
(2007) 01 AHC CK 0192
In the Allahabad High Court

The Commissioner, Trade Tax

APPELLANT

Vs

Kayson Metallic Corporation

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Contract Act, 1872 — Section 231, 232

Citation : (2008) 14 VST 139

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These five revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 11.02.1998 relating to the assessment years 1973-74, 74-75 and 75-76.

2. Dealers/opposite parties (hereinafter referred to as "Dealers") were engaged in the business of brass taps and their fittings. Dealers vide agreement dated 02.05.1973 appointed M/s Eastern Oceanic, 310, Thakurdwar, Bombay (hereinafter referred to as "Bombay Party") as export agent to procure the orders of export on behalf of the dealers. In pursuance thereof, Bombay Party obtained orders from the purchasers of outside the country and asked the dealers to dispatch the goods to Bombay for the export. Dealers in pursuance thereof, dispatched the goods to Bombay Party and, thereafter, Bombay Party exported the goods outside the country. During the course of assessment proceeding, dealers claimed that the dispatches of the goods to Bombay Party were in the course of export and were not in the course of inter-State sales. Assessing authority had not accepted the plea of the dealers and treated the dispatches of the goods to Bombay party as inter-State sales. First appeals filed by the dealers were rejected. Dealers filed second appeals before the Tribunal, which were allowed and the dispatches of the goods to Bombay Party have been treated in the course of export. It has been held that the movement of goods were occasioned in pursuance of orders of export.

3. Heard Sri B.K. Pandey, learned Standing Counsel and Sri Bharatji Agrawal, learned Senior Advocate appearing on behalf of the dealers.

4. Learned Standing Counsel submitted that Bombay Party had obtained the export orders in its own name and had exported the goods in its own name. Goods were dispatched by the dealers to Bombay Party and there was nothing to suggest that at the time of the dispatch of the goods it was specified that same goods would be exported to a particular party. There was no contract between the dealers and the buyers outside the country and thus, the movement of goods were not in pursuance of the orders for export and they were to the Bombay Party on principal to principal basis.

5. Learned Counsel for the dealers submitted that the genuineness of the agreement between the dealers and Bombay Party is not in dispute. Under the agreement goods were to be exported through Bombay Party. Bombay party acted as an agent and procured the orders from the parties outside the country and exported the goods to such parties., Merely because the orders were procured in its own name and the exports were made in its own name, it can not be said that in respect of those transactions Bombay Party had not acted as an agent to the dealer. He submitted that after the receipt of the payment, same were debited in the account of the dealer after deducting the commission. The movements of the goods from Mathura to Bombay were after the execution of the agreement dated 02.05.1973 and, therefore, movements were in pursuance of the said agreement. He submitted that no sale price was paid by the Bombay party to the dealers. Agreement was not for sale but the agreement was of agency. Thus, it can not be said that the movements of goods were in pursuance of the contract of sale. He submitted that the finding of the Tribunal in this regard is finding of fact.

6. In support of the contention he relied upon the decisions of Madras High Court in the case of The State of Tamil Nadu v. A. Rafeeq Ahmed & Co. reported in 52 STC 281 State of Tamil Nadu v. Vinyl Cable Industries reported in 94 STC 346 C.A. Akhtar & Company v. The State of Tamil Nadu reported in 47 STC, 62, The State of Tamil Nadu v. Abdullah Malick and Company reported in 57 STC 135. He submitted that the decision of the Apex Court in the case of Mod. Serajuddin v. The State of Orissa reported in 36 STC 136 is not applicable in the present case.

7. I have perused the order of the Tribunal and the authorities below and given my anxious considerations to the rival submissions.

8. It is useful to refer the agreement entered into between the dealers and Bombay Party dated 02.05.1973.:

AGREEMENT

This Agreement is made between MS. Eastern Oceanic, 310, Thakurdraw, Bombay-2, as Export Agency, here in after called the "Agent" of the first party and

1. M S The Punjab General Mfg. Works, Krishna Nagar, Mathura. 2. M/S Lal Industrial Corpmn. -do- 3. M/S Elite Metal Products. -do- 4. M/S Hindustan Metal Products -do- 5. M/S Shiv General Industries -do- 6. M/S Kavson Metalic Corpn. -do- 7. M/S Ashoka General Industries -do- Carrying on the business of manufacturing taps and water fittings at Krishna Nagar, Mathura, under L & K Group as Trade Mark, having branches of Serial Nos. 1, 2, 3 and 4 at Delhi and Bombay, hereinafter called the "Principals" of the second part.

2. Whereas aforesaid 7 manufacturers of the second part having agreed amongst themselves, form a group in collaboration with MS. Eastern Oceanic, for export of taps and water fittings outside India. The Company was formed styled as MS. Eastern Oceanic, and was duly registered under the Indian Partnership Act. Vide Certificate of Registration No. B.82507, dated 02-08-1972 issued by the Registrar of Firms, Bombay, Government of Maharashtra at Bombay, and whereas the Company registered under the Indian Partnership Act is a legal body, having correlation with the Principals.

3. Whereas due to difficulties involved in Export Procedure the Principals of the second part, are unable to obtain foreign orders, supply taps and water fittings individually and to successfully perform all formalities, it has been agreed between the Agents of the first part and the Principals of the second part, that the Agents shall work as Agents and Manufacturers as Principals for the business of export of taps and water fittings outside the territory of India, and further that the contract shall remain operative in conformity with "Import Trade Control Policy (for registered exporters) or the Ministry of Commerce, Government of India, New Delhi for the year 1973-74 and further as amended from time to time, and operative in succeeding years.

4. That the Agents and the Principals are bound to accelerate the exportation of the goods and will have

(a) a common intention to export,

(b) an obligation to export, and

(c) an actual export.

5. That the orders secured by the Agents as Company, shall be distributed for execution amongst the manufacturing firms aforesaid. The distribution of the order received will be according to the performance of the Principals.

6. That the said Principals shall supply to the Agents such manufactured taps and water fittings for which the Agents are able to secure orders from foreign buyers and contracted to supply them which are indented for by the Company Agents at the time and place indicated by the Agents in the indents placed by the Agents to the said Principals for supplies of goods for exporting the said ordered goods.

7. That the terms and condition of all contracts entered in to by the Agents with the foreign customers for the sale of the manufacture of the Principals will be

disclosed on the Principals and the Principals are bound to agree to supply for export such quantities of goods as allocated to them by the Agents or indented by them to the Principals on the terms and conditions as agreed to by the agents at the price as the agents agree to export their manufactures to the foreign buyers.

8. That the Principals agree that they themselves shall do such services as packing, labeling, marking, etc. and packages complete in all respects for export and dispatch them for delivery to the customers abroad and the Company as Agents will be entitled to have all documents as Railway Receipts or Motor Transport Receipts, or Shipping Documents, or Bills of Loading made out by their own name and the Company Agents could transfer and pledge all such documents and title deeds of the goods for obtaining advances and loans from the Bankers or any other Agency, and the Agents will be entitled to receive payments of all bills so made by them in their own name to the foreign buyers or otherwise.

9. That the Agents could in their turn appoint agents such as Bankers or Shipping and Clearing Agents, etc. to do all acts to perform all deeds for proper conduct of their business and their acts will be as binding on the Principals as on the Agents themselves. In the instant case Shri K.L. Agrawal the Managing Partner of the Eastern. Oceanic shall exercise the powers in the capacity of "Attorney" throughout on behalf of the principals, jointly or several.

10. That the Principals agree that the Agents shall be entitled to deduct from the price received from the foreign buyers such amount as might be agreed upon between the Agents and the Principals, from time to time for their commission and remuneration of the services and expenses incurred by them on behalf of the Principals as well as their own overhead charges out of the sale price of each particular type of the article particular design, style or make and so calculated on such basis prior and mutual approval.

11. That the Principals authorize the Agents to make invoices and bills in their own name to the foreign buyers for all the goods supplied by the Principals to or through the Agents for being exported.

12. That all or such part of the goods that are handed over by the Principals to the Agents for shipment for export which have been rejected or disapproved by the foreign customers, will be taken back by the Principals at their own cost and risk and the Agents will be reimbursed by the Principals for such amount received by them from the Agents on account of such goods.

13. That for accommodation purpose and for financing the Principals, the Agents will allow the Principals to draw on them and receive money and get advance payments from them to the extent of estimated value to the goods exported on an agreed basis of the method of calculation and the account will be settled on the close of the year on accounting period of the account books of the Agents or after full execution of the orders and final settlement regarding payments of

claim of foreign buyers, and will not fetch any interest to either party.

14. That the Principals shall be supplying taps and water fittings manufactured by them or through the Agents to the Company Agents which will be entered in the Register of Agents, styled as "CONSIGNMENT SALES REGISTER". The Principals from time to time shall be sending their statements of supplies to the Agents for verification and vice versa. This matter shall remain open for checking and verification of both the parties at convenient office hours.

15. That under Export Replenishment Scheme, Government issues incentive Import Licence on the basis of export of goods, viz.--

1. Import Replenishment Licence.

2. Cash Assistance.

3. Duty Drawback.

As the Company is Agent on behalf of the Manufacturers called the Principals, the ownership of the aforesaid benefits shall be the property of the Agents.

16. That sometimes such orders are received the raw materials of which are not available in the market, such materials shall be arranged to be purchased by the Company Agent. On receipt of such materials, it will be distributed to the manufacturers Principals at cost. The Company Agent shall not charge any profit, and it will be the property of the Company Agent. The material shall remain in custody of the Principals just as Manufacturing Agent of the Agents.

17. That the expression Company or Agents and the Principals herein used, shall be given the widest meaning and scope and unless inconsistent with the context, include the Agents representatives, successors and the assignes of the parties.

18. That this agreement is made for a period of three years in the first instance from the date of execution of the Agreement, subject to the termination at the option of either party in writing.

19. That all sorts of disputes of differences or whatever nature they may be, between the parties, which may arise with regard to the construction, meaning and effect of this deed or any part thereof and in respect of any sales, indent or supply under this deed, or prior to it, or any other matter in relation to transactions and supplies, arising from it or concerning it, it will be decided by the SOLE ARBITRATION OR SHRI BRIJ BHUSHAN LAL, despite the fact that he is one of the partners of the Agent concern as well as one of the parties of the Principals concern, or otherwise interested in the parties to the contract.

20. All or any Legal or Procedural mistakes may be rectified or amended, at any time with or without retrospective effect as the case may be.

SIGNED AND SEALED ATMATHURA THIS SECOND DAY OF MAY IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-THREE.

COMPANY AGENTS

For and on behalf of EASTERN OCEANIC PRINCIPAL MANUFACTURERS:

Sd-Illegible

For and on behalf of:

1. M/S The Punjab General Mft. Works. Sd/- Illegible 2. M/S Lal Industrial Copn. Sd/- Illegible 3. M/S Elite Metal Products. Sd/- Illegible 4. M/S Hindustan Metal Products. Sd/- Illegible 5. M/S Shiv General Industries. Sd/- Illegible 6. M/S Kayson Metalic Corpn. Sd/- Illegible 7. M/S Ashoka General Industries. Sd/- Illegible

Witnesses:

1. Ladlidas Agrawal Sd/- Illegible Pratap Bazar Verindaban 2. G.S. Kullshreshtha Sd/- Illegible Behind Pddar School, Baghbhadur, Mathura.

9. Tribunal has considered the aforesaid agreement and the other facts and recorded the following findings. Tribunal held as follows:

The assessee/appellant had a written contract with the Bombay party viz. M/s Eastern Oceanic, 310 Thakur Dwar, Bombay-2. Therein it has been mentioned that the Bombay party will export as the agent on behalf of the assessee/appellant and behalf of the assessee/appellants were exported. The above contract is on file, it is also an admitted fact that the Eastern Oceanic, Bombay, exporter agent on behalf of the assessee/appellants debited the amount received from the foreign Buyers having deducted their commission. The first appellate authority as well as the Assessing Officer have mentioned in the respective orders that because the Foreign Buyers did not have any direct contract with the assessee/appellants and hence, in view of the case of M/s Mohammed Sirazuddin reported in 1975 36 stc the disputed transactions were not to be deemed as exports made by the assessee/appellants. The learned Counsel for the Assessee/appellants has argued that there is no dispute regarding the genuineness of the agreement and its terms and the assessee had claimed that the said sales were made in the course of export. He has further argued that the facts of the case of M/s Sirajuddin (Supra) are quite different and do not apply on the assessee/appellants because in that case there were two distinct and separate contracts of sales, one contract of sale between Indian Manufacturer and the Indian Exporter and the other between the Indian Exporter and the Foreign Buyer. While in the present case, there is no contract of sale between the assessee/appellant and the Indian Exporter of M/s Eastern Oceanic, Bombay but there was relation of principal and agent between them and not that of vender and vendee. Same view has been taken by the Hon"ble Supreme Court in the case of AM/s Sirajuddin where the Hon"ble Judges have observed that there was no principal and agent relationship between the appellant and the corporation and in the absence of such relationship agency of necessity did not arise. The relationship between the appellant and the appellant and the corporation was between two

principals and there was no aspect whatsoever of principal and agent. This observation is much more important in view of the fact that there is no dispute over the fact that in view of the admitted agreement the relationship among the assessee/appellants and M/s Eastern Oceanic was that of the principal and agent. The Hon''ble Supreme Court have held in the case of Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, wherein the Hon''ble Supreme Court has observed "Where export is a result of a sale and the export is inextricately linked up with the sale so that the bond can not be dislocated without a breach of the obligation arising by status, contractor mutual understanding between the parties arising from the nature of transaction the sale is in the course of export "Similar view have been expressed in the case of State of Tamilnadu v. Abdullah Malik & Co. reported in 1984 (57) S.T.C. 135, Akhtar & Co. v. State of Tamilnadu reported in S.T.C. 1981 Page 47 and in the case of State of Tamilnadu v. Rafiq Ahmad & Co. 1983 (52) S.T.C. 281. Moreover in the present case certificate of exports, letters of Credit and indent of Ministry of Economy, Bagdad had been filed before the Assessing Officer as Evidence that goods has actually been exported and despatched from Mathura. The learned Counsel further argues that the agreement with M/s Eastern Oceanic has occasioned the Movement of goods Mathura to State of Bombay which was in pursuance of the Contract of sale between the Eastern Oceanic and the Foreign Buyer. In fact it was a case of consignment or transfer of Stock for dealer through agent of Bombay. It was not a case of Inter-State Trade; Lastly the learned Counsel has referred the case of M/s Shiv General Industries Krishna Nagar, Mathura wherein the similar circumstances the Hon''ble High Court in S.T.C. No. 176 of 1989 has held that the disputed transactions were export sales and the assessee was to get benefit of it. M/s Shiv General Industries, had also exported their Merchandise through M/s Eastern Oceanic and has come agreement as that of assessee/appellants.

10. Tribunal on the facts of the case has accepted that Bombay Party, the exporter acted as an agent on behalf of the present dealers and the payments received from the foreign buyers have been debited in the account of the dealers after deducting the commission. Tribunal further held that as per the agreement between Bombay Party and the dealers, goods had moved from Mathura to Bombay and from there agent had exported them to the foreign countries and had debited the amount so received from them in the account of the dealers after deducting the commission and accordingly, held that the movement of the goods were in the course of export from Mathura to the foreign buyers and not inter-State sales to Bombay party. The decision of the Apex Court in the case of Mod. Serajuddin v. The State of Orissa (Surpa) has been distinguished on the ground that it was not the case of agency but it was the case of sale by Serajuddin to State Trading Corporation on principal to principal basis.

11. Having heard learned Counsel for the parties and perused the order of the Tribunal and the authorities below.

12. The decision of the Constitution Bench of the Apex Court in the case of *Mod. Serajuddin v. The State of Orissa* (Supra) is not applicable to the present case. In that case there was sale by Serajuddin to the State Trading Corporation and, thereafter, there was export by State Trading Corporation to the foreign buyers. In the absence of any privity of contract between Serajuddin and the foreign buyers it has been held that the goods were not occasioned in the course of export. Apex Court on the facts and circumstances of the case has also held that the transactions between the Serajuddin and State Trading Corporation was on principal to principal basis and State Trading Corporation had not acted as an agent of Serajuddin.

13. In the present case Bombay Party acted as an agent under the written agreement. The genuineness of the agreement has not been disputed by any of the authorities. Therefore, the agreement between Bombay Party and the foreign buyers would be deemed to be agreement between the present dealers and the foreign buyers and the movements of the goods are held to have been occasioned from Mathura in pursuance of such contracts. There was link between the movements of goods from Mathura and export and both were the part of the same transactions. Therefore, in my view the movements of goods from Mathura were in pursuance of orders of export and were in the course of export.

14. Section 231 of the Contract Act provides that where an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is merely an agent, then, so far as the undisclosed principal is concerned, he might require the agent to perform any contract entered into by the agent on his behalf. So far as the other contracting party is concerned, the section enacts that he would have as against the principal the same rights that he would have against the agent, if the agent had been dealing on his own. In other words, the non-disclosure of the principal does not have any effect whatever in the real nature of the contract between the agent and the other contracting party. Section 232 of the Contract Act further provides that where an agent contracts with another party without disclosing his own principal's name, the principal can obtain performance of the contract by the other party only through the agent and subject to the rights and obligation which subsisted between the agent and the other party to the contract. This provision is meant to save the mutual rights and obligations that might be entered into by the agent of the undisclosed principal and the other party to the contract without, at the same time, any detriment to the principal's rights.

15. In the case of *The State of Tamil Nadu v. Abdullah Malick and Company* (Supra), *C.A. Akhtar & Company v. The State of Tamil Nadu* (Supra), *The State of Tamil Nadu v. A. Rafeeq Ahmed & Co.* (Supra), *State of Tamil Nadu v. Vinyl Cable Industries* (Supra), Madras High Court held that there is no requirement in law that the agent must disclose the name of Indian principal in respect of the transactions which were entered into with the foreign buyers to establish that the sale was in fact export sale. It has been held that where an assessee entered

into an export sale through agent and this mode of transactions is evidenced by the record, the fact that the foreign buyers are unaware of this circumstance would not detract from the fact that the sales are really those of the assessee. In all the aforesaid cases, sales to the foreign buyers through the agent have been held as sale in the course of export.

16. Moreover, there is no material on record to show that the movements of the goods from Mathura to Bombay were in pursuance of any contract of sale between the dealers and Bombay Party. Thus, it can not be treated as inter-State sales by the dealers to Bombay Party.

17. For the reasons stated above, all the revisions have no merit and are liable to be dismissed.

18. In the result, all the revisions fails and accordingly, dismissed.