(2003) 12 UK CK 0003

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 792 of 2003 (M/B) with Trade Tax Revision No''s. 411, 412 and 413 of 2001

Tata Elxsi Limited APPELLANT

Vs

State of Uttaranchal RESPONDENT

Date of Decision : 06-12-2003

Acts Referred:
Central Sales Tax Act, 1956 — Section 3
Constitution of India, 1950 — Article 286, 366(29A)
Uttar Pradesh Trade Tax Act, 1948 — Section 3F

Citation : (2004) 134 STC 403

Hon'ble Judges : S.H. Kapadia, C.J;M.M. Ghildiyal, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal and S.K. Posti, for the Appellant; Pitamber Maulekhi, Additional Chief Standing Counsel, for the Respondent

Judgement

S.H. Kapadia, C.J.—All the above matters involve common question of law and fact and, therefore, they are disposed of by this common judgment and order. However, for the sake of convenience we are mentioning hereinbelow the facts in Writ Petition No. 792 of 2003.

By this writ petition M/s. Tata Elxsi Limited has challenged assessment order dated June 30, 2003 for assessment year 2000-2001 and show cause notice dated August 7, 2003 for assessment year 2001-2002.

2. Facts :

A lease agreement was executed on January 11, 1995 between M/s. Tata Elxsi Ltd., and Bharat. Heavy Electricals Ltd., for giving on lease nine computers of a particular specification as enumerated in the agreement. They were not in existence on January 11, 1995. The said nine computer machines were to be accompanied by accessories. The computers were to be manufactured later on. In pursuance of the said agreement dated January 11, 1995, M/s. Tata Elxsi Ltd., placed a purchase order on various manufacturers/suppliers of computers accessories in the month of February 1995. One such purchase order was dated January 31, 1995 on NIT for supply/manufacture in accordance with specification enumerated in the lease agreement. At the time of the lease agreement the computers were not available. The goods were made to order. Before the assessing authority, the petitioner contended that since the goods were not in existence, the transfer of right to use did not take place at Haridwar where the agreement was executed. According to the petitioner, the placing of the purchase order by the petitioner with the manufacturers/ suppliers was only because of the lease agreement between petitioner and Bharat Heavy Electricals Ltd., and, therefore, the purchase order was an integral part of the lease and, therefore, the purchase order could not be separated from the lease. According to the petitioner in the present case petitioner received rental orders from Bharat Heavy Electricals Ltd., in terms of the lease agreement and in pursuance of the rental orders petitioner placed purchase orders pursuant to which computers were delivered from Bangalore and Delhi to Bharat Heavy Electricals Ltd. at Haridwar and therefore the transactions were in the nature of inter-State trade. According to the petitioners all the computers were supplied against rental orders placed by Bharat Heavy Electricals Ltd. under the above lease. According to the petitioner all the computers were supplied from outside the State of Uttaranchal. Before the assessing authority, petitioner placed reliance on the judgment of the Supreme Court in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, . Before the assessing authority, petitioner also relied upon judgment of the Andhra Pradesh High Court in the case of I.T.C. Classic Finance and Services v. Commissioner of Commercial Taxes reported in [1995] 97 STC 330(sc).

At this stage it may be mentioned that in the above writ petition we are concerned with imposition of tax u/s 3-P of the U.P, Trade Tax Act, 1948 for the assessment year 2000-2001. In the writ petition the petitioner has challenged the validity of assessment order dated June 30, 2003. This assessment order follows decisions of the Tribunal for the earlier assessment years which decisions are the subject-matter of the above revisions.

Similarly, in pursuance of the lease agreement dated January 11, 1995 one more purchase order dated February 9, 1995 was placed by the petitioner on Silicon Graphics Systems India Pvt. Ltd., New Delhi who sold the computer system to the petitioner which were dispatched from Delhi to Bharat Heavy Electricals Ltd., Haridwar.

Similarly, one more lease agreement was executed on December 10, 1999 between the petitioner and Bharat Heavy Electricals Ltd., pursuant to which petitioner placed purchase orders on December 14, 1999 with M/s. Nortel, U.S.A. and another order dated December 22, 2000 with M/s. Range Pay International Ltd., U.K. for purchase of equipments mentioned in the lease agreement dated December 10, 1999. These two purchase orders were placed by the petitioner on the selling dealers of U.S.A and U.K.

In the circumstances, in all the above three cases it has been argued that the movement of the goods was in pursuance of the lease;. that the purchase order was issued because of the lease ; that the purchase order was a part of the lease transaction ; that the lease transaction was a sale in the course of inter-State trade and commerce and, therefore, it cannot be subjected to tax within the State of Uttaranchal merely because lease was executed at Haridwar and consequently imposition of tax u/s 3-F of the U.P. Trade Tax Act, 1948 was illegal and bad in law.

3. Arguments :

Mr. Bharat Ji Agrawal, learned Senior Counsel for the petitioner contended that the purchase order was an integral part of the lease agreement between Bharat Heavy Electricals Ltd., and the petitioner dated January 11, 1995. That but for the lease agreement dated January 11, 1995 the petitioner would not have placed the purchase order on various manufacturers/suppliers of computers-accessories. That rental orders were placed from time to time by Bharat Heavy Electricals Ltd., on the petitioner in terms of the lease agreement dated January 11, 1995 and the computers-accessories were bought in view of the rental orders. It was further submitted that all manufacturers/suppliers were from outside the State of Uttaranchal. That the computers-accessories were not in existence at the time of execution of the lease dated January 11, 1995 between petitioner and Bharat Heavy Electricals Ltd. and, therefore, the transfer of the right to use did not take place at Haridwar where the lease was executed because the goods were not in existence on the date of the lease. That since the computers-accessories were not in existence at the time of the lease, the transfer of the right to use did not take place at Haridwar where the lease was executed. That in this case the computers-accessories came into existence after the purchase order (which was outside the State of Uttaranchal) and that the cause of the movement of the said goods was occasioned by the purchase order which was an integral part of the lease which was a deemed sale in the course of inter-State trade and commerce. That even though the lease was executed in Haridwar the computers had moved in pursuance of the agreement from outside this State and therefore there was no liability for payment of tax on the petitioners, even though ''the lease was executed in Uttaranchal. In this connection, reliance has been placed on the judgment of the Andhra Pradesh High Court in the case of I.T.C. Classic Finance and Services v. Commissioner of Commercial Taxes reported in [1995] 97 STC 330. Reliance was also placed on the judgment of the Supreme Court in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, . According to the learned counsel, in view of the above admitted facts the goods have moved from outside the State of Uttaranchal in pursuance of the lease agreement dated January 11, 1995 as the petitioner placed purchase order on ex-Uttaranchal suppliers/manufacturers of computers-accessories and who in turn supplied the equipments from Delhi and Bangalore to Ranipur in Haridwar and, therefore, it was clearly an inter-State sale. It was, therefore, submitted that imposition of tax on the petitioner on the rental charges received by the petitioner from Bharat Heavy Electricals Ltd. on the ground that the agreement was executed at Haridwar was illegal. Therefore, it was submitted that the assessments should be cancelled and the levy should be set aside. Mr. Agrawal, learned Counsel for the petitioner cited judgments in support of his above arguments.

Per contra, Mr. P. Maulekhi, learned Additional Chief Standing Counsel for State of Uttaranchal, submitted that the agreement to lease out computers to Bharat Heavy Electricals Ltd. on rental basis was executed in Haridwar, the computers were installed at Haridwar and the rent was paid to the petitioner by Bharat Heavy Electricals Ltd. for working the computers in Uttaranchal ''and, therefore, tax was leviable on the total amount of lease rent received by the petitioner u/s 3-F(1)(a) read with Section 3-F(2) of the U.P. Trade Tax Act, 1948. He contended that the deemed sale was not an outside sale. He contended that the deemed sale was not a sale in the course of inter-State trade or commerce. He relied upon the judgment of the Supreme Court in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, and he submitted that in the present case admittedly the goods were not in existence on the date of the lease and, therefore, the taxable event took place on the delivery of goods which was within the State of Uttaranchal and, therefore, the tax was correctly levied u/s 3-F of the U.P. Trade Tax Act, 1948. In particular, learned counsel for the State relied upon paragraph 35(d) of the judgment of the Supreme Court in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, . He further contended that in this case the lease was executed at Haridwar and the delivery of computers was made at Haridwar and, therefore, the tax liability of the petitioner u/s 3-F had arisen within the State of Uttaranchal. He further contended that the judgment of the Andhra Pradesh High Court in the case of I.T.C. Classic Finance and Services [1995] 97 STC 330 was not applicable to the facts of the present case as in this case at the time of the lease the goods were non-existent. Mr. Maulekhi, however, stated that the assessing authority has not analysed the terms and conditions of the lease agreement, the rental order, the purchase order, the invoice and the accounts. Mr. Maulekhi, therefore, submitted that he had no objection if the matter is remanded back to the assessing authority to consider the lease, rental order, etc.

4. Scope of Section 3(a) of the Central Sales Tax Act, 1956 read with Article 286 and Article 366(29A) of the Constitution as also Section 3-F of the U.P. Trade Tax Act, 1948 :

For the sake of clarity we quote hereinbelow the following :

(A) Section 3(a) of the Central Sales Tax Act, 1956 :

"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."

(B) Article 286 of the Constitution :

"286. Restrictions as to imposition of tax on the sale or purchase of goods.--(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place,--

(a) outside the State ; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

.... (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,--

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce ; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

Explanation omitted by the Constitution (Sixth Amendment) Act, 1956, Section 4.

Sub-sections by the Constitution (Sixth Amendment) Act, 1956, Section 4, for Clauses (2) and (3).

Sub-sections by the Constitution (Forty-sixth Amendment) Act, 1982, Section 3, for Clause (3).

(c) Article 366(29A) of the Constitution :

" 4(29A) ''tax on the sale or purchase of goods'' includes--

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration ;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration ;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration ;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made ;"

[4. Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, Section 4].

(D) Section 3-F of the U.P, Trade Tax Act, 1948, :

"3-F. Tax on the right to use any goods or goods involved in the execution of works contract.--(1) Notwithstanding anything contained in Section 3-A or Section 3-AAA or Section 3-D but subject to the provisions of sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall, for each assessment year, pay a tax on the net turnover of--

(a) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

[4. Sub-sections by the U.P. Act No. 31 of 1995 (with effect from 13-9-1985)]

5. In the present matter it is not necessary to dissect various decisions of the Supreme Court cited before us as the learned counsel for the State has submitted that the matter needs to be remanded back to the assessing authority. However, for the guidance of the assessing authority we have culled out a few principles which define inter-State sale. The principles are as follows :

(i) u/s 3(a) of the Central Sales Tax Act, 1956, only a transaction of sale connected with the movement of goods is regarded as an inter-State sale. The movement and sale must have a direct link. Such movement can be stipulated as a term in the contract or it may be contemplated by the parties as an implied term of the contract. Even if the movement of the goods is not specified in the contract still if the movement of the goods takes place incidental to the contract then also in such cases the transactions would be an inter-State sale.

(ii) The question as to whether a sale is an inter-State sale or intra-State sale does not depend upon the passing of the property in the goods. What is decisive is whether the sale causes the movement of goods from one State to other.

(iii) Depending upon facts and circumstances of each case, even lease transaction could be construed as deemed sale in the course of inter-State trade and commerce. In the determination of inter-State character of a sale the situs is immaterial. Where a State, while defining the expression "sale", makes the situs relevant for the purposes of deciding a deemed sale it cannot touch inter-State sale. This is because any State law concerning "deemed sale" covered by Article 366(29A)(a) to (f) of the Constitution must satisfy the requirement of Article 286 as also the provisions of the Central Sales Tax Act, 1956. In fact, Article 366(29A) explains the expression "sale or purchase of goods" occurring in Article 286 and also occurring in entry 54 of List II of the Constitution and further Article 366(29A) amplifies the said expression "sale or purchase of goods" by a fiction. For the purposes of taxation, however, a deemed sale cannot be distinguished from an ordinary sale. Therefore, in cases of inter-State sales falling u/s 3(a) of the Central Sales Tax Act, 1956 it is not relevant to consider the situs of the sale or the State in which the property in the goods happens to pass.

(iv) A sale can occasion the movement of the goods sold only when the terms of the sale provides that the goods shall be moved or if the movement of the goods is under a covenant or if it is an incident of the contract of sale. The movement must be linked with the sale. Therefore, the assessing authority is bound to examine each individual transaction and decide whether it constitutes an inter-State sale [See Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, .

(v) Section 3-F of the U.P. Trade Tax Act, 1948 levies tax on the right to use any goods. However, in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, the Supreme Court has held that the States in exercise of powers under entry 54 of List II read with Article 366(29A) cannot levy sales tax on the transfer of right to use goods, which is a deemed sale, if such sale is an inter-State sale. That, in the determination of inter-State character of sale the situs is immaterial. That in cases where the goods are not in existence on the date of the agreement the taxable event would be the date of delivery of goods.

(vi) The State can levy tax on deemed sales subject to Article 286 of the Constitution and sections 3 to 5 of the Central Sales Tax Act, 1956. Within these parameters, the State can fix by fiction the situs of deemed sales, however, in the absence of the fiction in cases where the goods are available the taxable event would take place where the property in the goods passes that is where agreement is executed and in cases of non-existent goods the taxable event would be at the place of delivery.

6. Findings :

As stated above in this case we are concerned with application of the above principles of law to the facts of this case. As stated in the judgment of the Supreme Court in Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another, each transaction has to be examined by the assessing authority. In this connection the assessing authority has to ascertain whether the movement of the goods sold is contemplated by the terms of contract of sale or by a covenant or whether the movement of goods sold is incidental to the contract of sale. In the present case it is alleged that at the time of execution of lease dated January 11, 1995 and December 10, 1999 the goods were not in existence. The assessing authority is bound to give a finding on this allegation after examining the terms and conditions of the lease, rental order, invoice and accounts of the petitioner. If the assessing authority finds that computers were not in existence on the date of the lease then he has to consider also the status of the purchase order. He has to find out whether the purchase order was an integral part of lease or whether purchase order was a separate transaction vis-a-vis the lease. In this case the petitioner had handed over the above documents to the assessing authority but the same were returned. In the assessment order there is no discussion on the terms and conditions of the lease, the purchase orders, the invoices, etc. The assessing authority was also required to consider the difference in the connotation of the words "unascertained goods" vis-a-vis "non-existent goods" on the date of the lease. In view of the judgment of the Supreme Court in 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, the assessing authority was required to keep in mind the difference between the tax on "use of goods" and the tax on the "transfer of right to use" the goods in the context of inter-State sale. It is in these circumstances that the matter needs to be remanded back to the assessing authority. There is one more aspect which the assessing authority needs to consider in this case. There are two sets of suppliers in this case. One set of suppliers are from India that is form States outside this State. The second set of suppliers are from U.S.A and U.K. The invoices in the two cases are different. The assessing authority will have to ascertain the privity of contract. Was such privity between Bharat Heavy Electricals Ltd. and petitioners or was there a privity of contract between suppliers and Bharat Heavy Electricals Ltd. The principles mentioned above are not exhaustive. Ultimately one has to go by the facts of each case in order to decide whether the transaction of sale is connected with the movement of goods so as to be regarded as inter-State sale. Since the assessing authority has not considered the material facts of these transactions in question we have no option but to remand the matter back to the assessing authority. We have taken on record the lease agreement including the annexures thereto, the invoices, the purchase orders and other relevant documents. The assessing authority can call upon the petitioner to supply any other document which he deems fit to consider. The assessing'' authority will also consider the books of accounts of the petitioner in a matter of purchase of computers-accessories from various suppliers/manufacturers and the accounting treatment given to such transactions. We do not wish to express any opinion on merits of this case.

In the circumstances, following order is passed :

(a) Writ petition is allowed in terms of prayer clauses (ii) and (iv) and accordingly the assessment order dated June 30, 2003 concerning assessment year 2000-2001 and the show cause notice dated August 7, 2003 are set aside. Similarly we allow Trade Tax Revision No. 411 of 2001 and we set aside the decision of the Tribunal dated September 14, 2001 concerning assessment year

1998-1999. Similarly, we allow Trade Tax Revision No. 412 of 2001 and we set aside the decision of the Tribunal dated September 14, 2001 concerning assessment year 1999-2000. Similarly, we allow Trade Tax Revision No. 413 of 2001 and we set aside the order of the Tribunal dated September 14, 2001 concerning provisional assessment made by the department for June, 2000.

(b) During the pendency of the above matters in this Court, the petitioners have deposited amounts/given bank guarantee to the department. These amounts have been deposited and the bank guarantees have been given subject to the result of the present cases. Since the petitioner has succeeded the amounts deposited will be returned to the petitioner without interest so also the bank guarantee shall be returned to the petitioner duly discharged. However, it is made clear that the matters are remanded back to the assessing authority. The assessing authority will decide the matters de novo in accordance with law within three months from the date of the receipt of this order. The assessing authority will hear the petitioner and thereafter give reasons while deciding the matter in accordance with law.

7. Accordingly, Writ Petition No. 792 of 2003 with T.T.R. No. 411 of 2001 with T.T.R No. 412 of 2001 with T.T.R. No. 413 of 2001 shall stand disposed of with no order as to costs.

