(2002) 09 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1906, 1907 and 4414 of 1999

Shree Rajasthan Syntex Ltd. APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4
Constitution of India, 1950 — Article 269, 286

Citation : (2003) 1 WLC 269 : (2003) 1 WLN 571

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.N. Mathur, J.—These three writ petitions have been filed by M/s Shree Rajasthan Syntex Ltd. engaged in manufacture of Synthetic Yarn. The Commercial Taxes Officer, Anti Evasion, Udaipur served a notice dated 2.12.1996 on the petitioner u/s 28 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as the RST Act) mentioning therein that the business premises of the petitioner Company was checked and surveyed on 14.5.1996 and on inquiry as contemplated u/s 71 of the RST, it came to his notice that in the year 1996-97 the petitioner Company had given on lease machineries worth Rs. 12,95,99,530/- to M/s Rajasthan Texchem Ltd. As per the agreement petitioner Company received Rs. 21,79,890-/- as a lease rent for the period onwards April 1996, but with an intention to evade tax the said figure was concealed. The petitioner was further asked to show cause u/s 64 as to why the penalty double the amount of tax be also not imposed.

2. The petitioner by way of instant writ petitions had challenged the notice dated 2.12.1996 (Annex. 4). The petitioner has inter alia challenged the constitutional validity of Clause (b) under Explanation-II to Section 2(38) of the Rajasthan Sales Tax Act, 1994. The say of the petitioner is that it had agreed to provide lease financing/plant and machinery on lease to Shree Rajasthan Texchem Ltd. to

the extent of Rs. 15 Crore vide MOU dated 19th May, 1995. Under the said MOU the petitioner was to provide technical expertise, infrastructure etc. for the implementation of the synthetic yarn spinning project of Shree Rajasthan Texchem Ltd. with the installed capacity of 17,280 spindles at Dungarpur apart from providing plant and machinery on lease. The said MOU preceded to execution of lease agreements Annexures 1 & 2 which were admittedly executed at New Delhi after the desptach machinery by Overseas Suppliers for the purpose of leasing them out to the lessee and before their delivery, directly to it i.e. by way of leasing them out in the course of import. The machineries were directly delivered to the lessee in pursuance to the said lease agreements in the course of import. The delivery of the machines to the lessee started from November, 1995 and in terms of the lease agreement the lease rent started thereunder. Thus, according to the petitioner at the time when the lease agreements were executed the machineries were available for transfer of right to use inasmuch as the orders were placed earlier with the suppliers and they were despatched. The right to use them was transferred to the lessee under the said lease agreement at New Delhi and machineries were delivered to the lessee at Dungarpur directly in the course of import under the said lease agreements.

3. In order to appreciate the contention, it would be convenient to read Section 2(38) of the RST, which is extracted as follows:

Section 2(38) of the RST Act, 1994 has defined ''sale'' as under:

(38) ''sale'' with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for each, deferred payment or other valuable consideration and includes,--

(i) a transfer, otherwise than in pursuance of a contract of property in goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) any delivery of goods on hire purchase or other system of payment by installments;

(iv) a transfer of the right to use goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply is for cash, deferred payment or other valuable consideration; and such transfer, delivery or supply shall be deemed to be a sale and the word ''purchase'' or ''buy'' shall be construed accordingly;

Explanation-I

....

Explanation-II--A sale or purchase shall be deemed to take place inside the State--

(a) ....

(b) in a case falling under Sub-Clause (iv), if the goods are used by the lessee within the State whether or not for a specified period, notwithstanding that the agreement for the lease has been made outside the State or that the goods have been moved from outside the State or the goods have been delivered to the lessee outside the State or the goods have been delivered to the lessee outside the State.

4. Thus, Sub-Clause (b) of Explanation-II of Section 2(38), provides that in case of sale by a transfer of right to use the goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration (falling under Sub-Clause (iv) above) if the goods are used by the lessee within the State whether or not for a specified period notwithstanding that the agreement for the lease has been made outside the State or that the goods have been moved from outside the State or the goods have been delivered to the lessee outside the State, the sale shall be deemed to have taken place inside the State.

5. The Apex Court in the case of M/s. Builders Association of India reported in 73 STC 370 has upheld the constitutional validity of 46th Constitutional Amendment Act and in consequence to which the definition of ''sale'' has been amended in the RST Act but the Apex Court has held that the deemed sales are at par with normal sales. It is further held that if in the process of executing a work contract a transfer of property in the goods takes place outside the State, the State would have no power to levy sales tax on such a transfer. It is further observed that 46th Constitutional Amendment does not deem an inter State sale to be an intra State sale. The Apex Court has reiterated the said principle in the case of M/s Gannon and Dunkerleys and has held that the legislative power made under Entry 54 of the State List is not available in respect of transactions of sale or purchase which take place in the course of inter State Trade or Commerce.

6. The Apex Court in 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, while dealing with the constitutional validity of Explanation-II(b) of Section 2(38)(4) RST has held that the impugned explanation is in excess of legislative power under Entry-54 of the List-II of the Seventh Schedule of the Constitution of India and accordingly the same shall be read down to the extent that it should not be applicable to the transaction of the transfer of right to use any goods. If such deemed sale is (a) an outside sale; (b) sale in course of the import or export of the goods; and (c) an inter-State sale. According to minority view the impugned exemption is clearly violative of Article 286(1)(a), Article

269(1)(g) and Article 269(3) of the Constitution of India read with Sections 3 & 4 of the Central Sales Tax Act, 1956. The minority view has accordingly declared the said provisions illegal and unconstitutional. The majority view has dealt with the provisions of Rajasthan Sales Tax Act, as follows:

Explanation-II(b) to Section 2(38)(4) of the Rajasthan Sales Tax Act, 1954 is substantially on the pattern of the explanation to Section 2(10) of the Maharashtra Act. By virtue of Explanation-II(b) the definition of "sale" is enlarged and it includes sales outside the State or sales which are inter-State sales have been made chargeable if the goods are used within the State. Therefore the said explanation is in excess of legislative power under Entry-54 of List-II of the Seventh Schedule and, accordingly it is directed that Explanation-II(b) of Section 2(38)(4) shall be read down to the effect that it would not be applicable to the transaction of the transfer of right to use any goods if such deemed sale is (i) an outside sale; (ii) sale in course of the import or export of the goods; and (iii) an inter-State sale.

Thus, it is evident that the deemed sale taking place in the course of import or in the course of Inter State Trade or outside the State cannot be subjected to tax liability in the State of Rajasthan merely on the basis that the leased property is being used in the State of Rajasthan. It also emerges that the transfer of right to use any goods has to be construed as deemed sale and tax in respect thereof is to be imposed on transfer of such right to use goods which would be taxable event and regardless of when and where the goods were delivered for use. The locus of deemed sale is the place where right to use the goods stood transferred. Where the goods were, when right to use them was transferred is of no relevance for determining the place of deemed sale. Further the place where the goods are delivered for use pursuant to the transfer of the right to use them is also of no relevant.

7. Applying this to the facts of the instant case, it is not at all in dispute that the taxable event namely transfer of right to use took place at Delhi on account of lease agreements executed in Delhi. The machinery were in existence at the time of said lease agreement inasmuch as the orders for the supplies were place by the petitioner earlier and they were also dispatched pursuant to such orders, for being leased out to the lessee and delivered to the lessee directly after the execution of the lease agreements at Delhi. The machinery was very much there when the right to use them was transferred under the lease agreements. In view of the decisions of the Apex Court referred to above the taxable event occurred when lease agreements were executed and situs of such deemed sale would be the place where the contract is executed and it cannot be at the place where goods are located for use. The impugned levy of RST on lease rent and interest thereon merely on the basis that the machinery were given on lease are located for use in Rajasthan being illegal, is not sustainable.

8. It has also been brought to our notice that after the decision of the Apex Court in 20th Century Finance Corpn. (supra) the second respondent in the regular

Assessment Order dated 2nd March, 2002 for the Assessment Year 1999-2000 1.7.1998 to 31.3.2000 u/s 29(6) of the RST on consideration of the petitioner''s reply and the lease agreements has found that the machineries have been leased out to Shree Rajasthan Taxchem Ltd. by way of direct delivery in the course of import under the said lease agreement executed out of Rajasthan. He has held that in view of the decision of the Apex Court in 20th Century Finance Corporation the lease rent was not taxable. However, in view of the pendency of the instant writ petitions for the earlier years a right has been reserved to act in accordance with the judgment in the instant petitions.

9. Consequently all the three writ petitions are allowed and the impugned notice are quashed and set aside. No order as to cost.