
(1996) 05 PAT CK 0030
In the Patna High Court
Case No : Tax Case No. 46 of 1984

Voltas Ltd.

APPELLANT

Vs

Commissioner, Commercial Taxes

RESPONDENT

Date of Decision : 02-05-1996

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (2003) 133 STC 208

Hon'ble Judges : S.N. Jha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Jai Narain Sahay and S.K.P. Sinha, for the Appellant; Rameshwar Prasad, Advocate-General and Veena Kumari Jaiswal, for the Respondent

Judgement

Aftab Alam, J.—Some three cornered sales of goods involving, the manufacturer at Madras or Bombay, the assessee at Jamshedpur, claiming to be acting as the agent of the manufacturer and the purchaser also at Jamshedpur give rise to the controversy as to whether the transactions were comprised of one or more incidents of sale and as to whether the sales were made in course of inter-State trade or commerce or whether those were intra-State sales and, therefore, taxable under the Bihar Sales Tax Act, 1959.

2. During the assessment period 1972-73 the assessee, according to its case, acting as an agent arranged and brought about the sales of goods manufactured by its principals (i) M/s. S.R.P. Tools Ltd., Madras and (ii) M/s. Cooper Engineering, Bombay. The sales were made to M/s. Tata Engineering and Locomotive Company at Jamshedpur. On these sales the assessee-company collected Central sales tax from the purchaser-company and deposited the tax amount at Madras and Bombay respectively where too the assessee was registered under the provisions of the Central Sales Tax Act. Those sales amounted to a sum of Rs. 24,44,994.07. In the assessment proceeding in this State the assessee claimed that the sales in question were made in course of inter-State trade and commerce and Central sales tax in respect of those sales

had been duly deposited at Madras and Bombay respectively from where the movement of the goods had taken place and, hence, this amount was not liable to be taken into account in the assessment in this State. The assessing officer did not see eye to eye with the contention. According to the assessing officer, each of the transactions involved two incidents of sale ; the first sale being inter-State in nature took place between the manufacturer and the assessee-company in terms of Section 3(i)(a) of the Act and the second inter-State sale took place between the assessee and the purchaser-company as provided u/s 3(i)(b) of the Central Sales Tax Act, 1956. The assessee was, therefore, liable to pay Central sales tax in respect of the second sale in Bihar. Against the assessment order passed by the assessing officer on June 4, 1979, the assessee preferred an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Jamshedpur Division, Jamshedpur. The appellate authority vide order, dated September 23, 1982, affirmed the findings and the assessment order passed by the assessing officer and rejected the assessee's appeal. The assessee, then, took up the matter in revision before the Commercial Taxes Tribunal, Bihar, Patna. The Tribunal by its judgment and order, dated September 23, 1982, upheld the petitioner's contention that each of the transactions in question involved only one sale and not two sales as found by the revenue authorities. It, however, held that the one sale involved in the transaction was not made in course of inter-State trade or commerce but was an intra-State sale in nature and, therefore, the entire turnover was liable to be subjected to sales tax under the Bihar Sales Tax Act, 1959.

3. One of the grievances made by the assessee is that the Tribunal's order amounted to making out a third case. It is further stated in this regard that the Revenue was allowed to change its stand at the fag end of the proceeding and, in fact, at the time when the departments' representative was making submissions before the Tribunal in reply to the submissions made on behalf of the assessee.

4. In order to examine the nature of the transactions the Tribunal has considered in some detail, the agreements entered into between the assessee-company and the two manufacturing companies, one at Madras and the other at Bombay. According to the assessee's case, it was the sole selling agent of the two manufacturing companies under the respective agreements separately entered into with each of them. It is an admitted position that the agreements between the assessee and the two manufacturing companies were similar in nature. The Tribunal has considered in detail the terms of the agreement, dated February 2, 1970, between the assessee and M/s. S.R.P. Tools Ltd., Madras. By this agreement the assessee was appointed as the sole selling agent of the Madras manufacturer for a period of five years, commencing from the date of the agreement. As the sole selling agent the assessee was obliged to sell the goods manufactured by its principal at prices fixed by the principal. The assessee (as the sole selling agent) was further obliged to collect the invoice value of the goods sold through it and to send the net amount after deducting its commission, etc., within 30 days of the sale. The assessee, the agent, was

entitled to receive selling commission at the rate of 12 1/2 per cent of the net invoice value. The agreement specifically provided that notwithstanding anything to the contrary contained therein, the goods, while in the custody of the agent, would continue to be the property of the principal. It further provided that the agent would not be liable for any loss or damage which may occasion to any of the principal's goods in its custody unless the damage was caused due to its wilful negligence. While the goods were in transit or in the custody of the agent, the responsibility to provide them a cover of insurance, etc., also lay with the principal.

5. Having, thus, examined the terms of the agency agreement between the assessee and its principal, the Tribunal also examined one typical transaction of sale and broke it down into smaller fractions. It is also an admitted position that the other sales forming part of the disputed turnover followed a similar pattern. The Tribunal has found that the purchaser-company (TELCO) by its letter, dated November 19/23, 1970, invited quotation from the assessee-company regarding the price of the materials specified in that letter. The quotation was to be furnished by December 16, 1970. The assessee in its turn wrote to its principal on November 30, 1970 advising it to forward its quotation directly to the purchaser-company with copies of the quotation to the assessee-company. The manufacturer, that is to say, the assessee's principal, as advised by its agent, sent its quotation regarding the desired goods directly to the purchaser-company along with letter, dated December 7, 1970. By that letter the purchaser-company was advised to place its orders for the goods through the manufacturer's sole selling agent, that is, the assessee-company. Copies of the quotation were sent separately to the assessee-company and it was informed by letter, dated December 7, 1970 that quoted prices were F.O.R. destination and that a 10 per cent discount was also allowed to the parties. The assessee-company, then, wrote a letter to the purchaser-company (TELCO) on December 14, 1970 confirming its principal's quotation sent directly to TELCO and requesting it (TELCO) for the purchase order. Finally the purchaser-company placed its purchase order, dated February 16, 1971, for the supply of the materials at the quoted price on the assessee-company which was forwarded by it to its principal at Madras. The principal acknowledged the receipt of that letter from the assessee regarding the supply of the tools and promised to supply them by July, 1971 and in one lot. The supply was eventually completed as promised. The goods were despatched by railway and in the railway receipts the manufacturer, that is, the principal was shown as the consignor and the purchaser-company, TELCO was described as the consignee. The railway receipts and the invoices, prepared by the manufacturer in the name of the assessee-company, were sent to it at Jamshedpur. Those invoices, sent by the principal to its agent, the assessee-company, bore the following note :

"This is despatched on consignment basis. The amount is to be paid as soon as the sale is effected. The sales tax when and where applicable will be collected by you and paid to the appropriate Government. 12 1/2 per cent commission will be

given to you by way of separate credit note."

6. On receipt of invoices and the railway receipts, the assessee prepared its own invoices in the name of the purchaser-company. The assessee's invoices showed the same prices as shown in the invoices raised by the principal in its name. In those invoices the assessee-company, as earlier advised by its principal, allowed 10 per cent discount to the purchaser but charged three per cent Central sales tax (subject to production of form C). Finally on receiving payments from the purchaser-company as per the invoices, the railway receipts were handed over to them on the basis of which the purchaser-company got the goods directly released from the railway. The assessee sent the price of the goods to its principal, the manufacturer, and deposited the amount of the Central sales tax at Madras.

7. On the basis of these admitted facts and circumstances it was contended on behalf of the assessee that the movement of the goods from Madras was occasioned by their sale to the purchaser-company and, hence, the transaction was manifestly sale in the course of inter-State trade and commerce as defined u/s 3(i)(a) of the Central Sales Tax Act.

8. From the order of the Tribunal, it appears that though initially it was contended on behalf of the Revenue that the entire transaction actually consisted of two sales, first between the manufacturer and its agent and the second between the agent and the purchaser-company, the main thrust was later put on an alternative submission. The alternative submission seems to be that in view of the clause in the agency agreement that the goods will continue to be the principal's property notwithstanding their custody in the hands of the agent and further having regard to the stipulation made in the invoice, the property in the goods had passed to the purchaser-company only in the State of Bihar on payment of the invoiced price in exchange of the railway receipts, the sale of goods actually took place in Bihar. It was, accordingly, contended that the movement of the goods had not been occasioned by their sale inasmuch as no sale had preceded the movement of the goods and, therefore, the transaction was not covered by the definition of sale in course of inter-State trade and commerce as provided u/s 3(i)(a) of the Central Sales Tax Act.

9. The Tribunal appears to have upheld this submission made on behalf of the Department. As noted above, it accepted the petitioner's case that the entire transaction comprised of only one sale but upholding the department's contention it held that the sale in question was an intra-State sale and not a sale within the meaning of Section 3(i)(a) of the Act. At this stage it would be apposite to extract the relevant passage from the order of the Tribunal :

"In the background of these facts, mere placing of the purchase orders by Telco or Voltas would not make them (M/s. Voltas Ltd.) the owner of the property as to sell them to the purchaser on their own behalf by transferring the document of title, in the present case, the railway receipts, in the way done. That transfer had

to be treated on behalf of the manufacturers, whose goods they were till then to ensure realisation of their invoice prices. With the goods so manufactured by the manufacturing companies and sent to M/s. Voltas Ltd. in pursuance of the purchase orders obtained by M/s. Voltas Ltd., from Telco, under the circumstances had to be treated as having been obtained on behalf of their (M/s. Voltas Ltd.) principal which continued to be their (manufacturer's) property, is established by the above extracted endorsement on the invoices prepared and sent to M/s. Voltas Ltd., while despatching the goods to Jamshedpur. It was clearly stated therein that the despatches were on consignment basis and the amounts in the invoices were to be paid to the principal as soon as their sales were effected. This clearly proves that their sales to the purchasers were still to be effected and they had been sent to M/s. Voltas Ltd., on consignment basis for their sales to the purchaser. M/s. Voltas Ltd., as agents were required in pursuance of the term of the endorsement to realise the sales tax as applicable and pay to the appropriate authority and that they (M/s. Voltas Ltd.) were to get their selling agent commission at the rate of 12 1/2 per cent by way of separate credit note. The property in the goods till that time was with the manufacturers and it passed on to the purchaser after he had taken delivery thereof on the strength of the railway receipts as issued to them by the manufacturers as consignees. Those sales by the Voltas to the Telco were on behalf of their principals, viz., the manufacturing companies for effecting which they (M/s. Voltas Ltd.) were to get their scheduled commission. In such circumstances, the sales of the goods so effected in Bihar were clearly in the nature of intra-State sales and required levy of tax at the rate prescribed in law as such. In view of this, I am unable to uphold the treatment of those sales as inter-State sales u/s 3(b) of the Act as held by the authorities below."

10. The assessee, then, made an application u/s 33(1) of the Bihar Sales Tax Act requesting the Tribunal to refer to the High Court two questions which, according to the assessee, arose in the facts and circumstances of this case. The Tribunal allowed that application and referred the following two questions for the opinion of this Court :

"(i) Whether in the facts and circumstances of the case the Tribunal was justified and within jurisdiction to permit the opposite party to submit at the reply stage before it that the transactions which had till then been treated and supported as inter-State sales u/s 3(b) of the Central Sales Tax Act, 1956, in the hands of the applicant with liability to pay tax in Bihar could alternatively be pleaded and considered as intra-State sales in Bihar in the hands of the applicant ?

(ii) Whether in the facts and circumstances of the case the transactions totalling Rs. 24,44,994.07 were single inter-State sales with tax liability in Madras or Bombay depending upon from where the goods moved or whether they constituted intra-State sales in Bihar in the hands of the applicants exigible to Bihar sales tax ?"

11. In fairness to the Tribunal it may be noted that it also agreed to refer

question No. (i) regarding the alleged procedural irregularity in allowing the department to advance an alternative submission at the revisional stage.

12. Of the two questions, quoted above, it is clear that it is question No. (ii) which relates to the merits of the case and we, accordingly, propose to first take up this question.

13. From the passage extracted from the Tribunal's order it appears that it has primarily relied upon two facts and circumstances for holding that the sale in question was a sale within the State. One is that the goods were despatched by the manufacturer to the purchaser-company on consignment basis and the price money, as per the invoices, were to be paid to the principal as soon as the sales were effected. The second circumstance is the clause in the agency agreement that the property in the goods would continue to vest in the manufacturer notwithstanding their custody and possession being in the hands of the agent. The inference, drawn is that the sales took place at Jamshedpur in Bihar, only after the goods had arrived there on the conclusion of their movement from Madras. To put it differently the movement of the goods from Madras was not occasioned by any sale as no sale preceded the movement of the goods.

14. The controversy, thus, really boils down to an interpretation of the expression "if the sale or purchase occasion the movement of goods from one State to another" (as appearing in Section 3(i)(a) of the Central Sales Tax Act). Can it be said that the movement of goods was occasioned by their sale even though the actual sale and the passing of goods had not preceded the movement of the goods but was to come about later on ? The Tribunal has held in the negative.

15. Having heard Mr. Sahay, counsel appearing on behalf of the assessee, and the counsel appearing on behalf of the State, I am of the opinion that the view taken by the Tribunal is not based on the correct legal position and appears to be at variance with the law laid down by the Supreme Court decisions on this point.

16. In the case of Oil India Ltd. Vs. The Superintendent of Taxes and Others, the Supreme Court held as follows :

"No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the course of inter-State trade". The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale."

17. In Oil and Natural Gas Commission v. State of Bihar [1976] 38 STC 435 SC

(SC) the main question was whether the supply of crude oil by the Oil and Natural Gas Commission to the Indian Oil Corporation Ltd., constituted sale for the purposes of the Sales Tax Act. Having answered the question in the affirmative their Lordships of the Supreme Court also noted and rejected the contention of the State of Bihar that the transaction was in the nature of intra-State sale. The relevant observations of the Supreme Court are as follows :

"The State of Bihar raised a feeble contention that it was not an inter-State sale. The delivery may be in Assam or in Bihar at Barauni, but the movement of goods is the result of contract and as an incident to the agreement between the Commission and the Corporation. The State of Assam has lawfully levied the Central sales tax on the petitioner. The State of Assam is entitled to levy Central sales tax on the petitioner. The Commission has been paying sales tax since the commencement of sales. It is made clear that it is open to the Commission to make applications for refund, if any, in accordance with the sales tax law."

18. Again in *English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others*, it was observed by the Supreme Court as follows :

"When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position."

19. In view of the aforesaid decisions of the Supreme Court the finding of the Tribunal that the transactions were in the nature of intra-State sale appears to me to be quite unsustainable in law and I have no doubt in my mind that the sales in question were made in course of inter-State trade and commerce within the meaning of Section 3(i)(a) of the Central Sales Tax Act and Central sales tax were rightly collected and deposited by the assessee in the State from where the movement of the goods had commenced.

20. I would, therefore, answer the second question in the affirmative, that is to say, in favour of the assessee and against the Revenue.

21. The main question relating to the merits of the case having been answered in

favour of the assessee we do not see any need or occasion to answer the first question dealing with the procedural aspect of the matter.

22. Let a copy of this order be sent to the Commercial Taxes Tribunal.