
(2003) 04 CAL CK 0013
In the Calcutta High Court
Case No : F.M.A. No. 249 of 2003

Sajjan Kumar Sharma

APPELLANT

Vs

Commercial Tax Officer and Others

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Central Sales Tax (West Bengal) Rules, 1958 — Rule 11
Central Sales Tax Act, 1956 — Section 3, 9, 9(2)
West Bengal Sales Tax Act, 1994 — Section 68
West Bengal Sales Tax Rules, 1995 — Rule 214C
West Bengal Taxation Tribunal Act, 1987 — Section 14, 2, 5

Citation : (2004) 3 CALLT 532 : (2004) 134 STC 460

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Mihir Lal Bhattacharyya and Shyamal Dutta, for the Appellant; Seba Roy, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—The appellant/petitioner's goods were being transported from West Bengal to Assam in course of a sale. Before it crossed the border, the goods were seized by the authorities under the West Bengal Sales Tax Act, 1994 ("State Act"), on the allegation of violation of the provisions of the State Act. The goods were, however, subsequently released on certain conditions. The goods, thereafter, had reached the destination at Assam. The petitioner had moved this High Court in writ jurisdiction for quashing the proceedings of the impugned seizure and imposition of penalty. The seizure was effected on September 9, 2001. The penalty was imposed on the same date, viz., 9th of September, 2001. These are the two aspects in respect of the said transaction, which were under challenge in the writ petition. The learned single Judge was pleased to dismiss the writ petition on the ground that by reason of the West Bengal Taxation Tribunal Act, 1987 ("1987 Act"), the jurisdiction of this Court has since ceased and exclusively conferred on the learned Tribunal constituted under the 1987 Act.

Against this order, this appeal has since been preferred.

2. Mr. Mihir Lal Bhattacharyya, the learned Senior Counsel for the appellant, submits that this is a sale in course of inter-State trade or commerce (inter-State sale), which is occasioned with the movement of the goods in terms of Section 3 of the Central Sales Tax Act, 1956 ("Central Act"). The seizure of the goods was made with the object of enforcement of the provisions of the Central Act and for prevention of evasion of tax collectable under the Central Act. The Central Act in Sub-section (2) of Section 9 provides that the authorities under the State Act shall have jurisdiction for enforcement and advancement of the object and purpose of the Central Act in exercise of the authority conferred upon them under the State Act unless there is specific and express provision made in the Central Act or the Rules framed thereunder. He also points out from Rule 11 of the Central Sales Tax (West Bengal) Rules, 1958 ("Central Rules") that the provision of the State Act and the Rules made thereunder shall apply *mutatis mutandis* to all proceedings and other matters incidental to the carrying out of the purposes of the Central Act for which no provision is made in the Central Act and the Rules made thereunder or under the Central Sales Tax (Registration and Turnover) Rules, 1957. According to Mr. Bhattacharyya, by reason of this provision, a legal fiction has since been created and it is, in effect, a legislation by adoption. Therefore, if any steps are taken by the authorities under the State Act under the provision of the State Act in order to carry out the purpose of the Central Act, by legal fiction, the same would be deemed to be an action taken under the Central Act and not under the State Act. Therefore, as soon any steps are taken under the State Act by the authorities created thereunder in respect of the sale occasioned by the Central Act, by legal fiction, it becomes an action taken under the Central Act. In terms of Section 5 of the 1987 Act, the Tribunal has jurisdiction to deal with matters governed by the State Acts specified in the Schedule. As such, the inter-State sale, which is governed by the Central Act, cannot be subject-matter before the learned Tribunal. Therefore, the judgment seems to be perverse. He, therefore, prays that the order appealed against should be set aside.

3. In support of his contention, he had relied on the decisions in *Sitaram Sree Gopal Vs. Certificate Officer, Overseas Packaging Industries (P) Ltd. v. West Bengal Commercial Taxes Tribunal* [1990] 78 STC 267 (WBTT) ; [1989] 22 STA 422, *Amitava Mitra Vs. State of West Bengal and Others*, and *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, .

4. Mrs. Seba Roy, learned counsel for the respondents/Revenue, on the other hand, has contended that a sale does not become inter-State sale on the initiation of the movement of the goods so long it does not cross the border of the State. Section 3 in Clause (a) read with the explanation makes it clear that a sale would be occasioned only when the goods are taken delivery of in the other State. As in this case, the goods were seized before it crossed the border, it did not assume the character of inter-State sale. The second question she has raised

is that the Central Act does not contain any provision of seizure. Sub-section (2) of Section 9 relates to the powers other than seizure. The provisions of seizure are provided in the State Act in Section 68. Therefore, any steps taken by the authority under the State Act in relation to the seizure of the goods not otherwise provided for in the Central Act, is a matter governed by the State Act. The third contention is that the goods having not crossed the border and stored in the warehouse before crossing the border, any steps taken by the authorities under the State Act would be governed by the State Act and not by the Central Act. Therefore, it is the Tribunal, which has jurisdiction. Because of the decision in *L. Chandra Kumar Vs. Union of India and others*, , this Court cannot entertain writ petition unless it is routed through the Tribunal. With these reasons she has supported the decision of the learned single Judge. She has also distinguished the decisions cited by Mr. Bhattacharyya.

5. The question seems to be very simple. The West Bengal Taxation Tribunal Act, 1987, in Section 5 provides that the 1987 Act would be applicable only in respect of the State Acts specified in the Schedule to that Act and that the Tribunal constituted under the 1987 Act subject to other provision of that Act shall exercise jurisdiction, powers and authority in relation to all matters of adjudication or trial of any disputes, complaints or offences with respect to the levy, assessment collection and enforcement of any tax under any specified State Acts and matters connected therewith or incidental thereto and no court except the Supreme Court of India shall exercise any jurisdiction in relation thereto. It creates an embargo by reason of Section 14 of the 1987 Act, with regard to the jurisdiction of all other courts including the High Court except the Supreme Court. Therefore, the jurisdiction of this Court under article 226 of the Constitution of India have since been excluded by specific express provision contained in Section 5 of the 1987 Act. With the Constitution of the Tribunal under the 1987 Act, all matters pending before the High Court stood transferred to the Tribunal by operation of law, namely, Section 15 of the 1987 Act.

6. In *L. Chandra Kumar Vs. Union of India and others*, , the jurisdiction of the High Court under article 226 of the Constitution of India was held to be saved. But then the same has to be resorted to only after being routed through the learned Tribunal and that too before the division Bench. Thus, the writ petition moved before this Court before a learned single Judge without being routed through the learned Tribunal is not maintainable. The proposition is as clear as that.

7. But this exclusion has to be read in consonance with Section 5 of the 1987 Act. Inasmuch as, it is only in relation to matters over which the Tribunal has jurisdiction, the embargo created u/s 5 read with Section 14 would operate. Unless the matter is covered by the 1987 Act, the embargo cannot be conceived of. Therefore, we are to examine as to whether the present case comes within the exclusion of the jurisdiction of this Court provided in Section 14 read with Section 5 of the 1987 Act.

8. As observed earlier, Section 5 prescribes the matter over which the Tribunal would exercise jurisdiction. It confines the jurisdiction only to matters related to the State Acts specified in the Schedule of the 1987 Act and this also refers to all matters relating to adjudication, trial of any disputes, complaints or offences with respect to the levy, assessment, collection and enforcement of any tax under any specified State Act and in all matters connected therewith or incidental thereto. Therefore, the thrust was in respect of the matter governed or covered under the specified State Acts. Admittedly, the Central Sales Tax Act cannot be included in the Schedule containing specified State Acts within the meaning of Section 2(k) of the 1987 Act. Therefore, if it relates to the Central Act then, the Tribunal cannot assume jurisdiction.

9. "Sale" is defined in Section 2(g) of the Central Act to mean sale with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on hire purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

10. The manner how the sale takes place, has since been provided for in Section 3 of the Central Act which is as follows :

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade and 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."

11. Mr. Bhattacharyya has contended that the petitioner had sold the goods to a customer at Assam where it was to be delivered and for which the goods occasioned movement from West Bengal to Assam. As such it was a "sale" within the meaning of Section 3 of the Central Act. But, Mrs. Roy, the learned counsel for the Revenue, disputes the same and contends that until it crosses the border, it A remains a sale within the State Act attracting the provisions of the State Act independent of the Central Act. The proposition sought to be propounded by Mrs. Roy, the learned counsel for the revenue/ respondents, seems to be devoid of any merit. Inasmuch as, Section 3 prescribes that a sale or purchase of goods under the Central Act deems to take place as soon the movement of the goods occasions from one State to another in the course of inter-State trade or commerce. The word "occasions" means "commences". Therefore, as soon the movement of the goods commences, in the course of a sale of the goods from one State to another, the course of inter-State trade or commerce deems to take place. Its artificial termination before it crosses the border on account of seizure by the State authority or non-delivery of the goods in another State would not change the character of the inter-State sale. Once the movement is occasioned,

subsequent stoppage of movement or artificial termination will not change the characteristic of the transaction. Even if, in the process of transportation the goods are kept in the warehouse before it crosses the border for transfer to trans-border customer necessitating inspection or otherwise, will not have the effect of cessation of the character of the inter-State sale. Therefore, in this case, undisputably the characteristic of the sale was an inter-State sale.

12. The Central Act does not provide any complete and comprehensive mechanism or machinery for enforcement of the Central Act or for carrying out the object and purpose of that Act. Instead of providing for necessary legislation in the Central Act, the Parliament had chosen a process of legislation by adoption. Admittedly, there are differences in laws operating in the field in different States. In order to make the Central law flexible, the Parliament, in its wisdom, had thought it fit to express its intention to adopt the State Act for the purpose of carrying out the purpose and object of the Central Act in the State concerned. Instead of maintaining double establishments, it had expressed its intention to avail of the machinery and mechanism created by the State Act for the purpose of implementation and enforcement of the Central Act.

13. Section 9 of the Central Act provides for levy and collection of tax and penalties in the following manner :

"9. Levy and collection of tax and penalties.--(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within Clause (a) or Clause (b) of Section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of Sub-section (2), in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within Sub-section (2) of Section 6, the tax shall be levied and collected,--

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State, shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty

payable under the general sales tax law of the State ; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State ; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf, make necessary provision for all or any of the matters specified in this sub-section."

14. The above provision makes it clear that the authorities created under the State Act are empowered to deal with matters governed under the Central Act. The power to assess, reassess, collect and enforce payment of tax includes all kinds of activities within the Act concerned. The seizure of the goods is in aid of enforcement of the Act concerned for collection of taxes. It also empowers collection of penalty. For the purpose of carrying out the purpose of the Central Act, the Legislature had adopted the machinery and the mechanism provided under the State Act through express provision provided in Section 9 of the Central Act. This seems to have been done for exercising effective control over the situation through common agency. The 1958 (Central) Rules, in Rule 11, provides that the provisions of the State Act and the Rules made thereunder shall mutatis mutandis apply to all proceedings or other matters incidental to the carrying out of the matters of the Central Act for which no provision is made in the 1958 (Central) Rules or in the Central Sales Tax (Registration and Turnover) Rules, 1957. In the one hand, the Central Act has adopted the State Act through legislation by adoption for carrying out the purpose of the Central Act and then in Rule 11 of the Central Rule, on the other, it provides for the procedure for carrying out the purpose of the Central Act.

15. Rule 214C of the West Bengal Sales Tax Rules, 1995 deals with restrictions on, and conditions for, transport of any consignment of goods by any person, casual trader or dealer from any place in West Bengal referred to in Sub-section (1) of Section 68 to any place outside West Bengal. By reason of this provision, the authorities are empowered to take steps even in respect of any such sale in order to comply with the restrictions imposed on transport of goods. Rule 214C provides as follows :

"(1) Any person, dealer or casual trader shall, while transporting any consignment of goods despatched from any place in West Bengal referred to in Sub-section (1) of Section 68, other than those mentioned in Rule 211A, to any place outside West Bengal either on his own account or on account of any

consignee, make over a way-bill in form 48 in duplicate, obtainable by him in the manner laid down in Rule 215, Rule 215A or Rule 215B, as the case may be, or a copy of challan in duplicate in respect of such consignment of goods to the transporter referred to in Section 73 for carrying such consignment of goods in his goods vehicle.

16. Rule 214C of the West Bengal Sales Tax Rules purports to deal with inter-State sales, which is otherwise outside the purview of the State Act. This rule was incorporated in contemplation of and furtherance to Section 9 of the Central Act and Rule 11 of the Central Rules. Such rules were incorporated for enabling these authorities under the State Act to deal with matters covered under the Central Act. But by reason of incorporation of these Rules, the characteristics of an inter-State sale would not assume a different hue other than a subject-matter governed by the Central Act outside the purview of the State Act, a specified State Act within the meaning of Section 2(k) of the 1987 Act. When the action relates to a Central Act and not to a specified State Act, the Tribunal cannot assume jurisdiction.

17. Section 68 of the State Act restricts movements of goods to prevent evasion of tax. Under sections 70 and 71, the authorities under the State Act are empowered to seize goods and impose penalty. When by reason of Section 9 of the Central Act read with Rule 11 of the Central Rules, an authority under the State Act exercises its power conferred upon it by the State Act in respect of matters for which no provision is provided for in the Central Act or the Central Rules specifically, by reason of adoption by legislation, the authorities under the State Act would be acting for carrying out the purpose of the Central Act. Arrest of evasion of taxes is a step in aid of collection of tax. In other words, it is an enforcement of the Act within the meaning of Section 9, Sub-section (2) of the Central Act. When the authorities under the State Act exercise their authority under the State Act in respect of an inter-State sale, it deals with the collection of tax under the Central Act and enforcement of the provisions thereof. When it exercises power under sections 68, 70 and 71, it ensures prevention of evasion of taxes payable on inter-State sale governed under the Central Act. Therefore, any authority exercised by the authorities created under the State Act in exercise of power conferred upon them by the State Act, in respect of matters not provided for either in the Central Act or in the Central Rules, in relation to any inter-State sale governed by the Central Act and the Central Rules, it acts in aid of enforcement of the Central Act. There cannot be any other interpretation.

18. In *Sitaram Sree Gopal Vs. Certificate Officer*, a distinction has been made with regard to matters governed under the Central Act and the State Act recognising the respective independent characteristics. Once the Central Act is outside the subject-matter of the State Act, the same cannot be subjected a State Act in the absence of legislative competence. The 1987 Act has been legislated by the State. It cannot encroach upon an area in respect of which the Parliament has right of legislation. Therefore, any action taken under the Central

Act with the aid of the State Act since adopted by legislation remains an action under the Central Act. The Tribunal in *Overseas Packaging Industries (P.) Ltd.* [1990] 78 STC 267 (WBTT); [1989] 22 STA 422 had itself recognised the same and rightly. The ratio decided in *Amitava Mitra Vs. State of West Bengal and Others*, , also sought to make a distinction between levy, assessment, collection and enforcement of tax on the one hand and search and seizure on the other. With this distinction, it had attempted to point out that search and seizure cannot be subject-matter of the jurisdiction of the Tribunal constituted under the 1987 Act. But this view is founded on the basis that no such case was made out that search and seizure involved in the said case was made for the purpose of levy, assessment, collection and enforcement of tax. Therefore, we may not derive much benefit out of the said decision. But, then paragraph 29 of the said decision has also harboured some doubt with regard to the object and utility of search and seizure. We, however, refrain from commenting on the said decision any further except that the search and seizure are effected to prevent evasion of tax. Prevention of evasion of tax is also a kind of enforcement of the Act for ensuring collection of tax. These are all inter-connected. Aims and object of search and seizure is to further the levy, assessment, collection and enforcement of tax. There cannot be any other object. Search and seizure is made in aid of levy, assessment, collection and enforcement of tax. It cannot have any different existence. The levy, assessment, collection and enforcement of tax is the ultimate object, which, in case of evasion, is achieved through the means of search and seizure. While levy, assessment, collection and enforcement is the object, the search and seizure is the means, mode and method for achieving such object. Search and seizure has no relevance or existence without the Act. The levy of penalty is also aimed at preventing evasion, equally connected with the enforcement of tax. Thus, these are integral part of levy, assessment, collection and enforcement of tax. When such function is undertaken by the authorities under the State Act for the purpose of enforcement of the Central Act, such function is a discharge of function under the Central Act by legal fiction. As such it cannot be brought within the purview of any specified State Act subject to the 1987 Act. In *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, , the apex Court had laid down that in *20th Century Finance Corp'n. Ltd. and Another Vs. State of Maharashtra*, , it was made clear by the majority of the Constitution Bench that the situs of the sale or purchase is wholly immaterial as regards the inter-State trade or commerce. In view of Section 3 of the Central Sales Tax Act, 1956, all that has to be seen is whether 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. If the transaction of sale satisfies any one of the two requirements, it shall be deemed to be a sale or purchase of goods in the course of inter-State trade or commerce and by virtue of articles 269 and 286 of the Constitution of India the same shall be beyond the legislative competence of a State to tax without regard to the fact whether such a prohibition is spelt out by the description of a legislative entry in the Seventh Schedule or not. We are

drawing support from the ratio decided in these decisions to buttress our view that the characteristics of an inter-State sale cannot be altered since it is handled by the authorities under the State Act for achieving the purpose and object of the Central Act. In view of the legislative incompetence in respect of inter-State trade or commerce on the part of the State, by utilising the mechanism of the State Act, the inter-State sale cannot be subjected to the State Act.

19. As soon it relates to Central Act, the same comes out of the purview of the State Act. Inasmuch as the State Act does not empower the authorities to deal with inter-State sales governed under the Central Act. It is by legal fiction the mechanism and machinery provided in the State Act is used and utilised for the purpose of enforcement of the Central Act. As such while dealing with the inter-State sale, the authorities under the State Act utilise their power under the State Act in aid of the Central Act, which has adopted the same. In other words, by legal fiction, the authorities would be discharging their function in relation to and enforcement of the Central Act. An action undertaken in aid of the Central Act cannot be treated to be an Act contemplated under the State Act. Utilisation of the mechanism and machinery of the State Act adopted by legislation cannot be deemed to be an action within the State Act. It would deem to be an action under the Central Act. Unless it is an action under the State Act, it cannot come within the purview of Section 5 of the 1987 Act. As such, the Tribunal constituted under the 1987 Act cannot assume jurisdiction in respect thereof. Unless the Tribunal can assume jurisdiction u/s 5, Section 14 cannot have any application. Therefore, the jurisdiction of this Court cannot be ousted. The ratio decided in *L. Chandra Kumar Vs. Union of India and others*, can also, therefore, not be attracted.

20. In the result, this appeal succeeds. The order dated July 24, 2002 passed by the learned single Judge in W.P. No. 8995(W) of 2002, appealed against is hereby set aside. Let the writ petition be remanded for decision by a learned single Judge of this Court in accordance with law on merit. We are not inclined to enter into the merits of the case since while dismissing the writ petition the merit was not gone into.

There will be no order as to costs,

Learned counsel for the respondents prays for stay of operation of this judgment.

Let there be a stay of operation of this judgment for a period of three weeks.

R.N. Sinha, J.

21. I agree.