambit of Section 3(a) of the Central Sales Tax Act. In other words, the Government of West Bengal has made encroachment and has illegally assumed jurisdiction to assess the petitioners under the Bengal Act and consequently the two annexures referred to above are fit to be quashed.

13. Lastly, the counsel for the respondents (West Bengal) has submitted that since the materials, i.e., stone boulders were supplied to the Government of West Bengal, this Court has got no jurisdiction to entertain the writ application as the cause of action must be deemed to have arisen in the State of West Bengal. This fact has been stoutly disputed by Sri T. K. Jha, the counsel for the petitioners. It has been stated that all the annexures, which have been referred to above (and form part of the paper books) explicitly prove that the petitioners have got their place of business at Maskalaiya at Rajmahal in the District of Santhal Parganas in Bihar. Annexure 11, which contains the order of the Commercial Tax Officer, Malda, West Bengal, holding the petitioners liable to sales tax u/s 4(2) of the Bengal Act was sent to the petitioners to their address at Rajmahal in the District of Santhal Parganas in Bihar. Even annexure 12, which is a notice under Sections

11 and 14(1) of the Bengal Act, was sent to the petitioners at the same address in Bihar. Sri T. K. Jha has, therefore, rightly urged that the cause of action, which constituted a bundle of facts, arose in the State of Bihar. In support of the contention the learned counsel has referred to a decision reported in L.V. Veeri Chettiar and Another Vs. Sales Tax Officer, Bombay, . From the two annexures 11 and 12 and also other correspondence entered into between the parties I feel satisfied and hold that the cause of action with regard to the impact of liability to be taxed by the taxing authorities arose in Bihar and the contention of Sri Dayal on this score is ruled out.

14. In the result, the orders contained in annexures 11 and 12 are hereby quashed. In the circumstances of the case, I do not propose to pass any order as to costs.

B.P. Jha, J.

15. I agree.