(1984) 03 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No''s. 12 and 13 of 1977

State of Punjab APPELLANT

Vs

Himachal Government Timber Depot RESPONDENT

Date of Decision : 29-03-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Punjab General Sales Tax Act, 1948 — Section 21, 5

Citation : (1985) 58 STC 265

Hon'ble Judges : Surinder Singh, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : I.S. Mann, Deputy A.G, for the Appellant; M.L. Puri, for the Respondent

Judgement

D.S. Tewatia, J.—Respondent-Himachal Government Timber Depot (hereinafter referred to as the assessee) sold by auction at Nangal timber to dealers registered in the State of Punjab as also to dealers who were registered outside the State of Punjab. Condition No. 8 of the terms and conditions of the auction required a bidding dealer registered outside the State of Punjab to furnish declaration in form C.

2. In regard to the assessment years 1967-68 and 1968-69, the assessee claimed deductions from his gross turnover in terms of Section 5(2)(a)(ii) of the Punjab General Sales Tax Act (hereinafter referred to as the Act) in respect of the sales made to dealers registered outside the Punjab State. The Assessing Authority in regard to both cases allowed the claimed deductions. The revisional authority, Deputy Excise and Taxation Commissioner, u/s 21(1) of the Act suo motu decided to examine the legality and propriety of the assessment orders in question regarding the said two years. The revisional authority came to the conclusion that the Assessing Authority acted illegally in allowing the claimed deductions. According to him, the sales in question were intra-State sales and not inter-State sales and therefore, the assessee was not entitled to any

deductions as claimed by him and he, therefore, in exercise of the powers of the Commissioner, modified the orders of the Assessing Authority and created additional demand quantum whereof is not necessary to state here. The respondent-dealer challenged that order in revision before the Sales Tax Tribunal. The Tribunal reversed the order holding that such sales as had taken place till 19th January, 1969 were inter-State sales by virtue of the existence of condition No. 8 in the terms and conditions of auction and such sales as had taken place after 20th January, 1969 when condition No. 8 was modified, would not be considered inter-State sales, and remanded the case to the Assessing Authority for reassessment. The State of Punjab applied to the Sales Tax Tribunal to refer the following two questions for opinion of the High Court :

(i) Whether the auction sales by the Himachal Government Timber Depot at Nangal, in the circumstances of the case are inter-State sales within the provisions of Section 3(a) of the Central Sales Tax Act, 1956 and therefore, liable to exemption from sales ,tax u/s 5(2)(a)(v) of the Punjab General Sales Tax Act, 1948.

(ii) Whether the said sales are intra-State sales subject to tax under the provisions of the Punjab General Sales Tax Act, 1948.

3. The Tribunal referred the following question to this Court as there existed no decided case of this Court in regard to the given question of law :

Whether on the facts and circumstances of the case, auction sales conducted by the respondent, Himachal Government Timber Depot at Nangal, are intra-State sales or inter-State sales ?

4. It is the admitted case of both the parties that in pursuance of condition No. 8 of the terms and conditions, of the auction sale in regard to the sales effected up to 19th January, 1969 the purchasing dealers registered outside the State of Punjab had to furnish declarations in form C to the assessee; that the goods so purchased moved out of the State of Punjab to various States; that the movement of the said goods from the State of Punjab to other States had been occasioned by the given sales contract only, i.e., there had been no other intervening contract between the sales contracts in question and the movement of those goods from the State of Punjab to other States.

5. Section 3(a) of the Central Sales Tax Act, 1966 is in the following terms :

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)...

6. Perusal of the said provision would reveal that a sale transaction which occasions movement of goods from one State to another would be considered to

be a sale in the course of inter-State trade or commerce.

7. In the present case not only the goods in question had moved out of Punjab State to outside State directly as a result of the given contract of sales but the said sales were, in fact, intended by the parties to be inter-State sales as the purchasing dealers who were registered outside the State of Punjab could not bid unless they had furnished declarations in C form and in fact, they did so. In the circumstances of this case the sales which took place as a result of auction by that date, i.e., 19th January, 1969 when condition No. 8 existed without amendment, shall amount in law to be inter-State sales.

8. It was argued before the Tribunal and was also reiterated before us that the property in goods had passed to the purchasing dealers from the moment of the fall of the hammer and therefore, the sale contract was complete between the parties and from that it could not be inferred that the goods were purchased for being transported outside the State of Punjab and thus amounted to inter-State sale.

9. There is no merit in the contention. Even if for the sake of argument it is accepted that the property in goods passed to the purchasing dealers immediately with the fall of the hammer and the contract of sale being complete, condition No. 8 of the terms and conditions of auction became part of the said contract and therefore, it would have to be taken that the purchasing dealers gave an undertaking to transfer the goods outside the State, and were bound to furnish declaration in C form at the appropriate time in compliance with condition No. 8. If the purchasing dealers thereafter, for whatever reason, failed to furnish declaration in form C then that would amount to breach of condition No. 8 and thus breach of term in terms of the said condition and would render the said dealer liable to such action as would be permissible under the law.

10. In view of the above, we answer the question in favour of the assessee and against the Revenue in regard to such sales as had taken place up to 19th January, 1969. No costs.

