
(2009) 10 GAU CK 0032
In the Gauhati High Court

Riangdo Veneers Private Ltd.

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

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

Citation : (2010) 1 GLR 571 : (2009) 5 GLT 764 : (2010) 27 VST 327

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This writ petition under article 226 of the Constitution of India has been filed so as to challenge the show-cause notice issued by the Superintendent of Taxes, Aizawl u/s 32(1) of the Mizoram Value Added Tax Act, 2005 (in short, "the MVAT Act"), asking as to why the materials supplied by the petitioner to the Chief Engineer, Power and Electricity Department during the year 2008 shall not be subjected to assessment for payment of VAT.

2. I have heard Shri Michael Zothankhuma, learned Counsel for the petitioner and also heard Mr. N. Sailo, learned Additional Advocate-General, Mizoram. Also perused the rival pleadings and documents filed with the writ petition and State affidavit.

3. The brief facts giving rise to the issuance of the show-cause notice by the Superintendent of Taxes, Aizawl are that respondent No. 2 invited tenders for supply of swaged steel tubular poles on July 3, 2007. In pursuance of the NIT, the writ petitioner submitted its tender which was accepted by the aforesaid respondent and supply order was placed at the writ petitioner's head office at Guwahati under letter No. P-37020/1/07-CE(PM)/6 dated November 20, 2007. Two more supply orders for the same item were also placed on the same date with identical terms and conditions. In the supply orders, it was stipulated that MVAT shall have to be paid extra by the supplier. Vide letter dated January 22,

2008 the petitioner informed the respondent that since the goods will be manufactured and supplied from its factory at Barapani in the State of Meghalaya it would be inter-State sale and as such, the petitioner will be liable to pay Central sales tax and Mizoram VAT will not be applicable. Since no reply to the aforesaid letter was received by the petitioner on time, the goods were despatched to the respondents on February 3, 2008. However before the goods could reach the office, the same were seized by the Tax Department on February 12, 2008 for non-compliance with the MVAT Act. Subsequently, the goods were released and supplied to the respondents on March 11, 2008. On receipt of the goods, the respondents made the payment to the writ petitioner. However, the Superintendent of Taxes issued the impugned show-cause notice for payment of MVAT which is under challenge.

4. The learned Counsel for the petitioner submitted that all inter-State sale or purchase that takes place in the course of inter-State trade or commerce are exempted u/s 40 of the Mizoram VAT Act, 2005. The learned Counsel also submitted that since the petitioner has already paid Central sales tax it cannot be taxed twice. The learned Counsel also submitted that since the order for supply of goods was placed at the registered office of the petitioner at Guwahati (Assam) and since the goods were transported from its factory at Barapani (Meghalaya) and delivered at Aizawl in the State of Mizoram the transaction is covered u/s 3(a) of the Central Sales Tax Act. In support of this submission, the learned Counsel has relied upon the judgment of the honourable Supreme Court rendered in Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, and the judgment of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc.,

5. Per contra, the learned Additional Advocate-General, Mizoram for the respondents submitted that the goods are taken delivery by the respondents only after verification and checking and till then it is considered to be intra-State transaction and not inter-State sale or purchase. The learned Counsel for the respondents submitted that since the goods were purchased by the respondents only at Aizawl, it cannot be termed as inter-State sale or purchase and as such the petitioner is liable to pay VAT. The learned Additional Advocate-General also placed reliance on the judgment of the honourable Supreme Court rendered in the case of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others,

6. For ready reference the relevant provisions of Section 3 of the Central Sales Tax Act, 1956 are reproduced below:

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.

Explanation 2 ...

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7. In the case of Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, the supplier was a manufacturer of air compressors. The Union Territory of Delhi had purchased goods placing its order to Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, at its registered office at Delhi. However, goods were manufactured at Faridabad in the State of Haryana. In such a situation, a question was raised whether the State of Haryana or Union Territory of Delhi was competent to levy tax. The honourable Supreme Court held that if there is movement of goods from one State to another it would mean inter-State sale or purchase and Section 3(a) of the CST Act would be applicable and as such the State of Haryana was competent to levy tax.

8. The aforesaid authority has been followed in the case of State of Orissa and Another Vs. K.B. Saha and Sons Industries Pvt. Ltd. and Others etc., and many other judgments.

9. In the case before me while inviting tender, the intending non-tribal tenderers were not asked to furnish registration certificate under the MVAT Act, 2005 or furnish clearance certificate thereof. However, when placing the supply orders, a condition was incorporated that the supplier shall have to pay MVAT separately. It is true that the NIT may not be a conclusive document to decide the statutory liability to pay tax. However, liability of the petitioner is to be ascertained from other facts. I have already noted earlier that the supply orders were placed at the registered office of the writ petitioner at Guwahati (Assam) and the goods were manufactured and supplied from the factory at Barapani (Meghalaya) to Aizawl. This is evident from annexure I, the invoice, annexed at with the affidavit of the respondents. Neither is there any averment in the affidavit of the respondents that the writ petitioner had any office in the State of Mizoram nor is there any evidence that the goods were actually purchased by the writ petitioner from any dealer in the State of Mizoram and then supplied it to the respondents to take a view that it was an intra-State sale or purchase.

10. On the other hand, the facts of this case clearly show that it was out and out an inter-State transaction and the writ petitioner is not liable to pay VAT under MVAT Act, 2005.

11. The authority of the apex court rendered in the case of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, was based on Section 3(b) of the CST Act, whereas the case at hand is covered by Section 3(a) of the said Act. In this way, the aforesaid authority relied upon by the learned Counsel for the respondents is not applicable.

12. In the result, the writ petition stands allowed. The impugned show-cause notice is hereby set aside.