courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 01/09/2026

(2006) 01 GAU CK 0054

In the Gauhati High Court

Case No : WP (C) No (s) . 4420, 7709 and 8408 of 2003, 9016, 9192 and 9494 of 2004, 264 and 878 of 2005

Rock International APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 2(38), 27, 7
Central Sales Tax Act, 1956 — Section 3, 3
Constitution of India, 1950 — Article 269, 286

Citation : (2006) 2 GLR 570 : (2006) 4 GLT 123 : (2008) 11 VST 111

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.K. Saraf, G.K. Joshi, D. Baruah, N. Hawelia, M.L. Gope and S. Chetia, for the Appellant; K.N. Choudhury and S. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—All the writ petitions having raised common questions of law on more or less similar facts were considered together and are being disposed of by this common judgment and order.

2. The petitioners in each of the cases are contractors who had entered into separate agreements with the N.F. Railways for supply of diverse quantities of river boulders of particular weight, i.e., between 40 Kg. to 70 Kg required in connection with the construction of the Bogibeel Bridge over the river Brahmaputra. The aforesaid contracts visualised that the boulders to be supplied by the petitioners were to be staked at the site of the Bogibeel Bridge in Dhemaji District of the State of Assam, situated on the North Bank of river Brahmaputra. The several conditions attached to the contract, particularly the special conditions, visualized that boulders of the specified size and weight are available in certain river quarries situated in Arunachal Pradesh from where the contractors may procure the required boulders and supply the same in terms of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-...

the contract agreements entered into by and between the parties. Materials have been brought on record by the petitioners to show that after the contract agreements were entered into, the authority of the N.F. Railways had written a letter dated 10.1.2003 addressed to the Director, Geology and Mining Department, Government of Arunachal Pradesh, informing the said authority that contractors have been engaged by the Railways for procurement of river boulders from the several locations within the State of Arunachal Pradesh as mentioned in the letter dated 10.1.2003. By the aforesaid letter the Railway authority had requested the Director, Geology and Mining, Government of Arunachal Pradesh to extend necessary cooperation to the contractors to enable them to obtain permission for extraction of boulders and for grant of permits for transportation of the same subject to payment of royalty and other statutory dues by the contractors. The petitioners have also enclosed to the writ petition several documents to show the details of royalty paid by them and the transport challans issued by the Government of Arunachal Pradesh for transportation of boulders. According to the petitioners, they had executed the contract agreements by producing the materials from the different river quarries located in the State of Arunachal Pradesh and thereafter by effecting supplies and staking the materials at site within the State of Assam, in terms of the stipulations incorporated in the contract agreements. The grievance raised is with regard to the actions on the part of the Railways in seeking to deduct from the bills of the petitioners sales tax at source under the provisions of the Assam General Sales Tax Act, 1993. In some of the cases under consideration while the petitioners had approached the Court at a stage when such deduction of taxes at source were contemplated, in the other writ petitions, the approach to the Court has been made after deductions had been effected. It is the legality and validity of the aforesaid action on the part of the Railways and the eligibility of the aforesaid transactions of sale to the provisions of the Assam General Sales Tax Act, 1993 that is the subject-matter of consideration by the Court in the present cases.

3. I have heard Dr. A.K. Saraf, learned senior Counsel appearing for the writ petitioners in W.P.(C) Nos. 4420/2003, 8408/2003, 264/2005, 9494/2004 and 878/2005 and Mr. G.K. Joshi, learned senior Counsel appearing for the writ petitioners in W.P.(C) Nos. 9016/2004, 9192/2004. I have also heard Mr. K.N. Choudhury, learned Additional Advocate General, Assam, appearing for the State and Mr. S. Sarma, learned Standing Counsel, Railways.

4. Learned Counsels for the petitioners by placing the contract agreements entered into by and between the parties and the special conditions attached thereto has sought to contend that the contracts in question having occasioned the movement of goods from the State of Arunachal Pradesh to the State of Assam, the Constitutional mandate contained in Articles 269 and 286 of the Constitution debars the State from levying any tax on the transactions in question. In this regard learned Counsels have contended that the materials on record make it abundantly clear that the boulders supplied by the petitioners have been moved from the State of Arunachal Pradesh and supplied to place

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-…

within the territories of the State of Assam and such movement having been occasioned by the contracts entered into by and between the parties there can be no doubt that it is pursuant to the contract agreements in question that the boulders have moved from the State of Arunachal Pradesh to the State of Assam. Learned Counsels have further argued that in view of the constitutional mandate enshrined in Article 286, Section 7 of the Assam General Sales Tax Act, 1993 clearly excludes transactions of sale or purchase of goods which had taken place in course of inter-State trade and commerce from the purview of any tax liability under the Act of 1993. Therefore, the actions resorted to or proposed, as the case may be, by the authority of the Indian Railways would be Constitutionally impermissible and wholly outside the purview of the Act of 1993. In this regard, reliance has been placed on a large number of decisions of the Apex Court laying down the law as to in what situations the movement of goods from one State to another can be understood to be a sale in the course of inter-State trade and commerce so as to exclude such sales from the purview of the Sales Tax enactments by the States. Of the several decisions cited at the Bar, particular reference may be made to the judgments of the Apex Court in the case of Oil India Ltd. Vs. The Superintendent of Taxes and Others, and in the case of State of A.P. Vs. National Thermal Power Corporation Ltd. and Others,

5. Controverting the submissions advanced on behalf of the petitioners, Sri K.N. Choudhury, learned Additional Advocate General, Assam, has submitted that the documents appended to the contract agreement entered into by and between the parties as additional/special conditions of contract, construed in the proper perspective, would go to show that what were executed by the petitioners were contracts in the nature of works contract and there being deployment of man, machinery and other specialized items in the execution of such contracts, it would not be correct to contend that the contracts were for supply of boulders alone. On the above basis, Sri Choudhury, learned Additional Advocate General, has contended that certain parts of the contracts executed by the petitioners would be exigible to tax under the provisions of the Act of 1993 and it is only the supply of boulders which may be outside the purview of liability under the Act of 1993.

6. Before delving into the arguments advanced on behalf of the contesting parties this Court must take note of the provisions contained in the Constitution with regard to levy of tax on transactions of sale which are effected in the course of inter-State trade and commerce. In this regard, the provisions contained in Articles 269 and 286 and those contained in Entry 92A in List I of the 7th Schedule as well as the Entry 54 in List II would be of relevance. It will not be necessary to burden the present order by any detail reference to the provisions contained in the aforesaid articles and entries of the Constitution, save and except to put on record that on a conjoint reading of the said provisions of the Constitution and on consideration of the judicial pronouncements in this regard, the law is well-settled that the State Legislatures have been denuded of any power to levy tax on sale-transactions that take place in the course of inter-State

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-…

trade or commerce. By virtue of the provisions contained in Section 3 of the Central Sales Tax Act, 1956, a sale or purchase of goods must be deemed to have taken place in the course of inter-State trade or commerce if such sale or purchase occasions the movement of goods from one State to another. The different circumstances in which a sale transaction can be said to have occasioned the movement of goods from one State to another has been considered by the Apex Court, amongst others, in its judgments in the case of Oil India Ltd. (supra) and in the case of National Thermal Power Corporation Ltd. and others (supra). The following passages from the aforesaid two judgments would amply sum up the position:

9. Even though Clause 7 of the supplemental agreement does not expressly provide for movement of the goods, it is clear that the parties envisaged the movement of crude oil in pursuance to the contract from the State of Assam to the State of Bihar. In other words, the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale. No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the course of inter-State trade". The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the same must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale. Oil India Ltd. Vs. The Superintendent of Taxes and Others,

24. It is well settled by a catena of decisions of this Court that a sale in the course of inter-State trade has three essential ingredients: (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; (ii) the goods must actually move from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract, of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element. Precedents are legion; we may briefly refer to some of them. In English Electric Co. of India Ltd v. CTO this Court held that when the movement of the goods from one State to another is an incident of the contract, it is a sale in the course of inter-State sale and it

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-…

does not matter which is the State in which the property passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. In Union of India v. K.G. Khosla & Co. Ltd. it was observed that a sale would 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 provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of the contract. Similar view was expressed in Sahney Steel & Press Works Ltd. v. CTO. In Manganese Ore (India) Ltd. v. Regional Asstt. CST after referring to Balabhagas Hulaschand v. State of Orissa it was observed that so far as Section 3(a) of the CST Act is concerned, there is no distinction between unascertained or future goods and goods which are already in existence, if at the time when the sale takes place these goods have come into actual existence. (2002) 5 SCC 503)

7. The rival submissions advanced on behalf of the parties may now be considered. I have read and perused the contract agreements entered into by and between the parties and on a plain reading thereof it is my considered view that notwithstanding certain special conditions, the contracts were really for supply and staking of river boulders at the specified sites. The special conditions of the contracts, on which reliance has been placed by Sri Choudhury, learned Additional Advocate General, which contemplates use of items like steel and cement are in the standard form prevalent in the N.F. Railways and having regard to what was agreed to by and between the parties it would be clear that such special conditions would have no relevance to any of the instant contracts. Furthermore, the mere reference to the contracts between the parties as works contracts, an aspect on which Sri Choudhury has paid repeated emphasis in the considered view of the Court, would again be of little significance. Works contract has been defined in Section 2(38) of the Act of 1993 and reading the definition as contained in the Act it cannot be said that the contracts entered into by and between the parties is in the nature of works contracts. In any case, the aforesaid argument raised on behalf of the State would be insignificant in view of the fact that it is the admitted case of the State that even if the contract between the parties is considered to be works contracts, the supply of boulders would stand excluded from the purview of the Act of 1993, which is the eventual relief that has been prayed for by the petitioners.

8. A reading of the contract agreements executed by and between the parties would go to show that supply of river boulders of the required specification as contemplated therein was to be from the river quarries located in the State of Arunachal Pradesh to locations within the State of Assam. The above position stands further clarified by the communications exchanged by and between the authorities of the N.P. Railways and the Government of Arunachal Pradesh and the several challans showing deposit of royalty as well as the road transport challans issued in the name of the petitioners. In such circumstances, not much persuasion would be required for the Court to take the view that it is pursuant to the contract between the parties that the movement of boulders had been

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-…

occasioned from the State of Arunachal Pradesh to the State of Assam. If that be so, on the ratio of the law laid down by the Apex Court in the two cases referred to above the transactions in question would be sales in the course of inter-State trade and commerce. By virtue of Article 286 and Entries 92A and 54 of List I and List II of the Seventh Schedule to the Constitution, such sales would be beyond the powers of the taxing power of the State Legislature. That is precisely why Section 7 of the Act of 1993 has omitted such sales from its purview, the same being covered u/s 3 of the Central Sales Tax Act. If the sale of boulders by the petitioners to the N.F. Railways is a sale in the course of inter-State trade and commerce u/s 3 of the Central Sales Tax Act, 1959, as this Court must hold, it is difficult to see as to how the provisions of the Act of 1993 can have any application to such sales. If the Act of 1993 is not to govern such transactions of sale, surely and certainly, the actions of the N.F. Railways in seeking to deduct taxes at source u/s 27 of the Act of 1993 will be equally unauthorised in law.

9. In view of the foregoing discussions and the conclusions reached on the basis thereof, this Court is of the view that all the writ petitions under consideration ought to be allowed which I hereby do. The actions of the N.F. Railways in deducting or proposing to deduct tax at source is declared to be unconstitutional and ultra vires the provisions of the Act of 1993. Consequently, the actions of the N.F. Railways in deducting tax at source from the bills of the petitioners or any such proposed action is being interfered, with the further direction for refund of tax where the same has been deducted from the bills of the petitioners, by following the provisions laid down in the Act of 1993.

All the writ petitions are allowed in the light of the above directions.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rock-international-appellant-hash-…