

(1991) 06 GUJ CK 0021
In the Gujarat High Court
Case No : Sales Tax Reference No. 14 of 1982

State of Gujarat

APPELLANT

Vs

Chem-dyes Corporation

RESPONDENT

Date of Decision : 12-06-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 5(3)
Gujarat Sales Tax Act, 1969 — Section 69

Citation : (1991) 06 GUJ CK 0021

Hon'ble Judges : S.D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Advocate : Kamal Mehta, for H.V. Chhatrapati and Co, for the Appellant; R.D. Pathak, for S.L. Modi, for the Respondent

Judgement

A.P. Ravani, J.—This is a reference u/s 69 of the Gujarat Sales Tax Act, 1969, at the instance of the Revenue. Opponent-assessee is a partnership firm. It was registered as a dealer under the Bombay Sales Tax Act, 1959 up to May 5, 1970 and thereafter, i.e., from May 6, 1970, it is registered as a dealer under the Gujarat Sales Tax Act, 1969. The assessee is also registered as a dealer under the Central Sales Tax Act, 1956. It deals with the business of certain chemicals and instruments and is also engaged in manufacture and sale of two articles known as "table-wax" and "wexol". It carries on its business at Rajkot. On August 10, 1973, the business premises of the assessee were searched and the account books and other documents for Samvat Years 2026 to 2029 were seized.

2. The Sales Tax Officer, Rajkot, found that there was suppression of sales and therefore issued notice with regard to the correct assessment of the turnover and also issued notice with regard to certain sales effected by the assessee which were considered as local sales. According to the department these sales were really inter-State sales u/s 3(b) of the Central Act and attracted the provisions of the Central Sales Tax Act, 1956. This reference is concerned with the dispute regarding these sale transactions.

3. The modus operandi in these sale transactions was that the assessee purchased goods from Bombay. These goods were to be despatched to Rajkot. The assessee handed over the railway receipts to the purchasers of the goods at Rajkot. These purchasers, after taking delivery of the goods from the railway, carried out inspection of the goods. After carrying out such inspection they made payment of the goods. It was the case of the assessee that the sales were concluded only after the inspection of the goods was carried out by the purchasers and only after they approved the goods. The assessee collected tax from the customers as applicable under the provisions of the Bombay Sales Tax Act, 1959 and under the provisions of the Gujarat Sales Tax Act, 1969. The assessee credited the amount of tax to the Sales Tax Officer together with the amount due on its remaining turnover of sales of the relevant accounting periods.

4. The Sales Tax Officer held that in these sale transactions the property in the goods passed at the time of delivery of the railway receipts because at the time of delivery of the railway receipts the movement of the goods had already commenced. The Sales Tax Officer, further held that the transactions attracted the provisions of the Central Sales Tax Act, 1956 and not that of Bombay Sales Tax Act, 1959 or Gujarat Sales Tax Act, 1969 and he made assessment accordingly. The Sales Tax Officer also imposed penalty under the appropriate provisions of the Bombay Sales Tax Act, 1959 and also under the appropriate provisions of the Gujarat Sales Tax Act, 1969. As a result of this order, the amount credited by the assessee to the Sales Tax Officer through periodical returns of the relevant turnovers of sales were forfeited to the Government and the additional liability under the Central Sales Tax Act, 1956, accrued. The assessee filed appeal under the provision of the Bombay Sales Tax Act, 1959 and the Gujarat Sales Tax Act, 1969. The appeals were heard by the learned Assistant Commissioner. He confirmed the finding arrived at by the Sales Tax Officer. The assessee preferred second appeal before the Tribunal.

5. The Tribunal upheld the contention of the assessee that the sale transactions in question were local sales and not inter-State sales. The Tribunal relied upon a decision of the Supreme Court in the case of *Tata Iron and Steel Co. Limited v. S. R. Sarkar* reported in [1960] 11 STC 655. The Tribunal found on facts that no complete sale of goods has taken place either at the time of, or merely as a result of, the transfer of railway receipts by the assessee-firm to the intending purchasers. The Tribunal further held that the view taken by the lower authorities that the transactions were inter-State sales covered by clause (b) of section 3 of the Central Sales Tax Act, 1956, could not be sustained. The Tribunal also recorded the finding that it was not the case of the Revenue that the sale transactions fall within the scope of clause (a) of section 3 of the Central Sales Tax Act, 1956. In view of the aforesaid finding the Tribunal set aside the orders of the Sales Tax Officer and that of the Assistant Commissioner. The Tribunal also set aside the consequent order of forfeiture and penalty passed by the lower authorities.

6. Since there were 11 second appeals before the Tribunal, the department filed 11 applications for reference u/s 69 of the Gujarat Sales Tax Act, 1969. However, the Tribunal heard and decided all the applications together and disposed of them by a common order. The Tribunal has referred the following question to this Court :

"Whether, on the facts and in the circumstances of the case, the Gujarat Sales Tax Tribunal was justified in law in holding that the disputed sales were subject to tax under the relevant provisions of the Bombay Sales Tax Act, 1959 and the Gujarat Sales Tax Act, 1969 and did not constitute inter-State sales under the provisions of section 3(b) of the Central Sales Tax Act, 1956 ?"

7. The sales in question for different periods are as follows :

S. No.	Samvat year	Amount Rs.	1	2025	36,671	2	2026 (1st half)	37,203	3
	2026 (2nd half)	13,418	4	2027	37,472	5	2028	60,865	6
	2029	4,334							

The aforesaid sales were of table-wax and wexol.

8. The Tribunal found on facts that as per the relevant terms of agreement between the assessee and its purchasers, all supplies of goods were subject to checking and approval by the purchasers. The purchasers had a right to reject the goods and that too, at the cost of the assessee. Thus the purchasers even after taking delivery of the goods from the railway authorities at the destination could say that they do not wish to purchase the goods without incurring any liability whatsoever. On going through the terms of agreement of purchase and the order forms as well as other relevant documents, the Tribunal came to the conclusion that there was merely an agreement to sell. There was no sale till the purchasers took delivery of the goods, inspected the same and ultimately approved the same. The Tribunal also found that at the time of endorsement of the railway receipts in favour of the purchasers, the purchasers were not required to pay and as a matter of fact had not paid any part of the purchase price of the goods to the assessee. The Tribunal found that the purchasers had paid the price of the goods to the appellate only after they had checked the goods and found that they were in order.

9. In view of the aforesaid finding of facts the Tribunal came to the conclusion that when the railway receipt were endorsed in favour of intending purchaser by the assessee, the sale had not taken place. There was mutual agreement to sell. The sale took place only after the goods reached at the destination and the goods were inspected and approved by the purchasers. In view of this finding of facts the Tribunal came to the conclusion that the provisions of section 3(b) of the Central Sales Tax Act, 1956, were not attracted.

10. The term "sale" is defined u/s 2(g) of the Central Sales Tax Act, 1956, which means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire purchase or other system of payment by instalments, but

does not include a mortgage or hypothecation of or a charge or pledge on goods. Section 3 of the Central Sales Tax Act, 1956, provides as to when the sale or purchase of goods is said to have taken place in the course of inter-State trade or commerce. The relevant part of the section reads as follows :

"3. 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 delivery 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. -"

Section 3(b) of the Central Act would apply only if the sale is effected by transfer of documents of title to goods during their movement from one State to another. Be it noted that one of the requisite conditions of applicability of the section is "sale" of goods and not an agreement to sell. Both the conditions should be satisfied - sale as well as transfer of documents of title to the goods - during their movement from one State to another. In the instant case there is transfer of documents, meaning thereby, the railway receipts have been endorsed by the assessee in favour of the intending purchasers. This event has occurred during the movement of the goods from Bombay to Rajkot. But during this time the sale has not taken place. During this period what was in existence was merely an agreement to sell. Therefore in our opinion the Tribunal was rightly held that the provisions of section 3(b) of the Central Sales Tax Act, 1956, were not attracted.

11. The Tribunal relied on the decision of the Supreme Court in the case of Tata Iron and Steel Co. Ltd. v. S. R. Sarkar reported in [1960] 11 STC 655. In that case the provisions of section 3(a) and (b) came up for consideration before the Supreme Court. The Supreme Court after referring to the definition of "sale" occurring in section 2(g) of the Act observed as follows :

"By section 3, a sale or purchase of goods is 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 transfer of documents of title to the goods during their movement from one State to another. A transaction of sale is subject to tax under the Central Sales Tax Act on the completion of the sale, and a mere contract of sale is not a sale within the definition of "sale" in section 2(g)."

The Supreme Court further observed that the sale contemplated by clause (b) is one which is effected by transfer of documents of title to the goods during their

movement from one State to an other. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b); nor will the sale in which the property in the goods passes after the movement from one State to another has ceased, be covered by the clause.

12. The Tribunal has rightly followed the aforesaid principles laid down by the Supreme Court. Before the Tribunal several decisions of different High Courts were cited. The Tribunal has distinguished the same, and in our opinion, rightly. Therefore we do not propose to discuss these decisions.

13. Reference may be made to a decision of the Supreme Court in the case of Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, . In that case the constitutional validity of the provisions of section 5(3) of the Central Sales Tax Act, 1956, was challenged. During the course of the judgment the Supreme Court explained the term "sale" occurring in the provisions of section 5(3). The Supreme Court, inter alia, observed that the expression "sale" has been defined in section 2(g) for the purpose of that Act. After referring to the definition of the term "sale" the Supreme Court held that this definition will be applicable as the term "sale" occurring in section 5(3) of the Act must mean transfer of goods by one person to another for cash or for deferred payment or for any other valuable considerations, and it cannot mean "agreement to sell". The Supreme Court also considered its earlier decision in the case of Balabhagas Hulaschand Vs. State of Orissa, . Therein it was, inter alia, observed that the word "sale" includes "agreement to sell". However, it is also observed that the word "sale" may include "agreement to sell" provided, however, there is stipulation in the agreement regarding transfer of property in goods.

14. In the instant case there is nothing to indicate that the intending purchasers had entered into agreement to sell in which there was stipulation regarding the transfer of the property in the goods. On the contrary the finding of facts is otherwise. The Tribunal has categorically found that the property in the goods has passed only after the goods reached the destination at Rajkot and only after the intending purchaser took delivery, and thereafter inspected the same and approved the same. In our opinion the Tribunal has rightly decided the question.

15. For the aforesaid reasons we answer the question in the affirmative in favour of the assessee and against the Revenue. The reference is answered accordingly with no order as to costs.

16. Reference answered in the affirmative.