

(2004) 04 PAT CK 0098

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2704 of 2004

Shakumbhri Udyog

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0098

Judgement

1. This writ application has been filed by the petitioner, a proprietorship firm of Haryana, for a direction to the respondent-State of Bihar and its officials including the Collector, Darbhanga, to refund the amount illegally deducted from the bills of the petitioner on account of sales tax deduction on supply of blankets from Panipat, Haryana, on the ground that the supply/sale was made as a result of inter-State trade and as such no sales tax is payable under the provisions of the Bihar Finance Act, 1981 with regard to the supply of blankets.

2. On February 22, 2003 a short tender notice was published by respondent No. 2-Collector, Darbhanga, for supply of 78,087 blankets in the district vide annexure-1 of the writ application. In terms of the said notice, the petitioner submitted his tender on February 27, 2003. The tenders submitted by the petitioner and others were considered by the District Purchase Committee under the chairmanship of respondent No. 2-Collector, Darbhanga, and the tender of the petitioner was accepted. Thereafter, a supply order for supply of the blankets at the rate of Rs. 135 per blanket was sent to the petitioner at his Panipat residence in the State of Haryana. The supply order (annexure-2), inter alia, provided that the supply of the blankets has to be made within twenty days and the supplier at his own cost has to supply the blankets at 18 Block headquarters of the district and after supply of blankets, inspection of the quality of the supplied blankets has to be made by the concerned officers as mentioned in the supply order and on their quality certificate, payment will be made after deducting 10 per cent and after supply of the entire quantity of blankets and on receipt of the necessary quality certificate from the concerned officers by the District Magistrate, the remaining 10 per cent amount will be paid to the supplier.

A copy of the said supply order has been appended as annexure-2 to the writ application.

3. According to the petitioner, on receipt of the supply order, he supplied the blankets as per the supply order from Panipat to the concerned officer in the district of Darbhanga and raised bills for payment. The supply was made through various transports of Haryana, including one Laxmi Transport. Thereafter, 90 per cent payment of the value of supplied blankets was made to the petitioner, but the remaining 10 per cent inspite of supplying the entire quantity of blankets as per the specification was not paid despite repeated requests made by the petitioner.

4. On November 24, 2003 the Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga, requested the Collector, Darbhanga, to deduct 8 per cent as sales tax and 1 per cent as additional tax from the bill of the petitioner, in pursuance of which Rs. 9,60,426.55 has been deducted and deposited in the Government Treasury by order of the Collector and the same is evident from the letter of the Collector dated December 19, 2003 (annexure-4 to the writ application).

5. Thus, further assertion made on behalf of the petitioner is that the blankets supplied were woven handloom blankets and they are tax-free under the Haryana General Sales Tax Act, 1973 and the blankets moved from the State of Haryana in pursuance of a supply order and as such the supply was made in the course of inter-State trade and no sale has been effected in the State of Bihar and as such the petitioner has no liability to pay sales tax or additional tax and, accordingly, a direction may be issued for payment of the aforesaid amount, which has been wrongly withheld.

6. A counter-affidavit has been filed on behalf of the State, wherein the State has not disputed the fact that in pursuance of the supply order, the blankets have been brought from Panipat to Darbhanga by the petitioner at his own cost of transportation and, thereafter, supplied to different local 18 Block-headquarters of the district of Darbhanga at the cost of the petitioner. The goods were, subject to the inspection of the quality of the blankets on the basis of the quality certificate issued by the concerned officer and as such the supply of blankets is a local sale within the State of Bihar and is not an inter-State sale. The petitioner had himself quoted the rates inclusive of all taxes in his quotation, so there was no need to mention in the supply order that the tax would be deducted from the bills of the petitioner.

7. According to the tender notice, an agreement was also to be entered into between the parties after the issuance of the supply order but admitted fact is that no agreement has been entered into between the parties.

8. The only question for consideration in this case is as to whether the transaction is an inter-State sale or intra-State sale. In case, it is an inter-State sale, then the State of Bihar is not entitled to charge sales tax but in case sale

has taken place in the State of Bihar then in that case the petitioner is liable to pay sales tax or additional tax.

9. The law on this point is well-settled and there is no need of overburdening this order by citing several cases, suffice it to refer to a Constitution Bench judgment of the apex Court in the case of *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, wherein the apex Court has held that a sale in the course of inter-State trade has three essential ingredients, namely, (i) there must be a contract of sale regarding inter-State movement of goods; (ii) the goods must actually move from, one State to another, pursuant to such contract of sale, in other words the sale being the proximate or minimum cause of movement; and (iii) such movement of goods must be from one State to another State where the sale concludes. In this connection, it is useful to refer to paragraph 24 (para 25 in STC) of the said judgment, which runs as follows:

24 It is well-settled by a catena of decision 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. and Another Vs. The Deputy Commercial Tax Officer and Others*, 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 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 (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, 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 and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, In *Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur*, after referring to *Balabhagas Hulaschand Vs. State of Orissa*, it was observed that so far as Section 3(a) of the GST 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.

10. Thus, the facts of this case have to be scrutinised to find out whether the transactions fulfil the aforesaid conditions or not. If the transaction fulfils the said conditions then it is sale in course of inter-State trade and the petitioner is not liable to tax under the Bihar Finance Act otherwise his liability arises under the Bihar Finance Act on the ground that the sale has taken place in the State of Bihar. There is no dispute that there was contract of sale as on the basis of the tender submitted by the petitioner, the same was accepted and a supply order was given to him to supply blankets on the terms and conditions as indicated above. Supply order was sent to the petitioner at his residential address at Haryana and, thereafter, he was to transport blankets from Haryana to the district of Darbhanga in the State of Bihar and to supply the same and the payment has to be made on the grant of quality certificate by the concerned officer. Therefore, the first condition that there should be contract of sale between the parties is, thus, fulfilled. The second condition that the goods must move from one State to another in pursuance of such contract of sale, is also fulfilled as after the supply order has been passed by the respondent, the goods moved from the State of Haryana to the State of Bihar. In other words, cause of supply of blankets from Haryana to Bihar arose because of acceptance of tender and issuance of supply order by the respondents. The third condition is also fulfilled as movements of the blankets have been made from State of Haryana to Bihar, where on being satisfied with the quality, certificates were issued and 90 per cent of the value of the blankets has been paid. So, even if the version of the State-respondent is accepted that the sale concluded here in Bihar after the blankets were found according to the specification prescribed in the supply order, the three conditions, as mentioned above, have been fulfilled in this case.

11. The sale has taken place in course of the inter-State trade and, accordingly, the petitioner is not liable to pay sales tax or additional tax under the provisions of the Bihar Finance Act and, accordingly, the direction issued by the Assistant Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga, for charging 8 per cent sales tax and 1 per cent additional tax as well as the order passed by the District Magistrate to deposit the said amount in the Government Treasury towards tax are unjustified and illegal for the reason that the petitioner is not liable to pay sales tax under the provisions of the Bihar Finance Act and, accordingly, they are quashed.

12. In the result, this writ application is allowed and it is held that the State has no authority to charge sales tax or additional tax with regard to the transactions in question and, accordingly, 8 per cent sales tax and 1 per cent additional tax, deducted from the bills of the petitioner, should be refunded to the petitioner within a period of three months from the date of receipt/production of a copy of this order.