
(1975) 07 OHC CK 0002
In the Orissa High Court
Case No : S.J. Cs. No's. 43 to 50 of 1970

State of Orissa

APPELLANT

Vs

S. Lal and Company (P) Ltd.

RESPONDENT

Date of Decision : 01-07-1975

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 3

Citation : (1975) 41 CLT 955

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, for the Respondent

Judgement

R.N. Misra, J.—u/s 24(1) of the Orissa Sales Tax Act, the following question has been referred to the Court for determination:

Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal is right in holding that the impugned transaction envisages only one sale which is in the course of inter-State trade and commerce and as such, not exigible under the O.S.T. Act or two sales - one by the mine-owner to the S.T.C. and then by the S.T.C. to the subsequent purchasers - thus bringing the first sale under the purview of the O.S.T. Act?

2. The Assessee is a mine owner in the district of Keonjhar. The Stare Trading Corporation (hereinafter referred as the "Corporation") entered into contracts with the Steel Mills within the country for supply of mineral ores and entered into contracts with the Assessee for satisfying its obligations under contracts to the Steel Mills. According to the Revenue there are two sales - one by the mine owner to the Corporation which is completed within the State and is exigible to sales tax under the Orissa Sales Tax Act and the other by the Corporation to the Steel Mills which is exigible under the Central Sales Tax Act. The Assessee contends that the Corporation had pre-existing contractual obligations with the Steel Mills and with a view to satisfying such existing contracts made purchases

from the dealer. The contracts of the Corporation with the dealer postulated movement of goods outside the State directly bringing the transactions within the purview of Section 3(a) of the Central Sales Tax Act. Therefore, what may have otherwise been a local sale must be taken to be a sale within the purview of Section 3(a) of the Central Sales Tax Act. While the assessing officer did not accept the contention of the Assessee, the first appellate authority did and held that the transactions between the Assessee and the Corporation were exigible to central sales tax only. The State went up in appeal before the Tribunal and the Tribunal concurred with the findings of the first appellate authority.

3. In the supplementary paper book, the contracts between the Assessee and the Corporation have been printed. Before we proceed to analyse the terms thereof, we think it appropriate to settle the legal position first. Section 3 of the Central Sales Tax Act provides:

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....

Explanation 2....

As we are concerned with the provision of Clause (a), it is unnecessary to refer to the two Explanations appearing in Section 3. The conditions and circumstances laid down as necessary and essential for a sale to be in course of inter-State trade or commerce u/s 3(a), therefore, are:

(i) there must, firstly, be a completed sale of goods, i. e., any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration; and

(ii) such sale should, secondly, occasion the movement of goods from one State to another State, meaning that "the relevant contract of sale provides that goods will be so moved and that by reason of the sale. In the case of *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar* (1960) 11 S.T.C. 655, the Supreme Court has laid down that Section 3(a) covers sales, other than those included in Section 3(b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale or the property in the goods passes in either State. In the case of *Balabhagas Hulaschand v. State of Orissa* ILR 1971 Cutt 337 the true meaning of Section 3(a) of the Central Sales Tax Act was examined by a Bench of this Court. The point for consideration in that case was whether there was a sale in the course of inter-State trade or commerce or there was an interState sale within the State of West Bengal. After examining the law

laid down by the Supreme Court in *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar* (1960) 11 S.T.C. 655, the learned Chief Justice observed:

The underlined expression in the passage quoted above (at page 667 of the Reporter) shows that title in the goods may pass either in Orissa or in West Bengal and yet the transaction may be an inter-State sale if the conditions prescribed in Section 3(a) are fulfilled. But in order that such sale would come within the ambit of inter-State trade or commerce, the movement of the goods must be the result of a covenant or an incident of the contract of sale. In this case, if the jute mills in West Bengal would have rejected the goods and would not have appropriated them to the contract, there would be no transfer of title and consequently no sale, as "sale" within the meaning of Section 2(g) of the Central Sales Tax Act does not include a mere agreement to sell. In such a case, neither Orissa nor West Bengal could tax an agreement to sell. But the position is different where the agreement to sell unascertained goods ultimately matures into a completed sale which involves transfer of property. In this case, ultimately the goods were approved at the siding of the mills and accordingly there was a completed sale. Even though title to the property passed in West Bengal and the sale was completed there, the transaction would be taxable as a "sale" in the course of inter-State trade or commerce because the movement of the jute from Orissa to West Bengal was the result of a covenant entered into between the Petitioner and the jute mills, through the licenced broker, that the goods should be moved to the sidings of the mills for final approval and appropriation towards the contract....

In the case of *Kelvinator of India Ltd. Vs. The State of Haryana*, ., the test laid down in *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar* (1960) 11 S.T.C. 655 was approved and it was further observed:

.... A sale of goods can be held to have taken place in the course of inter-State trade under Clause (a) of Section 3 of the Act if it can be shown that the sale has occasioned the movement of goods from one State to another. A sale in the course of inter-State trade has three essentials there must be a sale,

(ii) the goods must actually be moved from one State to another, and (iii) the sale and movement of the goods must be part of the same transaction....

It is also plain from the language of Section 3(a) of the Act that the movement of goods from one State to another must be under the contract of sale. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of the above clause. Perusal of Section 3(d) further makes it manifest that there must be a contract of sale preceding the movement of the goods from one State to another, and the movement of goods should have been caused by and be the result of that contract of sale. If there was no contract of sale preceding the movement of goods, the movement can obviously be not ascribed to a contract of sale nor can it be said that the sale has occasioned the movement of goods from one State to the other.

The various clauses of the model contract entered into between the Corporation as buyer and the mine owner as the seller clearly show that as a direct result of the sale, the goods moved out of the State. In fact, the contract shows that the ores have to be loaded into wagons supplied by the Railways and be transported outside the State for satisfying pre-existing contracts of the Corporation with Steel Mills. If the provision of Section 3(a) of the Central Sales Tax Act was not there, the transaction obviously would be a local sale liable to sales tax under the Orissa Sales Tax Act. What could otherwise have been a local sale becomes inter-State sale under the concept of Section 3(a) of the Central Sales Tax Act, because under the contract, movement out of the State of the commodity sold is envisaged. The Tribunal on an analysis of the terms of the contract has recorded a finding which directly brings it within the tests indicated in the decisions referred to above. Accordingly, it must be held that the sales in question are exigible to central sales tax and are not liable to be taxed under the Orissa Sales Tax Act. Our answer to the question posted by the Tribunal, therefore, shall be:

In the facts and circumstances of the case the Tribunal was right in holding that the transactions envisaged only one sale in course of inter-State trade or commerce and as such, were not exigible to tax under the Orissa Sales Tax Act and have rightly been assessed under the Central Sales Tax Act.

We make no order as to costs of these reference applications.

B.K. Ray, J.

4. I agree.