

(1994) 11 AP CK 0011

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 138, 148 and 149 of 1988

State of Andhra Pradesh

APPELLANT

Vs

Coromandel Paints and Chemicals Ltd.

RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20, 22(1), 6A
Central Sales Tax Act, 1956 — Section 3, 6, 6A, 9

Citation : (1995) 98 STC 82

Hon'ble Judges : S.S. Mohammed Quadri, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant;
A.K. Jaiswal, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—These three tax revision cases, relating to the same assessee but pertaining to different assessment years, are preferred by the State u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the State Act"), against the common order of the Sales Tax Appellate Tribunal in appeals dated July 1, 1987. The question, which pertains to assessment of sales tax under the Central Sales Tax Act, 1956 (for short "the Central Act"), is common in the three revisions and arises out of common facts. Therefore, they are heard together and are being disposed of by a common judgment.

2. For appreciating the question in these cases, we would refer to the facts in Tax Revision Case No. 148 of 1988. It relates to the assessment year 1980-81. The turnover of the assessee included turnover of an amount of Rs. 53,96,110, in respect of which claim for exemption was accepted by the assessing authority u/s 6-A of the Central Act on the ground that it is in respect of stock transfers to the branches of the assessee and that it was also covered by declarations in form "F". The Deputy Commissioner (C.T.), Visakhapatnam, in exercise of the revisional power u/s 20 of the State Act, revised the assessment and withdrew the exemption granted by the assessing authority in respect of the disputed

turnover, referred to above. On appeal by the assessee, the Sales Tax Appellate Tribunal allowed the appeal holding that the disputed turnover related to stock transfers and thus confirmed the order of the assessing authority. Assailing the correctness of the order of the Tribunal, the tax revision case is filed by the State.

3. The learned Government Pleader for Commercial Taxes contends that the movement of the goods was occasioned by the sale of the paints by the assessee to the Shipping Corporation of India Limited (for short "S.C.I."), therefore, the turnover is in respect of inter-State sale u/s 3(a) of the Central Act. He further contends that the effect of withdrawal of the exemption by the revisional authority would be that the "F" forms were not accepted. Therefore, the Tribunal's order will have to be set aside and the disputed turnover will have to be assessed to tax.

4. Mr. A. K. Jaiswal, learned counsel for the assessee, on the other hand, contends that the movement of the goods was only from the head office to branches and that the sale was effected by the branches to the Shipping Corporation of India, therefore, the movement of the goods cannot be said to have been occasioned by the sale of the goods. The burden of proof to show that the movement of the goods was otherwise than in the course of inter-State sale, was discharged by the assessee by producing declarations in "F" forms, which have been accepted by the assessing authority and that no inaccuracy or incorrect entry in the declaration having been pointed out in the "F" forms, the revisional authority cannot withdraw the exemption.

5. In view of the above contentions, two questions arise for consideration.

(1) Whether the disputed turnover relates to inter-State sales; and

(2) What is the effect of the presumption u/s 6-A of the Central Act, when declarations in form "F" are filed by the assessee and accepted by the assessing authority ?

6. We shall take up these two questions together. We may note here that section 6 of the Central Act, which is the charging section, levies tax under the Central Act on all sales of goods, other than electrical energy, effected by every dealer in the course of inter-State trade or commerce during any year on and from the notified date. Section 9 of the Central Act provides that the tax payable by any dealer under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce, whether such sale falls within clause (a) or clause (b) of section 3, shall be levied by the Government of India and shall be collected by that Government in accordance with the provisions of sub-section (2) of that section, in the State from which the movement of the goods commenced. The proviso enumerates an exception, but we do not consider it necessary to refer to it having regard to the contentions raised before us. Now turning to section 3 of the Central Act, it may be useful to read it here :

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

State trade or 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.

Explanation 1. - Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. - Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

7. A perusal of the provisions, extracted above, shows that it raises a presumption of law and that is - 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. For purposes of clause (b) of section 3, Explanation 1 says that where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Explanation 2 deals with a situation where the movement of goods commences in one State and terminates in the same State but in the course of movement it passes through another State, and enjoins that it should not be treated as a movement of goods from one State to another State.

8. It would also be relevant to note section 6-A of the Central Act. It provides that if any dealer claims that he is not liable to pay tax under the Central Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, and not by reason of sale, then the burden of proving that the movement of goods was so occasioned, shall be on the dealer. It also provides the mode of discharge of that burden of proof. To discharge the burden the dealer has to furnish to the assessing authority, within the prescribed time, a declaration duly filled and signed by the principal officer of the other place of business, or his agent or principal, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods. On production of such a declaration, if the assessing authority is satisfied, after making such enquiry as he may consider necessary, that the particulars contained in the declaration furnished by the dealer are true, he is authorised, either at the time of, or at any time before, the assessment of the tax payable by

the dealer under the Central Act, to make an order to that effect and on his so doing, the movement of the goods, to which the declaration relates, shall be deemed for the purpose of the Central Act to have been occasioned otherwise than as a result of sale.

9. What follows from a combined reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment. Where the department takes advantage of the presumption u/s 3(a) and/or (b) to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase in the course of inter-State trade or commerce, then the assessee can rebut the presumption by filing declaration in form "F" u/s 6-A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by virtue of sale. Where the department does not take advantage of the presumption u/s 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax u/s 6, the declaration in form "F" u/s 6-A would be of no avail.

10. In the instant case the case of the Revenue is based on the agreement and not on the presumption u/s 3(a) of the Central Act. The Shipping Corporation of India called for tenders for the supply of paints suitable for marine ships. The assessee submitted its tender which was accepted. The terms of acceptance of the tender, are contained in letter No. 151/00/650, dated August 24, 1981, of the Shipping Corporation of India. Conditions Nos. 1, 2, 8, 13 and 15 are relied upon to show that it resulted into a binding agreement or at any rate an agreement to sell the paints between the assessee and the Shipping Corporation of India. As the answer to the question depends on interpretation of those terms, it will be useful to read them here :

"1. The period of the contract shall be from September 1, 1979 to August 31, 1980, with the Corporation's option for extension of the contract arrangement for a period up to November 30, 1980, on the same terms and conditions.

2. During the period of the contract you shall supply to our owned, managed and chartered vessels at the port concerned. No extra charges would be payable for delivery of paints to vessels in stream. The rates are inclusive of port and customs charges, octroi duty, if any, will be borne by you.

8. All rates shall be kept firm for the period of the contract including the period of extension. No enhancement in the rates will be permitted, for any reasons whatsoever, during the currency of the contract. No upward revision in prices would be claimed by you even if any excise duty is imposed or increased in raw material.

13. You will maintain adequate stock of paints to meet our requirements throughout the period of the contract. In case of your failure to supply paints either at required time or of the requisite quality and in the required quantity,

the Corporation will be free to buy the requirements from other paint suppliers at your risk and cost. The Corporation shall also be at liberty to terminate the contract without notice in case of repeated failure to arrange supplies at the required time or at the requisite quality/quantity.

15. You shall not supply any paints, shades, types or quality, not covered by the contract unless and until you have received prior written order, specifically indicating the rates of such items. In case of supply of paints not covered by the contract, you will submit separate bills."

11. Clause (1) of the agreement mentions the period during which the contract will have to be in force, namely, from September 1, 1979 to August 31, 1980, subject to extension up to November 30, 1980. Clause (2) says that during the abovesaid period the assessee should supply paints to the vessels owned, managed and chartered vessels against the orders placed by the officers/agents of the Shipping Corporation of India at the rates and on the terms mentioned in the Schedule. Clause (2) clarifies that the rates mentioned in the Schedule are for free delivery on board the vessels at the port concerned and that no extra charges would be payable for delivery of paints to vessels in stream and that the rates would be inclusive of port and customs charges, octroi duty, if any. Clause (8) enjoins on the assessee to keep the rates unaltered for the abovesaid period including the period of extension and that there shall not be enhancement in the rates during the said period. Clause (13) enjoins on the assessee to maintain adequate stock of paints to meet the requirements of S.C.I. throughout the period of contract and makes the assessee liable for the risk caused in default of complying with the said condition. Clause (15) casts an obligation on the assessee not to supply any paints, shades, types or quality not covered by the contract unless and until the assessee has received prior written order specifically indicating the rates of such items. However, if there has been a supply of items other than those covered by the contract, the assessee was given the liberty to submit separate bills.

12. From the above terms it follows that the assessee has undertaken to supply paints to the Shipping Corporation of India against the orders placed by the officers/agents of the Shipping Corporation of India at various places of the port or at different ports. Such types of contract cannot be treated either as a binding contract or an agreement to sell the goods mentioned therein. It is merely a standing offer to supply goods as and when ordered during the specified period and at the specified rates. As to when a contract to sell the goods would be effective can be determined with reference to section 4 of the Sale of Goods Act, 1930, which is in the following terms :

"4. Sale and agreement to sell. - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale, when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

13. The provisions, referred to above, define that a contract of sale of goods would be effective when the seller transfers or agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in presenti, it is called "sale"; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called "an agreement to sell". When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred, are fulfilled, the "agreement to sell" becomes a "sale".

14. The question as to when an invitation to tender for supply would ripen into a contract, was considered by the Supreme Court in Union of India (UOI) Vs. Maddala Thathiah, . In that case, pursuant to an invitation to tender made by the Union of India, the respondent therein submitted his tender for supply of jaggery during the months of February and March, 1948. The tender was accepted by the Union of India and the respondent was asked to furnish security. The terms of the tender, inter alia, contemplated that the delivery of 1/4 of the quantity should be made on March 1, 1948, 1/4 on March 22, 1948; 1/4 on April 5, 1948, and 1/4 on April 21, 1948. Subsequently the dates of delivery of jaggery were changed. After February, 1948 the Union of India cancelled the agreement for supply of the balance of jaggery. In the suit filed by the respondent for recovery of damages for breach of contract, it was held by the Supreme Court that the acceptance of the tender did not amount to placing the order for any definite quantity of jaggery on a definite date and, therefore, did not amount to a contract in the strict sense of the term in view of the provisions requiring a deposit of security and the placing of the formal order.

15. When an understanding reached between the parties for supply of goods at a future date, would become a binding contract, was discussed by Cheshire and Fifoot in his authoritative treatise on "Law of Contract". The learned author has this to say :

"There is no doubt, of course, that the tender is an offer. The question, however, is whether its "acceptance" by the corporation is an acceptance in the legal sense so as to produce a binding contract. This can be answered only by examining the language of the original invitation to tender. There are at least two possible cases. First, the corporation may have stated that it will definitely

require a specified quantity of goods, no more and no less, as, for instance, where it advertises for 1,000 tons of coal to be supplied during the period January 1st to December 31st. Here the acceptance of the tender is an acceptance in the legal sense, and it creates an obligation. The trader is bound to deliver, the corporation is bound to accept, 1,000 tons and the fact that delivery is to be by instalments as and when demanded does not disturb the existence of the obligation.

Secondly, the corporation advertises that it may require articles of a specified description up to a maximum amount, as, for instance, where it invites tenders for the supply during the coming year of coal not exceeding, 1,000 tons altogether, deliveries to be made if and when demanded, the effect of the so-called "acceptance" of the tender is very different. The trader has made what is called a standing offer. Until revocation he stands ready and willing to deliver coal up to 1,000 tons at the agreed price when the Corporation from time to time demands a precise quantity. The "acceptance" of the tender, however, does not convert the offer into a binding contract, for a contract of sale implies that the buyer has agreed to accept the goods. In the present case the Corporation has not agreed to take 1,000 tons, or indeed any quantity of coal. It has merely stated that it may require supplies up to a maximum limit."

16. It is thus clear that where the terms of the agreement enjoin supply of goods against an order already placed, it amounts to a contract if the goods are specified but they are to be delivered at a future date as and when specified. But, where neither the quantity nor the goods have been specified and the supply has to be made at a stated period of the required quantity, it cannot be said that there was a sale or even an agreement to sell, it is merely a standing offer.

17. In the instant case, we have already noted above, the terms of the letter of acceptance of the tender contemplate that the assessee would keep the paints of the variety, which was the subject-matter of tender, ready at their sub-offices or branches and that they were bound to supply as and when the order was placed by the S.C.I. with the assessee, it can only be a standing offer but not "sale" or an "agreement to sell".

18. We shall now refer to the earliest case on this aspect decided by the Supreme Court.

19. In *Balabhagas Hulaschand v. State of Orissa* [1976] 37 STC 207, the Supreme Court laid down that before a sale could be said to take place in the course of inter-State trade or commerce the following conditions must be satisfied - (1) There must be an agreement to sell containing a stipulation, express or implied, regarding movement of goods from one State to another; (2) in pursuance of that agreement, the goods should have in fact moved from one State to another; and (3) ultimately, a concluded sale should take place in the State where the goods were sent, and (4) that State is different from the State

from which the goods moved.

20. Applying the above tests to the facts of the present case, it cannot be said that conditions (1) and (2) are satisfied though the goods moved from the State of Andhra Pradesh to the States of Maharashtra, West Bengal and Tamil Nadu and concluded sales took place in those States.

21. In *English Electric Company of India Ltd. v. Deputy Commercial Tax Officer* [1976] 38 STC 475 a similar question arose for consideration of the Supreme Court. There, the appellant-company was having its registered office at Calcutta and branches at various places - Bombay, Delhi, Madras and Lucknow. The main factory of the company was at Madras where certain goods were manufactured. The branch office at Bombay, pursuant to the order placed by a customer at Bombay, placed an indent with the branch office at Madras. The Madras branch despatched the goods to Bombay by goods train. The goods were delivered to the buyer at Bombay with intimation to the Bombay branch. The Madras High Court held that it constituted an inter-State sale within the meaning of section 3(a) of the Central Sales Tax Act. On appeal, the Supreme Court held that the appellant-company was one legal entity. The contract of sale was between the appellant and the buyer. The steps were taken from the beginning to the end by the Bombay branch in co-ordination with the Madras factory and that it was the Madras factory which, pursuant to the covenant in the contract of sale, caused the movement of goods from Madras to Bombay, and that the movement of goods from Madras to Bombay was the result of contract of sale. Therefore, the turnover of sale was liable to be taxed under the Central Act.

22. The principle laid down by the Supreme Court in that case is that when the movement of goods from one State to another was an incident of the contract of sale, it was a sale in the course of inter-State trade or commerce, falling within the meaning of section 3(a) of the Central Act and that it was immaterial in which State the property in the goods passed. It was pointed out that what was decisive was whether the sale was one which occasioned the movement of goods from one State to another and that 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 was also pointed out that it was not necessary that the sale must precede the inter-State movement in order that the sale might be deemed to have occasioned such movement and that for a sale to be deemed to have taken place in the course of inter-State trade or commerce, the covenant regarding such movement need not be specified in the contract itself and that it would be enough if the movement was in pursuance of and incidental to the contract of sale.

23. In *Union of India v. K. G. Khosla and Co. Ltd.* [1979] 43 STC 457, the question that arose for consideration of the Supreme Court was whether the sales made by the assessee were made at Faridabad in the course of inter-State trade or within the Union Territory of Delhi. The High Court of Delhi was of the view that the sales were inter-State sales assessable to sales tax under the

Central Act by the authorities at Faridabad. On appeal, the Supreme Court held that if a contract of sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale and that the contract need not provide for such movement of goods. In that case the Supreme Court laid down as under :

"The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the circumstance as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale."

24. *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, is a case where the assessee had its registered office and factory at Hyderabad and branches at Bombay, Calcutta and Coimbatore. The branches used to receive orders from customers within and outside their respective States for the supply of goods which were manufactured, according to the designs and specifications supplied by customers, at its factory at Hyderabad from where they were despatched to the respective branches by way of transfer of stock. The branches raised the bills and received the sale price. The branches also furnished form "F" to the registered office at Hyderabad u/s 6-A of the Central Act. It may also be noted that the branches were assessed to sales tax in their respective States. However, the Commercial Tax Officer, at Hyderabad, issued notices to assess the transactions as inter-State sales. That having been challenged, the Supreme Court took the view that even if the customer placed an order with the branch office and the branch office communicated the terms and specifications of the order to the registered office and the branch office itself despatched the goods to the buyer, billed and received the sale price, the order placed should be deemed to be an order placed with the company, and for the purpose of fulfilling that order the manufactured goods commenced their journey from the registered office in the State of Andhra Pradesh to the branches outside the State for delivery of the goods to the customer. The movement of the goods from the registered office at Hyderabad was occasioned by the order placed by the customer and was an incident of the contract, and therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-State movement. Therefore, such a turnover was taxable u/s 3(a) of the Central Act.

25. From the above decisions the principle which emerges is - when the sale or agreement for sale causes or has the effect of occasioning the movement of goods from one State to another irrespective of whether the movement of goods is provided in the contract of sale or not, or when the order is placed with any branch office or the head office which resulted in the movement of goods, irrespective of whether the property in the goods passed in one State or the other, if the effect of such a sale is to have the movement of goods from one State to another, an inter-State sale would ensue and would result in exigibility of tax u/s 3(a) of the Central Sales Tax Act on the turnover of such transaction.

26. Now reverting to the facts of the present case, we have already pointed out that there has been no sale which has occasioned the movement of goods. Acceptance of the tender of the assessee to meet the requirements of the orders that would be placed from time to time resulted in a standing offer by the assessee pursuant to which arrangements were made for the sale of paints to S.C.I. There was no obligation on the S.C.I. to accept the goods which have been moved to the branches; nor could there be any complaint for not taking of the goods after the goods had arrived at the branches, here the process of sale commenced only after an order was placed by the S.C.I. with the respective branches which delivered the goods and effected sales. This being the position, the test laid down above is not satisfied.

27. In this view of the matter, the order of the Tribunal holding that the withdrawal of exemption by the Deputy Commissioner is bad in law, cannot be said to suffer from any illegality. The expression "withdrawal of exemption" is somewhat inappropriate. Where the stocks were transferred from the head office to the branches otherwise than in the course of inter-State trade or commerce, the turnover of such goods does not become exigible to tax u/s 3(a) of the Central Act. It is only when the turnover relates to sale or purchase of goods during the course of inter-State trade or commerce that it would be taxable under the Central Act.

28. In the result, the order of the Tribunal is confirmed. The three tax revision cases are dismissed, but in the circumstances without costs.

29. Petitions dismissed.