
(2000) 01 KAR CK 0091
In the Karnataka High Court
Case No : S.T.R.P. No's. 54 to 63 of 1999

State of Karnataka

APPELLANT

Vs

Jindal Aluminium Limited

RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (2002) 126 STC 458

Hon'ble Judges : V.K. Singhal, J; T.N. Vallinayagam, J

Bench : Division Bench

Advocate : S. Sujatha, High Court Government Pleader, for the Appellant; M. Thirumalesh, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—The revenue is aggrieved by the orders passed by the Karnataka Appellate Tribunal dated March 22, 1999, in respect of the assessment years 1989-90 to 1993-94 (CST), wherein, the alleged suppression was deleted and the transactions were held as branch transfers and not inter-State sale. These proceedings emanated from reassessment orders, on the basis of the report of the Central Excise Department. The Central Excise Department, ultimately, dropped the proceedings and the contention of the assessee that there was no suppression, was accepted by the Central Excise Tribunal as well. Before us, it is submitted that, the Tribunal was not justified in deleting the suppressed figures of sales estimated by the assessing authority and treating the transaction as branch transfers and not inter-State sales.

2. Arguments of the learned counsel for both the parties heard and both these issues are dealt separately :

Following five questions have been raised :

(1) Whether, on the facts and in the circumstances of the case, the Karnataka Appellate Tribunal is right in law in allowing the appeals filed by the respondent-

company ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in treating the inter-State sales as branch transfer ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in treating the turnover of inter-State sales as branch transfers on the ground of test of reasonableness ?

(4) Whether, on the facts and in the circumstances of the case, the impugned order is sustainable in law ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not considering all the documents produced by the department ?"

3. (a) Whether there is suppression :

Learned counsel for the department has drawn our attention to annexure "C" letter dated March 23, 1991 written by Arya Central Transport Ltd., Bangalore, to their Delhi office, in which, it was mentioned that the consignments were despatched without any other documents, and freight was paid at Bangalore. In annexure "D", the Delhi office of the said transport company has written on May 29, 1991, they have credited a freight charges of Rs. 80,087 in respect of the six challans. It is also mentioned "it is not understood why you have mentioned the challan Nos. instead of C.N. Nos. for proper accounting of the paid receipts". From this letter, the only thing which could be said is, that, the credit of freight charges of Rs. 80,087 was made in the books of Delhi office of the transport company. Another letter was annexure "E". This is again a letter written by the Bangalore office of the transport company to their Delhi office, in which, they have mentioned that, weight load as per challan is only 1 to 2 tonnes, per challan, whereas, the hire paid was for the full truck load. These were such 6 challans :

"Sl. No.

Challan No.

Date

Amount Rs.

1.

109-7261

22-12-90

14,720-00

2.

109-7282

26-12-90
11,790-00
3.
109-7290
28-12-90
14,453-00
4.
109-7335
04-01-91
11,070-00
5.
109-7351
07-01-91
14,070-00
6.
109-7379
12-01-91
13,984-00
Total
80,087-00"

Bangalore office have collected freight amount and the same was credited and accounted in books of accounts treating the challan as C.N. On the basis of this letter, it is stated that, the goods were sent by respondents which have not been accounted. On the basis of this set of documents, it is stated that there is a suppression in the production by the assessee. Attention is also drawn to annexure "F", the statement given by the transporter, in which, he has stated that the letters were seized from their premises and the contents thereof, are correct. Besides that, report of Central Excise Department was also considered. Central Excise Tribunal has set aside enhancement considering the contents as household articles of the ex-employees of the company. The conclusions arrived at by the assessing authority were as under :

"(a) that the assessee had specifically desired ACTL not to record the said transportations made on their behalf.

(b) that they have used certain lorry challans No. which is for 1 or 2 tonnes, to cover for the consignment which weigh approximately 10 to 12 tonnes for which there are no documents.

(c) that the freight charged is for full load, even though the documents covering them are for 1 to 2 tonnes.

(d) that the freight charges has been collected by cash, departing from the regular practice of collecting by cheques.

(e) that the said challans No. at (b) above were asked to be treated as consignment note numbers by the Bangalore ACTL office.

(iii) in a statement made before the ACCT (CV) S.Z. Bangalore Shri Kamlesh N. Gaind has confirmed that the contents of this letter are true and correct.

(iv) Further Shri G.D. Agarwal, Administration in-charge of ACTL, New Delhi, in his statement made before the Central Excise authorities, at Delhi, on July 26, 1994 has also confirmed that the said six consignments were assessee's goods and that they were transported without any documents."

4. The assessing authority has estimated the suppressed turnover from 1990-91 to 1993-94 and has also taken into consideration all these documents.

5. Assessing authority came to conclusion that, assessee was despatching two loads with identical quantities by mentioning one and the same consignment number and accounting only one load. This conclusion was arrived on the basis of annexure "B". In respect of one consignment, different lorry numbers were found on challan and lorry receipt. The statement of General Manager that if some of the lorry challans contained two dates, it was because the payment of freight to the lorry owner hired by ACTL happened to be settled on a date subsequent to the date of actual lifting and transportation of the goods from the manufacturing unit to Nelamangala godown. Wherever the freight had been paid on the very same day of transportation, the lorry challan contained only one date. About the vehicle number mentioned in lorry challan being different from the vehicle number shown on the lorry receipt, it was explained that this might have happened due to the mischief done by their staff to keep the freight amount for local movement with themselves or might be due to the fact that the owner/driver/broker who collects freight amount gives a wrong lorry number, was accepted. Before the assessing authority, it was contended that, the six consignments as mentioned in annexure "C" were not belonging to the assessee-company. The affidavit of those employees who have resigned from the services of the company have been produced, on the basis of which the Tribunal came to the conclusion that, in view of the affidavits of the employees, no case existed against the company. The other point which was considered by the assessing authority was that, truck No. HR-26-9908 was intercepted on September 23, 1992 which was without documents and a penalty of Rs. 20,000 was paid. It was found by the Tribunal that, it has not been established that the said goods belong

to the assessee-company. On the basis of burning loss and consumption of electricity, it was considered that, there was more production than as shown in the books of accounts. The assessee submitted the letters of Indian Institute of Science and HAL to show that the material loss comes to 3 per cent to 6 per cent and the comparative figures for consumption of electricity of various other companies were also submitted. From the comparative charge of 7 other manufacturers, it is found that the consumption of electricity by the assessee was the lowest. The enhancement of turnover by 0.63 per cent was considered as without basis. There was a note by company Secretary as under, from which it was considered that there is excess production :

"Technical people contend that the production for 1992-93 is 8443 MT as against 8103 tonnes as per balance sheet. If that production figure is considered the consumption per unit works out to 509 MT."

Tribunal's finding on this point are :

"It was explained that the technical people exercising supervision over production of aluminium extrusions account for the entire production including the defectives which are reprocessed for conversion into aluminium extrusions. Aluminium extrusions derived from the re-processing are also taken to account by the technical people as production. In consequence, one and the same quantity of aluminium extrusions first derived as defective and on re-processing derived as marketable quality extrusions, gets accounted twice. It is such a difference between the net and actual production taken to balance sheet and the total production accounted by the technical people that was narrated in the note of the then company Secretary, Sri R.S. Bajaj."

It was also observed by applying test of reasonableness, the assessee could not have camouflaged alleged few transactions of sales.

5A. So far as the finding on question of suppression is concerned, basically, it is a question of fact and in revision, it has to be seen as to whether the view taken by the Tribunal is absolutely perverse, illegal or without jurisdiction or suffers from any mistake apparent from the record or error of law. Nothing has been pointed out, on the basis of which, a different conclusion could be arrived at. It was mainly on the basis of the transporters document that inference was drawn that the goods have been sent by the assessee without recording the same in the books of account. The finding which has been given by the Tribunal is that the vehicle was not carrying the goods of the assessee. Such finding is supported by the affidavits of the ex-employee. Nothing on record has come as to whether such vehicles were intercepted at any check-post containing the goods of the assessee nor there was any positive evidence of any suppression or proof of sales. Nothing was found from the premises of the assessee. The document of third party are admissible against him and to make them applicable to the other, higher degree of proof is required. Even the statement of those ex-employees who have filed their affidavits have not been refuted by any other satisfactory

evidence. The electricity and fuel consumption and metal loss which was another basis was negated on the ground that the figures of the assessee are the lowest. In these circumstances, we do not consider that the setting aside of enhancement of suppressed turnover by the Tribunal was unjustified. The evidence relied by the department was considered by the Tribunal and the explanation of the assessee was accepted.

6. Branch transfer :

The assessee has now branches at Delhi, Hyderabad and Bombay. The main dispute was with regard to the transfer of those goods which were delivered to the prospective buyer on the same day.

7. The modus operandi found by the Tribunal was as follows :

"(a) The company manufactures both general sections and specific sections. While general sections like round tubes, square tubes, door handles, window sections, tower bolts and TV antenna are stock transferred to branches at Delhi, Bombay and Hyderabad, the specific sections are sold in the course of inter-State trade. 90 to 95 per cent of the products are general sections which are around 200 in number.

(b) The general sections are fast moving items for which neither the manufacturing unit at Bangalore nor the branches at Delhi, Bombay and Hyderabad receive prior orders and hence, are not made to order and hence are stock transferred. Whereas, for the specific sections, the manufacturing unit receives prior order with specifications after which the company manufactures dies as per specifications and the specific sections are manufactured and sold in the course of inter-State trade by collecting four per cent Central sales tax. The inter-State sales are effected to dealers of Delhi, Bombay and Hyderabad though the company has branch offices in those places.

(c) The manufacturing activity of general sections and despatches of general sections to the branches on stock transfers are in the usual course of business and are as part of daily routine. Hence, goods are stock transferred as and when manufactured in full truck loads.

(d) The branches at Delhi, Bombay and Hyderabad are registered in the respective States and are having sufficient storing facilities (godown available). The copies of the registration certificates mentioning godown facilities are filed by the appellant which are taken on records. The proof of payment of rent for branches and godown are also filed.

(e) The branches at Delhi, Bombay and Hyderabad, after receipt of the goods from Bangalore and after taking delivery of the goods, sold the goods in open market to the wholesalers at the respective cities of Delhi, Bombay and Hyderabad. The branches maintain stock registers at branches wherein the total stock received and the sales effected at the branches are entered into on day-to-day basis.

(f) There are 19 wholesalers in Delhi. The names and addresses of the said wholesalers are filed. Most of the wholesalers (90%) are within the cities of Delhi, Bombay and Hyderabad and hence goods are mostly sold within the respective cities.

(g) The goods manufactured by the appellant are sold by weight and not by numbers.

(h) The goods stock transferred to branches are unloaded in the godowns. The lorry receipts of the transporters clearly indicate that the freight is including unloading charges."

Assessing authority observed :

".....

10(e) After the manufacture, the goods are segregated section-wise separately and each section manufactured is weighed before packing and after packing the exact weight is marked on the package like 76.8 kg. or 92.7 kg., etc., which indicates the exact weight. The packing is done with the quantity ranging from 60 to 100 kgs.

(f) The company is very strict on the quality control and does not pack goods which do not stand test of quality control. Even goods with slightest damage or bend is not packed or sold which turn is taken to stock of scrap which is reused as raw material.

(4) The investigating authorities have contended that identical quantities have been sold, i.e., without unpacking. It is to be noted that the appellant being a manufacturer sells only to wholesalers in lumpsum and by weight and not by numbers and also since the goods are general and fast moving items, the branches cannot afford to sell the goods piece by piece after unpacking. Hence, a particular pack containing 70.8 kgs., has to be sold as 70.8 kg. only. Though it is identical keeping in view the nature of business and nature of general goods the bundles are to be sold as bundles.

(5) Unpacking of bundles at the branches is not done which is also to fulfil the statutory requirements of the Central Excise Department to enable the assessment of RT-12 returns. The Central excise authorities vide letter No. OC/3872/87, dated December 28, 1987 have instructed the company to link each invoice of the branch with the stock transfer voucher of head office to tally the quantity and the price at which the goods are sold by the branches. Hence, the branches in order to link, do not undertake unpacking of material."

Following negative facts were found :

(a) Receipt of advance by the manufacturing units or its communication to manufacturing unit.

(b) Payment of freight upto the destination of the ultimate buyer.

- (c) Obtaining of insurance and the destination upto which transit insurance has been covered by the despatching unit.
- (d) Extent of presence of stock and pattern of stocking at branch.
- (e) Delivery instructions to the transporters.
- (f) Existence or non-existence of branch.
- (g) Possibility of indication of ultimate buyer in the delivery challan.
- (h) Presence of packing indicating the ultimate consignee thereby disabling the branch from diverting goods.

Assessing authority relied on the decision reported in Mehta Group of Industries v. State of Haryana [1989] 75 STC 428 (P&H) and Haryana Iron and Steel Rolling Mills Vs. State of Haryana, which was distinguished by the assessee as under :

Sl No.

Mehta Group case

Appellant's case

1.

Goods despatched from Bahadurgarh in Haryana to Delhi --Which is only about 30 kms. distance and sold on the same day.

Goods are transferred from factory at Bangalore to the branches at Delhi, Bombay and Hyderabad, i.e., different parts of the country and it takes about 3 to 8 days to reach the branches.

2.

The goods are despatched to customers to far off places in various States on the same day of receipt of goods.

The goods are sold at the branches to the local buyers after minimum 2 to 3 days on an average. Sale from factory at Bangalore is made to customers in various States on CST basis, wherever orders are placed by inter-State customers with the factory.

3.

There is no specific pattern in despatch of goods from factory to head office.

Goods are despatched in full truck loads on regular basis to the branches.

4.

No records of any orders placed by the dealers.

After the goods reach at the branches, local dealers are contacted and orders finalised and entered in order register (customer contact register) available at

the branches. In some cases, even written orders have been received from customers subsequent to the receipt of goods at branches.

5.

There was no stock at the branches.

The branches have regular stocks and this is evident from the stock records maintained at the branches.

6.

The finding was that the goods were manufactured to the specification of buyers.

The goods manufactured are not to the specification of any buyer. The goods despatched to branches are general goods of commercial nature in the ordinary course of business. Same goods are purchased by different customers not once but repeatedly.

7.

As regards sales to buyers at Delhi only three buyers.

There are more than 15 buyers in Delhi and the branch had absolute discretion to sell to any one of them.

8.

This case relates to Assessment year 1970-71 in which year submission of form F was not prevalent. The case was decided based on facts.

With effect from April 1, 1973 section 6-A of the CST Act, has been inserted according to which particulars in form have been furnished by the appellant along with evidence of despatches, etc., which the assessing authorities have already taken into consideration at the time of assessment. Now the burden of proof is on department.

9.

No documents are there to show how goods moved from Delhi to other States.

Appellant has evidence to show that goods were unloaded in their godown for which entries were made in the "goods inward" register maintained at the godown and Subsequently goods were sold to the dealers/customers under a delivery challan. Proper acknowledgement was taken from the dealers/customers in the copy of the challan for having delivered the material. The lorry receipts of the transporter also clearly show that the freight charges are inclusive of the unloading charges at the branch godown.

10.

The assessee despatched goods to the branches in small consignments of 15 kg/20kg and sold the same to two different customers in two different lots even

though received on same day. There were even two consignments of small quantities on one day.

The goods were despatched in full truck loads from the factory to the branches and in most of the cases goods have been sold to more than one buyer.

11.

Goods have been sold to one customer only and in two cases goods have been sold to two customers.

In more than 90 per cent of the cases goods have been sold to more than one customer.

Sl. No.

Haryana Iron & Steel Rolling Mills case

Appellant's case

1.

Goods were despatched to branch on full lorry loads and they were disposed of on the same day at the branches.

Goods are taken into stock at the branches. In view of the demand for the products, goods are sold afterwards at an average of 2 to 3 days after the goods are received at branches. In some cases, goods have been sold even after 6 to 8 days of receipt at branches. In most of the cases goods are not sold in different lots.

2.

The dealer did not produce contracts under which the movement of goods took place nor the purchasing dealer produced order book confirming the true nature and character of transactions.

The goods of general commercial nature are transferred to the branches, in the ordinary course of business, The branches maintain customer contact-cum-order register showing that the orders have been finalised on a purchaser after getting offers from many parties and after receipt of goods at branches, The branches have absolute discretion to choose customer. It can be seen that the same type of section of extrusions have been sold to different customers on different dates which

shows that the goods are of general commercial nature which are required and can be purchased by any one and not made as per requisition of specific customers.

3.

The branch office did not produce stock register

The branches maintain stock register to show opening balance of stock, receipt, sales and closing balance of stocks on day-to-day basis. In addition to stock register, branches are also maintaining goods inward register at the time of receipt of goods at branches. There is always regular stock of goods at branches.

4.

Non-production of stock registers of its Delhi office was used as basis for raising the presumption that the goods were never received by the Delhi office and were delivered directly to the buyers at Delhi. This has also strengthened the presumption of the existing contracts.

The branches are independent in nature. Regular books of accounts in addition to stock register are maintained at the branches. The goods are transferred from the factory at Bangalore to the branches by lorries booked in the name of branch offices only on freight to pay basis. The goods are unloaded and taken into stock at the branches. Goods have never been directly delivered to any customers to necessitate such delivery. Goods received at branches have been always entered in stock register before they are sold.

5.

This case relates to the assessment year 1972-73 when the provisions of section 6A of the CST Act was not in existence. Provisions of section 6A of the CST Act was inserted with effect from April 1, 1973 only. Hence, based on the above facts, the High Court has decided the matter.

Provisions of section 6A of the CST Act is applicable in this case. As assessee, company has discharged its burden of proof that the transfer of goods was made otherwise than by way of sale by furnishing before the assessing authority, particulars in form F, along with evidence of despatch of such goods. The particulars and evidence have been accepted by department and appellant's assessments have been completed by assessing authority.

6.

Delhi to Hisar is only four hours journey. Material reach the branch along with the details itself.

In our case, it takes 4 to 8 days, documents and details reach the branch next day by courier, i.e., much before the receipt of material at branches giving enough time to contact customers and obtain orders."

8. Observations of the following para of the decision of this Court in *Bhoruka Steel Rolling Mills Ltd. v. State of Karnataka* S.T.A. No. 37 of 1977, dated February 4, 1981, were relied which reads :

"As on each occasion the goods were despatched by the appellant to the branch office in lorry, the movement came to an end when the lorry reached the branch office. Thereafter it was open for the branch office situated in the State of Tamil

Nadu, after receiving the goods in the lorries to sell the goods to the customers without unloading the goods if anyone intended to purchase the goods when the lorries were stationed at the premises of the branch office. An endorsement on the way-bills thereafter authorising the carrier to deliver the goods to the person or persons who had purchased these goods in the State of Tamil Nadu, would only be an intra-State sales and the movement of the lorries pursuant to such a sale would not alter the nature of the transaction. Therefore, such sales after the lorries had reached the destination, i.e., branch office in the State of Tamil Nadu could not be treated as inter-State sales, in the absence of essential ingredients to constitute inter-State sale, i.e., either the existence of prior contract between the intending purchasers situated in another State prior to the movement of the goods or sale by way of transfer of documents while the goods were still in transit, i.e., before they reached the branch offices. As in the present case, the goods, were sold to the customers in the State of Tamil Nadu by the branch office after the journey came to an end and the goods reached the branch office by the mere fact that sales were effected in that State without unloading the goods and directing the carrier to deliver the goods to those who had purchased the goods in the State of Tamil Nadu, the sales cannot be termed as inter-State sales."

9. Learned counsel for the assessee also referred the following decisions :

(i) Indian Duplicators Ltd. Vs. State of Tamil Nadu, : Indian Duplicators Ltd. is a manufacturer of duplicators, its accessories, etc., and its place of business located in Madras. It despatched goods to the branch at Hyderabad. The goods so despatched carried markings on the packages of Andhra Pradesh buyers. The department held that such markings brought about nexus between the stock transfers despatched and sale by the branch at Hyderabad and therefore, the transactions were sales in the course of inter-State trade or commerce. Negating this stand, the honourable High Court of Madras held that there was no establishment of any direct link or nexus between the sale and the movement of goods to supply to the Andhra Pradesh buyers, especially when the goods despatched by the appellant were moved by it in the ordinary course of business. The mere fact that the mark of the Andhra Pradesh buyer's name was found on the goods would not necessarily lead to the conclusion that there was a completed transaction of sale by the appellant in Madras by appropriation of goods towards any contract. Therefore, the transaction was not to be regarded as representing inter-State sales effected by the assessee.

(ii) Kelvinator of India Ltd. Vs. The State of Haryana, : Kelvinator of India Ltd. had its factory in Haryana State, where it manufactured refrigerators, deep freezers, etc. The company operated its registered office and sales office at Delhi and it had entered into three distribution agreements with three different dealers. The three different dealers placed their purchase orders only after the goods reached the head office in Delhi. The honourable Supreme Court of India held that the three distribution agreements were not agreements of sale between

the parties and therefore, it could not be said that the movement of goods from Haryana to Delhi was under any contract of sale. Transactions between Kelvinator of India Ltd., and the distributors did not constitute sales in the course of inter-State trade or commerce and hence, no tax under the Central Act could be levied on those transactions.

(iii) Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, : Tata Engineering and Locomotive Co. Ltd., manufactured trucks and buses in the State of Bihar and moved them to its own stock yards situated in different parts of the country and then delivered them to the dealers against allocation letters and firm orders. Honourable Supreme Court of India held that the movement of the vehicles from the stock yards could not be said to have been occasioned by any contract or incident of contract of sale and hence, the transactions are not taxable under the Central Act as inter-State sales.

(iv) State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., : Thungabhadra Industries Ltd., kept on despatching goods to its various depots outside the State in truck loads every few days. The depots issued bills to the wholesale buyers who had placed indents and delivered the goods to them. The department took the stand that at the time of despatch of goods, appropriation of goods took place to particular contracts placed by way of indents by the wholesale buyers. Rejecting this stand, the Appellate Tribunal pronounced judgment which was also upheld by the honourable High Court of Andhra Pradesh that the appropriation of goods to a particular contract took place at the depots outside the State when the invoices were raised and when the goods were separated for delivery to the wholesale buyers.

Tribunal observed :

".....there could be no two opinions that the ratio of judgments applicable to facts in the case of the appellant are the judgments of honourable High Court of Karnataka in the case of Bhoruka Steel Rolling Mills Ltd. v. State of Karnataka STA No. 37 of 1977 dated February 4, 1981, judgments of honourable Supreme Court of India in the case of Kelvinator of India Ltd. Vs. The State of Haryana, and Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, . The judgment of honourable High Court of Punjab and Haryana in the cases of Mehta Group of Industries [1989] 75 STC 428P&H and Haryana Iron and Steel Rolling Mills Vs. State of Haryana, do not have any applicability to the facts in the case of the appellant. Except to have pressed into service the judgment of the honourable High Court of Punjab and Haryana in the aforesaid two cases, no material evidences whatsoever have been brought on record of the reassessment orders to establish existence of any nexus between the despatches accounted as stock transfers and sales effected by the branches. It is now well-settled by consistent judgments of honourable High Courts and honourable Supreme Court of India that merely by reason of identical ties in respect of description of goods, quantity and value between the

despatches made to branches and sales effected by the branches even on the same day of receipt of goods at branches, it cannot be held that the despatches constitute transactions of inter-State sales liable to Central sales tax. We have no hesitation therefore, in reaching the conclusion that the case against the appellant for having camouflaged any transaction of inter-State sales into branch transfer is not proved."

10. It is submitted that, an inference could be drawn that the goods moved, in pursuance of the contract of sale from Karnataka State to their branches which were situated in other States. In order to establish the transaction as an inter-State sale, it is necessary that there must be movements of goods from one State to another in pursuance of the contract of sale. If the movement of goods is independent of any contract and the sale is effected even on the same day in the State, in which the branch is situated, then, it cannot be considered to be an inter-State sale. There is nothing on record to show that there was a contract prior to movement of the goods from the State of Karnataka. The assessing authority has referred certain dates, on which, vehicle sent from Karnataka, reached the branch and on that very day, the sale was effected to a local buyer in that State. In order to establish that the transaction is inter-State sale, the burden is on the assessing authority and merely on the basis of presumption, inter-State sale cannot be presumed. It may be true in a particular case where the goods are delivered to the buyer by the branch on the same day, that it may be on the basis of an existing contract, but for that, the contract or even the correspondence could have been brought on record. By mere presumption, it cannot be considered that in all cases, where the sale is effected on the same day by the branch, on which, they have received the goods from head office, it will be presumed that it is an inter-State sale, is not in accordance with the provision of Section 3 of the Central Sales Tax Act, 1956. The provision of Section 3 contemplated the movement of goods in pursuance of the contract of sale. If the movement is independent of the contract, even on the expectation of a particular buyer purchasing the goods, it will not be considered to be an inter-State sale. There may be instances where the goods are sold only to one buyer by the branch, but so long as the movement is not linked with the contract, it could not be considered to be an inter-State transaction. The discretion always remains with the branch manager who delivered the goods to one person or the other, the entire quantity of truck load or part thereof. These were the matter, for which, no efforts were made to prove that the transactions are inter-State in nature. A detailed discussion has already been made by the Tribunal and it was considered that, the identically in respect of the description of the goods, quantity and value between the despatches made to the branches and sales effected by the branches on the same day, cannot be considered to be the inter-State sale. This conclusion of the Tribunal cannot be considered to be against the provisions of law and various decisions relied. In view of the decision of Commissioner of Sales Tax v. Suresh Chand Jain [1988] 70 STC 45 (SC) the burden to prove the transaction as inter-State was on the assessing authority

which has failed to prove the same. In *Larsen and Toubro Ltd. v. State of Karnataka* STA 392 of 1993, it was held that in *Haryana Iron and Steel Rolling Mills Vs. State of Haryana*, , *Mehta Group of Industries v. State of Haryana* 1989 75 STC 428 (P&H) cannot be applied blindly without scrutiny of facts.

In these circumstances, looking to the facts of the present case, the Tribunal was justified in not following the decisions given in *Haryana Iron and Steel Rolling Mills Vs. State of Haryana*, and *Mehta Group of Industries v. State of Haryana* [1989] 75 STC 428 (P&H) and we do not consider that any case for interference in revisional jurisdiction is made out.

Sales tax revision petition is accordingly dismissed.