
(1975) 03 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 30 of 1971

South Punjab Electricity Corporation Ltd. (Now Rohtak,
Textile Mills Ltd.)

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 17-03-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 4, 5, 8
Constitution of India, 1950 — Article 286
Punjab General Sales Tax Act, 1948 — Section 21, 22

Citation : (1976) 37 STC 35

Hon'ble Judges : S.S. Sandhawalia, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : K.K. Jain and S.P. Jain, for the Appellant; C.D. Dewan, Additional Advocate-General, for the Respondent

Judgement

Bal Raj Tuli, J.—This order will dispose of General Sales Tax References Nos. 30, 31 and 32 of 1971. G. S. T. R. No. 30 relates to the assessment year 1964-65, while G. S. T. R. Nos. 31 and 32 relate to the assessment year 1965-66.

2. The facts are that the assessee, Messrs. South Punjab Electricity Corporation Ltd. now named as Rohtak Textile Mills Ltd., Rohtak, is a public company registered under the Companies Act, with its registered office at Delhi. It is engaged in the business of manufacture and sale of cotton yarn and has its spinning mills, known as Mohan Spinning Mills, at Rohtak for the manufacture thereof. It is registered under the Punjab General Sales Tax Act as well as the Central Sales Tax Act, 1956, at Rohtak. It maintains sales office and godown at Delhi besides the one at Rohtak: For the assessment year 1964-65, the assessee showed gross turnover of Rs. 76,17,823.15 out of which it claimed deductions amounting to Rs. 52,84,985.61, as transfer of cotton yarn from the factory at Rohtak to its sales office at Delhi.

4. The Assessing Authority examined the transactions relating to the deductions

claimed from the account books, stock registers and other documents produced by the assessee and disallowed deductions to the tune of Rs. 22,72,399.63 by order dated 6th September, 1966, a copy of which is annexure A to the statement of the case. Similarly, for the assessment year 1965-66, the assessee-company filed a return showing gross turnover of Rs. 1,08,37,571.67, and claimed deductions to the tune of Rs. 93,50,775.60, on account of transfers from the factory to the sales office at Delhi. The Assessing Authority perused the account books, stock registers and other documents produced by the assessee and after examining each transaction, disallowed the deductions to the extent of Rs. 30,73,778.58. A copy of that order is annexure B to the statement of the case. Against those orders, the assessee preferred appeals which were dismissed by the Deputy Excise and Taxation Commissioner: vide orders dated 21st September, 1967, and 23rd September, 1967, copies of which are annexures C and D to the statement of the case. The matter was taken to the Excise and Taxation Commissioner in revision u/s 21(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act"), which were dismissed by order dated 20th December, 1968. A copy of that order is annexure E to the statement of the case. Against the order of the Excise and Taxation Commissioner, two appeals were filed before the Sales Tax Tribunal, which were dismissed by order dated 26th May, 1969, copy of which is annexure F to the statement of the case. Thereafter, two separate applications u/s 22(1) of the Act were filed before the Tribunal for reference of the following questions of law to this Court for decision for the year 1964-65 and similar questions for the year 1965-66 by mentioning the appropriate amount in question No. (4):

(1) Whether the findings arrived at by the Tribunal are based on evidence on the record of the case and are correct ?

(2) Whether in deciding the case, the Tribunal was justified in taking into consideration extraneous circumstances and basing its decision thereon ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal has correctly construed the general terms and conditions of the contract entered into by the Delhi sales office with the purchaser ?

(4) Whether, on the facts and in the circumstances of the case, the sales effected by the Delhi sales office amounting to Rs. 22,72,399.63 could be considered as inter-State sales qua the State of Haryana and taxed as such?

5. The Tribunal refused to refer the said questions by order dated 20th November, 1969, as, in his opinion, no question of law arose out of his order. A copy of that order is annexure G. The petitioner then filed applications u/s 22 of the Act in this Court for a direction to the Sales Tax Tribunal, Haryana, to refer the abovesaid questions of law to this Court for decision. Those applications came up for hearing before a Division Bench, which directed the Tribunal to draw up the statement of the case and refer the following questions for decision to this Court by order dated 17th May, 1971:

(1) Whether, on the facts and in the circumstances of the case, the transactions in dispute are not inter-State sales ?

(2) Whether there is any evidence on the record to hold that the transactions in dispute are not inter-State sales ?

6. In consequence of that order, the Sales Tax Tribunal has drawn up the statement of the case and referred the above-mentioned two questions for decision to this Court.

7. It may be mentioned that for the assessment year 1955-66, the gross turnover was shown as Rs. 1,08,37,571.67 out of which Rs. 93,50,775.60 were claimed as deductions on account of value of the goods transferred to Delhi office. Out of this amount, the sum of Rs. 2,99,973.00 was disallowed on the ground that the sales were made to dealers in the State of Punjab and were intra-State sales. G. S. T. R.No. 32 of 1971 concerns this amount and, in that case, the questions for decision should read as under:

(1) Whether, on the facts and in the circumstances of the case, the transactions in dispute are not intra-State sales ?

(2) Whether there is any evidence on the record to hold that the transactions in dispute are not intra-State sales ?

8. I shall first deal with G. S. T. R. Nos. 30 and 31 of 1971. The facts found in these cases by the Sales Tax Tribunal are that the assessee-company has its registered office at Delhi and carries on the business of manufacture of cotton yarn at Rohtak under the name and style of "Mohan Spinning Mills, Rohtak". It is registered as a manufacturer under Registration Certificate No. ROH-1V/7037 under the Punjab General Sales Tax Act, 1948, and No. ROH/CST/2582 under the Central Sales Tax Act, 1956. The company has also got its sales office at Delhi. There was a standard form of contract of sale which was entered into by the company's sales office at Netaji Subash Marg, Delhi-6, with the buyers of the cotton yarn. The learned Tribunal has set out the following clauses from the agreement dated 10th February, 1965, which was entered into by the company's sales office at Delhi with Messrs. Jamna Dass Ram Kishan, Bartan Market, Sadar Bazar, Delhi:

1. Preamble.--The undersigned (hereinafter called the "buyers", hereby agrees to purchase from M/s. Mohan Spinning Mills (hereinafter called "the company"), the undermentioned goods at the prices shown against them upon the terms and conditions included in this contract.

2. Condition No. 1.--The order is subject to confirmation by the company. It shall be open to the company to accept it or not, wholly or in part, within 15 days from the receipt thereof. While communicating the acceptance, the company shall intimate to the buyers the approximate date by which the goods of the order are expected to be in a deliverable state, whether in one or more lots/instalments;

3. Condition No. 2.--If the company will be unable to deliver the whole or any part of the goods by the time specified for delivery thereof by reason of the mills working in short time or it being expedient to stop the mills temporarily or by reason of fire or other disorganisation of labour or transport, breakdown of machinery, war, civil commotion, riot, stoppage or hindrance in the supply of raw material or fuel, explosion, accident, strike, lock-out or any other inevitable or unforeseen event over which the company has no control and which directly or indirectly interfere with the normal working or the full working of the mills, the buyers shall be bound to take delivery of such goods as the company may be in a position to deliver and the time for completing the contract shall, as regards the goods not ready by the specified time, be extended for such time as the company may reasonably require to make up for the delay caused by events and circumstances above-mentioned.

4. Condition No. 3.--If, for any reason, other than those mentioned in the preceding clause, any portion of the contract goods is not ready by the specified time, it shall be open to the buyer, at his option, either to cancel the contract, in so far as the cancellation relates to the balance of the goods which are not in the process of manufacture but which still remain to be manufactured or to agree to extend the time of delivery for such period as the company may reasonably require.

5. Condition No. 10.--In the event of the buyer requiring the company to despatch the goods either by rail, road or sea, the goods shall be at the risk, in all respects, of the buyer from the time the goods are ready with the company and available for delivery to the carrier, after notice to that effect is issued by the company to the buyer. The goods shall be despatched by goods train at railway or owner's risk as is acceptable to the railway authorities, but property and risk in the goods shall pass to the buyer on delivery of the goods to the carriers.

6. Condition No. 14.--The prices are net mill godown delivery and the buyer shall be responsible for all charges after the goods leave the godowns of the company, as the case may be. Where the prices are for destination, this means that the company will pay railway freight by goods train up to the railway station of destination. Excise duty payable on the goods shall be paid by the buyer in addition to the price. If the Government revise this levy and increase the excise duty after the date of this contract and before the delivery of the goods to the buyer, the buyer shall pay such increased duty on the goods under this contract.

7. Condition No. 15.--The buyer will pay earnest money at the rate of 10 per cent estimated value of the order, if demanded by the company. Such earnest money shall be liable to be forfeited by the company in the event of breach of this contract.

8. Condition No. 16.--State sales tax in the case of sale inside State and Central sales tax in the case of sale in the course of inter-State trade, shall be payable by the buyer at the rate leviable at the time of sale. In case the buyer is a

registered dealer in the goods, he shall produce a declaration in the authenticated form to entitle himself to the benefits thereof.

9. Condition No. 18.--This condition provides for arbitration to the Punjab and Delhi Chamber of Commerce whose decision shall be final and binding on the parties.

10. Condition No. 19.--The legal proceedings arising out of this contract after the reference to arbitration are to be filed in the courts of Delhi irrespective of place of signing the contract or actual payment for the goods.

9. Shri C.D. Dewan, the learned Counsel for the respondent, wanted to refer to the other terms of the contract of sale, but we have not permitted him to do so because the entire contract as such has not been made a part of the statement of the case and only some of its clauses have been considered by the Tribunal. The learned Counsel for the assessee has also submitted that all the evidence produced by the assessee-company should be looked at. We are of the opinion that while answering the questions referred to this Court, we are to confine ourselves to the facts stated in the statement of the case and as found by the Sales Tax Tribunal in his final order and no other document, evidence or record can be looked into. For this reason, the request of the learned Counsel for the petitioner has also been declined. We shall, therefore, answer the questions referred on the basis of the evidence considered by the Sales Tax Tribunal and his findings thereon.

10. The learned Tribunal has misinterpreted the contract inasmuch as he has considered that "Mohan Spinning Mills" or "the company" means the mills of the company at Rohtak and that the contracts were on the basis of ex-godown delivery of the goods at Rohtak because the freight charges were recoverable from the purchasers although octroi charges were not so recoverable. It is to be remembered that the contract referred to above was admittedly executed at Delhi by the sales office of the assessee-company with the purchaser of cotton yarn, carrying on business at Delhi. The terms of the contract, which provided for ex-mill godown delivery, meant delivery at the godown of the company at Delhi and not Rohtak. The tenor of the conditions of the contract, set out above, read as a whole, leaves no doubt that the sale was to take place at Delhi at the time of actual delivery of the goods to the buyer or to a carrier for onward journey to him and the sales tax, whether intra-State or inter-State, was to be exigible then (condition No. 16). Condition No. 19 unambiguously shows that the contract of sale was to be performed at Delhi and it was the responsibility of the company to bring the goods to Delhi for delivery to the buyers. There is thus no evidence in support of the conclusion arrived at by the Sales Tax Tribunal that the movement of the goods from Rohtak was as a result of the orders received from the buyers. It has not been found by the Tribunal, as has been argued by Mr. C. D. Dewan, the learned Counsel for the respondent, that cotton yarn of a particular specification or description was manufactured at the company's mills at Rohtak for the particular buyer indenting the same after receipt of the order from him

and, therefore, the movement of cotton yarn commenced from Rohtak in fulfilment of that contract of sale. On the other hand, the facts found are that the bales of cotton yarn were transported to Delhi sales office without any appropriation and from there they were delivered to the local buyers or despatched to out-of-State buyers in accordance with their orders. The sales to local dealers of Delhi were thus intra-State sales and not inter-State sales while sales to buyers outside Delhi were inter-State sales in relation to which the movement of goods commenced from Delhi and not Rohtak. Hence the sales tax authorities of Rohtak in Haryana had no jurisdiction to levy inter-State sales tax thereon under the Central Sales Tax Act, 1956.

11. The law has now been settled beyond doubt by the Supreme Court in *Kelvinator of India Ltd. Vs. The State of Haryana*, . In that case, the assessee-company had its factory at Faridabad in Haryana wherein it manufactured refrigerators, deep-freezers, compressors and other similar articles. Its registered office, sales office and godown were in Delhi. It was registered as a dealer at Faridabad-, both under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956. The refrigerators manufactured by the assessee were marketed under the trade marks of "Kelvinator", "Leonard" and "Gem". The assessee entered into three separate distribution agreements with three companies, S, B and G, for the sale of "Kelvinator", "Leonard" and "Gem" respectively. The prices of the refrigerators were fixed as mutually agreed upon from time to time. They were not settled for individual machines but periodically. The prices quoted were ex-assessee's works at Faridabad and the distributors had to pay the assessee all charges on the transport of the goods from the assessee's works at Faridabad to the assessee's registered office in Delhi. The purchase orders were placed by the distributors after the goods reached the head office in Delhi and the property in the goods passed at Delhi after delivery. Clause 6 of the distribution agreement with S contained the following provision:

All goods leaving the company's factory will pass through rigorous inspection procedures laid down by the company. No responsibility for shortage or damage occurring in transit will be accepted by the company.

Clause 8 of the distribution agreement with B and G was as follows:

All the goods leaving the company's factory will pass through rigorous inspection procedures laid down by the company, and will be packed in crates and will be delivered to the distributors packed as such. The company in no case shall be responsible for any shortage or damage that may occur in further transit, once the goods have been delivered and inspected by the distributors in Delhi.

12. The following facts were asserted by the assessee but nothing was said on them by the departmental authorities: After the goods were manufactured in the factory, an excise clearance pass was obtained afterpayment of excise duty for the transport of the goods from the factory to the assessee's godown in Delhi. The excise pass was always for movement of goods in favour of self. During the

transport of the goods from Faridabad to Delhi, the octroi at the barrier was paid by the assessee. The goods were received by the assessee's staff at the destination and taken in its godown. In pursuance of the orders, the Delhi staff gave delivery of the goods at Delhi to the customers under challans prepared at Delhi. The bill was raised from Delhi and the price of the goods was received by the assessee at Delhi and deposited in the assessee's account in its Delhi bank. The Tribunal held that the agency contracts entered into by the assessee with S, B and G were, in fact as well as in law, contracts of sale and, therefore, the transactions between the assessee and S, B and G were inter-State sales liable to tax under the Central Sales Tax Act, 1956. The High Court on a reference held that the Tribunal was right in its conclusion that the movement of the machines had been occasioned by the agreements between the manufacturers and the distributors and the transactions were, therefore, inter-State sales. On appeal to the Supreme Court, it was held:

On the facts and circumstances of the case, the three agreements between the assessee and the distributors were merely agreements for the distribution of refrigerators and were not agreements of sale between the parties. It could not be said that there was any movement of refrigerators from Faridabad to Delhi under a contract of sale. The transactions between the assessee and the distributors did not constitute sales in the course of inter-State trade or commerce and, therefore, there was no liability to pay tax under the Central Sales Tax Act, 1956.

13. It was further observed that in deciding the question whether the transaction between the parties is in the course of inter-State trade or commerce, the court should look not merely at the distribution agreements, but regard should be had to the entire course of dealings between the parties, and that there is nothing illegal or impermissible to a party so arranging its affairs that the liability to pay tax would not be attracted or that the brunt of taxation would be reduced to the minimum. Reference was made to some earlier judgments of the Supreme Court with approval, one of them being *Tata Engineering & Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes, Jamshedpur* [1970] 26 STC 364 (SC) in which it was held that the sales to be exigible to tax under the Act must be shown to have occasioned the movement of goods or articles from one State to another and that the movement must be the result of a covenant or incident of the contract of sale. The conclusion was then stated as under:

It can, therefore, be said that a sale of goods is in the course of inter-State trade if the sale and movement of goods from one State to another are integral parts of the same transaction. There must exist a direct nexus between the sale and the movement of goods from one State to the other. In other words, the movement should be incident of, and be necessitated by, the contract of sale and thus be interlinked with the sale of goods.

14. It was held by a Division Bench of the Madras High Court in *Cement Distributors (P.) Ltd., Dalmiapuram v. Deputy Commercial Tax Officer, Lalgudi*

[1969] 23 STC 86 mad that if the goods are sent in bulk to an agent in another State with instructions to distribute them amongst the allottees, the movement of the goods cannot be said to have been occasioned by the sales which take place at the time the goods are earmarked and delivered to the allottees and not at any time prior thereto. In that case the petitioner-company, having its registered office at Madras and branches at Calcutta and Dalmiapuram, was constituted as the agent of the State Trading Corporation of India Limited to take charge of the cement manufactured in a factory at Dalmiapuram and to dispose it of in accordance with the directions of the corporation. During the period 1961-62, large quantities of cement had to be sent to Calcutta by the petitioner under the directions of the corporation, and authorisations to sell and purchase cement were accordingly issued by the corporation. Pursuant to those authorisations, which enabled the petitioner to sell the quantity of cement mentioned therein to the persons in whose favour the authorisations were issued, several tons of cement were shipped by the petitioner from the port of Cuddalore to its Calcutta branch. The Calcutta branch appointed its clearing agents to clear the goods, authorised the agents to deliver to the respective allottees at the jetty or dock such quantities of cement fixed by the corporation under the letters of allotment and collected the price from the purchasers. The question that arose for decision was whether those sales could be charged to tax by the Madras State under the Central Sales Tax Act, 1956. It was decided in the negative with the following observation:

As the purchasers or allottees were unable to identify their goods until they were separated and delivered to them by the clearing agents under express authority from the petitioner's branch office at Calcutta, the appropriation to the contracts of sale took place only at Calcutta and, therefore, the sales could not be brought into the net of taxation by the State of Madras as the situs for such jurisdiction had been shifted by reason of the sales being out-of-State sales in relation to the State of Madras.

15. A similar view was taken by a learned single Judge of the Madras High Court in Radhakrishna Mills Ltd. v. State of Tamil Nadu [1973] 32 STC 168 Mad. In that case, the petitioner-mills in the State of Tamil Nadu despatched to Calcutta in their own name bulk quantities of yarn which were cleared by the petitioner's agent at Calcutta and the expenses were debited to them. The goods were then sold at the discretion of the agent to a few of the several buyers whose contracts were pending on the date of despatch. The assessing authority treated those transactions as inter-State sales within the meaning of Section 3(a) of the Central Sales Tax Act, 1956, and not out-of-State sales which would be exempted from being included in the assessable turnover under the Central Sales Tax Act and, accordingly, revised the original assessments whereunder exemption had been granted. The petitioner thereupon filed a writ petition in the High Court to quash the reassessment order. It was held that it was the depot agent who appropriated the goods towards particular contracts without reference to his principal and, therefore, the transactions were intra-State sales in the

State of West Bengal and out-of-State sales so far as the State of Tamil Nadu was concerned. The order of reassessment was quashed. On the parity of reasoning, it can be said in the cases before us that the sales took place at Delhi when the bales of cotton yarn were separately appropriated to the contracts of the buyers who had already placed their orders and not when the goods were transported from the mills at Rohtak to the sales office of the company at Delhi. It has not been found by any of the authorities under the Act that the bales of cotton yarn meant for each purchaser were appropriated at Rohtak before the goods left the mills so that they had to be delivered only to that particular buyer and not to anybody else. The assessee-company produced railway receipts or goods receipts showing that the goods were transported from the mills at Rohtak to the Delhi sales office in the name of "self" and not in the name of any purchaser. The octroi or terminal tax at Delhi was paid by the assessee who also bore the transport charges. It is thus evident that the goods, when received at Delhi in the godowns of the mills, were unappropriated goods and were the property of the assessee itself. The property in those goods passed to the buyers only when the appropriation of a particular number of bales meant for each purchaser was made at Delhi. The sales were thus intra-State sales at Delhi and not inter-State sales which occasioned the movement of the goods from Rohtak qua the buyers of Delhi.

16. In *Daulatram Rameshwarlal Vs. B.K. Wadeyar*, a Division Bench of the Bombay High Court held:

One test which is fairly simple and easy and which is almost infallible in these matters is to see whether the exporter could have diverted the goods which he had purchased to any purpose other than the purpose of export. Inasmuch as the exporter in this case only got delivery of the goods by means of the documents of title after they had crossed the customs barrier, it could not be suggested that he could have made any other use of the goods except exporting them outside India.

17. According to this principle of law, if a seller has such control over the goods, which enables him to divert them to any purchaser or for any other purpose, the sale cannot be said to have taken place till then. This test of diversion was also applied by the Supreme Court in *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, The relevant observations are:

The next question that arises is whether the movement of axle-box bodies from Belgium into Madras was the result of a covenant in the contract of sale or an incident of such contract. It seems to us that it is quite clear from the contract that it was incidental to the contract that the axle-box bodies would be manufactured in Belgium, inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place in the

course of import of goods within Section 5(2) of the Act, and are, therefore, exempt from taxation." (Emphasis supplied.)

18. A Division Bench of the Madras High Court held in *Larsen and Toubro Ltd., Madras-2 v. Joint Commercial Tax Officer, Mount Road II Division, Madras* [1967] 20 STC 100 that the character of the transaction does not change because of the terms of delivery, like f. o. r., or f.o.b. or c. i. f.

19. The mere mention of delivery f.o.r. place of destination in condition No. 14 of the contract of sale does not necessarily lead to the conclusion that the movement of goods commenced from Rohtak in fulfilment of that contract unless it is further proved that the goods despatched from Rohtak directly reached the buyer at the place mentioned in the contract. There is no such finding given by the Sales Tax Tribunal in these cases.

20. The learned Counsel for the respondent has relied on a decision of the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Allwyn Cooper* [1970] 25 STC 28 (SC) wherein the facts were that the respondent, who carried on the business of selling manganese ore, sold manganese ore pursuant to four contracts. In the first two contracts there was a clause to the effect that the price was f.o.r. Katangjhiri railway siding in Madhya Pradesh and that the first weighment at the Gondia weigh-bridge, which was en route between the place of despatch and the destination in the State of Maharashtra, should be the basis for final accounts. In the other two contracts there was a specific clause that the price would include railway freight from the loading station in Madhya Pradesh, to the port of Vishakhapatnam in the State of Andhra Pradesh and that the balance of 10 per cent of the price was to be paid in the case of one contract after loading, weighing and despatch of the ore to the port and in the case of the second after acceptance of the goods in the plots of the buyers at the port. On these facts, it was held that the performance of each one of the contracts necessarily involved the movement of the goods from the State of Madhya Pradesh to the State of Maharashtra or to the State of Andhra Pradesh and the sales under the four contracts were inter-State sales u/s 3(a) of the Central Sales Tax Act, 1956. The facts of that case are clearly distinguishable because the goods were despatched from Madhya Pradesh to the State of Maharashtra or Andhra Pradesh for being delivered to the buyer and could not be diverted on the way by the seller or dealt with in other manner by him. He had no control over the goods while in transit except that in the case of the first two contracts, the weighment of the goods was to be made at the Gondia weigh-bridge, which was en route between the place of despatch and the place of destination in the State of Maharashtra, because the price was dependent on that weight. These goods were not despatched by the seller to self at the place of destination and were to be taken delivery of by the buyer at that place. Clearly the movement of the goods commenced from Madhya Pradesh in fulfilment of the contracts of sale and the property in the goods passed to the buyers at the moment they were despatched from Madhya Pradesh.

21. The learned Counsel has also relied on another decision of the Supreme Court in *The State of Bihar and Another Vs. Tata Engineering and Locomotive Co. Ltd.*, In that case the respondent-company carried on the business of manufacturing and selling trucks and bus chassis and spare parts thereof. It had its head office in Bombay and its factory in Jamshedpur in Bihar. It had appointed several dealers all over India. Under the agreements between the company and the dealers, each dealer was assigned a territory in which alone he could sell the trucks, bus chassis and other spare parts purchased from the company and the dealer was forbidden from selling them outside his territory. The dealers placed their indents, paid the price of the goods and obtained delivery orders from the Bombay office of the company. In pursuance of those delivery orders, the trucks, bus chassis and spare parts were delivered in Bihar to the dealers to be taken over to the territories assigned to them. Under the contracts the dealers were required to remove the trucks, bus chassis and spare parts delivered to them in the State of Bihar to places outside the State. The question was, whether the sales to dealers outside the State of Bihar under those agreements, were sales which took place in the course of inter-State trade or commerce within the meaning of Article 286(2) of the Constitution of India and were, therefore, exempt from liability to sales tax under the Bihar Sales Tax Act, 1947. It was held that the sales were in the course of inter-State trade and, therefore, exempt from tax under the Bihar Sales Tax Act, 1947. The dealers were required to move the trucks, bus chassis and spare parts purchased by them from the State of Bihar to places outside the State and they were so required by the terms of the contracts entered into by them with the respondent-company. They would have committed breach of their contracts and incurred the penalty prescribed in their dealership agreements, if they had failed to abide by the terms requiring them to move the goods outside the State of Bihar. It was observed that "it is a well-established position in law that, where under the terms of a contract of sale, the buyer is required to remove the goods from the State in which he purchased them to another State, and the goods are so removed, that sale in question must be considered as a sale in the course of inter-State trade or commerce". It is evident that those facts have not even the remotest resemblance to the facts of the cases before us and the ratio of that decision cannot be applied to the facts of these cases.

22. The learned Counsel for the respondent has lastly relied on the judgment of a Division Bench of the Delhi High Court in *K. G. Khosla & Co. Pvt. Ltd. v. Chief Commissioner, Union Territory of Delhi* [1872] 30 STC 13 delhi In that case the petitioner-company, with its head office at Delhi, had its factory for manufacturing air compressors and garage equipments at Faridabad in the Haryana State. Orders for the supply of various goods were received at its head office in Delhi and the head office drew out a production programme and advised the factory to manufacture them. The goods were manufactured in accordance with the specifications received from the purchasers prior to their manufacture. After the goods were so manufactured, they were brought to the head office at

Delhi and despatched from Delhi to the various customers in and outside Delhi. The price of the goods was also received at Delhi. The Assessing Authority at Faridabad made an assessment order against the petitioner-company on the basis that the sales effected by it were inter-State sales. On a writ petition being filed by the petitioner-company, it was held that:

(1) for the sales to be inter-State sales within the meaning of Section 3(a) of the Central Sales Tax Act, 1956, it was not necessary that the contracts of sale should themselves have provided that the goods should be supplied from Faridabad. Since the contracts of sale referred to goods of particular specifications, those goods were manufactured in Faridabad, and those contracts of sale could be performed by the petitioner only in one way, viz., by the movement of the goods from Faridabad, the movement was occasioned by the contracts of sale and their movement from Faridabad to Delhi was a necessary incident of the contracts of sale. Therefore, the sales were made in the course of inter-State trade within the meaning of Section 3 (a);

(2) the fact that in many of the contracts it was provided that delivery would be f.o.r. Delhi did not affect the legal position;

(3) in view of Sections 2(a), 2(dd), 4(2)(b) and 8(2)(a) of the Central Sales Tax Act, 1956, the appropriation of the goods took place when the unascertained or future goods were manufactured in accordance with the specifications of the contracts of sale, and the sales tax authorities at Faridabad were entitled to levy Central sales tax on the sales;

(4) it is not the physical possibility of diversion but the legal right of diversion which is to be taken into account in determining whether the sale was in the course of inter-State trade; and

(5) the appropriation referred to in Section 4(2)(b) of the Central Sales Tax Act, 1956, connotes the setting apart of goods as specific goods to be delivered under the contract of sale and not an appropriation linked with the passing of property.

23. The facts are clearly distinguishable because the particular goods were manufactured in fulfilment of particular contracts and had to be supplied to the buyers who had placed orders for them, and could not be supplied to any other buyer. The mere fact that in the course of journey of the goods from that factory at Faridabad to the place of destination, they had to pass through Delhi, did not affect the true position that they had been manufactured for a particular party and had to be delivered to that party and nobody else. No such facts have been found in the present cases. Therefore, the learned Counsel cannot rely on the ratio decidendi of this decision as well.

24. For the reasons given above, we hold that on the facts and in the circumstances of these cases, the goods were supplied to local buyers or out-of-State buyers from Delhi and not from Rohtak and the exemptions to the extent of Rs. 22,72,399.63 for the year 1964-65 and Rs. 30,73,778.58 for 1965-66

were wrongly disallowed. On the local sales at Delhi, intra-State sales tax could be levied if it was in force and on the inter-State sales tax could be levied by the authorities of Delhi and not by the sales tax authority of Haryana. Consequently, both the questions referred to us in G. S. T. R. Nos. 30 and 31 of 1971 are answered in favour of the assessee and against the sales tax department. The assessee is entitled to its costs. Counsel's fee Rs. 250 in each reference.

25. Coming to G. S. T. R. No. 32 of 1971, the facts are that goods of the value of Rs. 2,99,973.00 were supplied from Delhi to various customers at Ludhiana, Bhiwani and Faridabad, when all these places were situate in the Punjab State, during the year 1965-66. Since Rohtak was also in that State, the Assessing Authority treated the sales as intra-State sales. It was pleaded by the petitioner-company that the goods were not supplied from Rohtak, but were supplied from Delhi where the orders had been received and the goods manufactured at Rohtak were transported to Delhi sales office in routine, and not in fulfilment of the contracts of sale with the parties at those places. The petitioner-company submitted proof in support of its plea, but it was disbelieved without there being any evidence in the possession of the department to the contrary. It is significant to note that the rate of tax was only 1 per cent and the petitioner-company had sold goods worth about Rs. 15 lacs from Rohtak to the dealers within the State of Punjab and there is no reason why goods of the value of about Rs. 3 lacs should have been taken to Delhi and despatched from there to the buyers at Faridabad, Bhiwani and Ludhiana. The expenses of transporting those goods to Delhi including the payment on account of octroi or terminal tax, were probably more than the sales tax of 1 per cent, which had to be paid by the buyer. The only fact on which the sales tax authorities did not believe the version of the petitioner-company was that in some cases the goods were received at Delhi in the evening and were alleged to have been despatched to outstation soon thereafter and that the entries which were made in the account books at Delhi were formal in nature. No reasonable man can come to that conclusion on that fact alone because it is a matter of common experience that the trucks carrying the goods leave Delhi at night, and even one truck carries goods of and for more than one party. It appears to us that the orders for supply of goods were generally received at Delhi sales office from where they were supplied and, in due course, the goods were also supplied from Delhi to these parties. Those sales, therefore, constituted inter-State sales in which the movement of the goods commenced from Delhi State and the sales tax authorities at Delhi alone had the right or the jurisdiction to levy inter-State sales tax thereon. The sales tax authorities of Punjab (now Haryana) could not levy intra-State sales tax on those sales. For these reasons, the two questions set out above, duly corrected by us, are answered in favour of the assessee and against the sales tax department. The assessee is entitled to its costs of this reference from the respondent. Counsel's fee Rs. 250.

Sandhawalia, J.

I agree.