

The State of Tamil Nadu

Vs

The Cement Distributors (P) Ltd. and Others

Civil Appeal No. 231 of 1970

(CJI A. N. Ray, K. K. Mathew, V. R. Krisyhna Iyer JJ)

14.03.1975

JUDGMENT

RAY, C.J. -

1. This appeal by certificate is on the question whether there was any contract of sale pursuant to which goods were moved from the State of Tamil Nadu to the State of West Bengal.
2. The respondent Cement Distributors Private Limited are the agents of the State Trading Corporation. Under the Cement Control Order all manufacturers are required to sell cement to State Trading Corporation. On November 22, 1961 the Regional Cement Officer of the State Trading Corporation in Tamil Nadu authorised the respondent to sell the quantity of cement mentioned in the authorisation note of that date to persons directed by the Regional Cement Officer, State Trading Corporation, Calcutta. The authorisation was in favour of the respondent. The factory which was to supply cement was also mentioned in the note as Dalmiapuram factory. The authorisation further said that 9,000 metric tons were allotted for the fourth period in 1961 for distribution to Calcutta area as directed by the Regional Cement Officer, State Trading Corporation, Calcutta.
3. On November 4, 1961, there was another authorisation issued by the Regional Cement Officer at Calcutta. The note mentioned the respondent Cement Distributors as suppliers. The note said that the authorisation was in favour of the Executive Engineer, Howrah Division Construction Board, 94, Chittaranjan Avenue, Calcutta. The quantity allotted was 230 metric tons. The name of the factory to supply cement was Dalmiapuram. Delivery was ex-Calcutta jetty docks. The price was the ruling price on the date of despatch from the factory.
4. On these documents it is contended on behalf of the State that cement was shipped by the respondent to their godown at Calcutta for direct sale to the purchaser in whose favour the letter of authorisation note was issued, namely, the Executive Engineer, Howrah Division Construction Board, who was to take delivery at the jetty.
5. The respondents were assessed by the State under the Central Sales Tax Act on these transactions as inter-State sales. The respondent company contended that cement was despatched under authorisation order to Calcutta. The respondent company contended that the company did not enter into any contract for sale of cement with the buyers before or at the time of shipment. A contract was made only after an authorisation in favour of the buyer had been issued by the Regional Cement Officer, Calcutta. Such an authorisation by Calcutta officer was subsequent to the shipment. The respondent company contended that the transaction was not inter-State sale.

6. The only question is whether the contract of sale itself with the Executive Engineer occasioned movement of goods.

7. Section 3 of the Central Sales Tax Act provides that 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. The settled view of this Court is that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale. (See *Tata Iron & Steel Co. Ltd. v. S. R. Sarkar* ((1961) 1 SCR 379 : AIR 1961 SC 65 : (1960) 11 STC 655.)).

8. In the present case, the goods are despatched by the respondents to themselves at Calcutta according to the directions of the State Trading Corporation. This was for consumption in Calcutta area as will appear from the authorisation dated November 4, 1961. The other authorisation letter dated November 22, 1961 was issued, after the arrival of the goods, by the Regional Cement Officer, Calcutta authorising the respondent to sell cement. It is apparent that there was no movement of goods by the respondent company as a result of a contract of sale between the respondent and the buyer at Calcutta. The shipment was made by the respondent company without any (sic any) reference to any buyer. The movement of goods from Madras to Calcutta did not take place as a result of any contract of sale, but in pursuance of instruction contained in authorisation for transfer of stocks from Madras to Calcutta. The transactions were not inter-State sales liable to tax under the Central Sales Tax Act. The movement of goods from one State to another without any of the elements of "sale" within the meaning of the Central Act cannot be subject to tax. The shipment was movement of stocks of cement belonging to the State Trading Corporation from one place to another. There was shortage of supply of cement at Calcutta. The State Trading Corporation moved stocks from Madras to Calcutta. The area of need and the availability of stocks of cement were known to the State Trading Corporation. The transactions could not be subjected to Central sales tax.

9. For these reasons, the appeal fails and is dismissed. Parties will pay and bear their own costs.

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