

Sahney Steel and Press Works Limited and Another

Vs

Commercial Tax Officer and Others

Writ Petition No. 7337 of 1981

(R. S. Pathak, A. N. Sen JJ)

10.09.1985

JUDGMENT

PATHAK, J. -

1. The First petitioner, M/s. Sahney Steel and Press Works Ltd. (hereinafter referred to as "the Company"), is a public limited company having its registered office and factory at Hyderabad. The second petitioner, Shri Bhupendra Singh Sahney, is a Director and shareholder of that company. The Company has branches at Amritsar, Bangalore, Bombay, Calcutta, Coimbatore and Delhi. The registered office of the Company at Hyderabad is registered as a dealer under the Central Sales Tax Act as well as under the Andhra Pradesh General Sales Tax Act.

2. The Company is engaged in the manufacture and sale of stampings and laminations made out of steel sheets which are utilised as raw material for making electric motors, transformers and similar goods. The branches of the Company are mainly engaged in effecting sales and looking after the sales promotion and liaison work. The Company manufactures (a) standard goods according to Company's own designs and specifications, (b) non-standard goods according to the designs and specifications supplied by customers. In the course of its normal business, the registered office despatched both standard and non-standard goods manufactured at the Hyderabad factory to the branches. Such transfers made by the registered office to the branches at Bombay, Calcutta and Coimbatore of non-standard goods form the subject of the instant controversy.

3. According to the petitioner, the branch offices situate at Bombay, Calcutta and Coimbatore, which themselves are registered as dealers under the Central Sales Tax Act and under the related State Sales Tax Acts, receive orders from customers within and from outside the respective States for the supply of goods conforming to definite specifications and drawings. Those branch offices then advise the registered office at Hyderabad to manufacture and despatch the goods. On receipt of such advice from the branch, the goods are manufactured at the Hyderabad factory and thereafter despatched by the registered office to the branches by way of transfer of stock. While despatching the goods, sometimes intimation is also given by the registered office to the customer concerned about the despatch of the goods to the destination indicated by him. Such goods are booked to 'self' and sent by lorries. The goods received by the branches from time to time, whether standard goods or non-standard goods, are entered in the stock accounts of the branches and are kept in stock by the branches for ultimate delivery to the customers. On the goods reaching the branches, they are inspected by the customers and accepted by them where the customers are local parties. Where delivery has to be effected to customers of other States, the goods are despatched to them by the branch. The branches raise bills and receive the sales price. The branches furnish 'F' forms to the registered office under Section 6-A of the Central Sales Tax Act in the case of stock transfers to the

branches. These are the facts set forth in the writ petition.

4. It appears that the sale of non-standard goods was assessed to State Sales Tax under the Sales Tax Acts of Maharashtra, West Bengal and Tamil Nadu. The Commercial Tax Officer, Company Circle-II, Hyderabad, however, expressed the view that the Company was liable to Central Sales Tax on the turnover of non-standard goods and rejected the contention of the Company that the pertinent turnover was not so liable. For the assessment year 1979-80 he made an assessment order dated May 4, 1981 assessing a turnover of Rs. 1,29,50,248.73 representing what the petitioners claimed to be stock transfers from the Hyderabad registered office to the branches outside the State of Andhra Pradesh. By way of abundant caution the petitioners had prayed that in the event of their objection to the imposition of Central Sales Tax being overruled they should be allowed time to collect 'C' forms from the various customers to whom the branches had effected sales and to submit them to the Commercial Tax Officer. The Commercial Tax Officer, however, did not grant the Company the further time it sought for that purpose.

5. The petitioners state that the Commercial Tax Officer has also issued notices dated May 2, 1981 seeking to reopen the Central Sales Tax assessment already completed for the years 1977-78 and 1978-79. In the original assessments for those years the Commercial Tax Officer had excluded the disputed transactions relating to transfers of non-standard goods from the registered office to the branches.

6. The petitioners, therefore, pray for the quashing of the assessment order dated May 4, 1981 made under the Central Sales Tax Act for the assessment year 1979-80, and the consequent demand of tax, insofar as the assessment order includes within the assessed turnover the value of non-standard goods transferred to the branches. The petitioners also pray for an order restraining the Commercial Tax Officer from reopening past assessments for the purpose of including such transfers in the assessable turnover. Alternatively, the petitioners pray that in the event of the transactions being held liable to Central Sales Tax an opportunity should be given to the Company to file 'C' forms to enable it to avail of the concessional rate of tax envisaged under sub-section (1) of Section 8 read with sub-section (4) of Section 8 of the Central Sales Tax Act. A further prayer in the alternative is that the assessments made under the local Sales Tax Acts from the assessment year 1978-79 onwards, insofar as the assessments include the turnover of the aforesaid stock transfers transferred by the registered office to the branches should be quashed.

7. While making the assessment order for the assessment year 1979-80, the Commercial Tax Officer found that the branch offices of the Company, after procuring orders for the supply of goods with definite specifications and drawings advised the registered office at Hyderabad to manufacture and supply the goods in accordance therewith. After the goods were so manufactured in the factor at Hyderabad, the registered office despatched the goods to the branches. The goods were collected by the branch offices and despatched to various customers according to the orders received earlier. The Commercial Tax Officer also found that except for the manufacture of goods according to the specifications received from the customers at the registered office and factory at Hyderabad, all other activities including that of booking orders, sales despatching, billing and receiving of the sale price were being carried on by the branch offices situated outside the State of Andhra Pradesh. In the opinion of the Commercial Tax Officer the movement of the goods from Hyderabad to the stations outside the State was an incident of the contract incorporated in the specific orders procured by the branch offices, and therefore the transactions were inter-State sales within the terms of sub-section (a) of Section 3 of the Central Sales Tax Act.

8. The petitioners challenge the finding of the Commercial Tax Officer that the transactions in question constitute inter-State sales. The petitioners contend that when the registered office of the Company at Hyderabad despatched the manufactured goods to its branch office it was merely a transfer of stock from the registered office to the branch office, and thereafter to movement of the goods started from the branch office to the buyer. It is urged that the registered office and the branch office were separately registered as dealers under the sales tax law and transactions effected by the branch office should not be identified with transactions effected by the registered office. The movement of the goods from Hyderabad to the branch office, it is said, was only for the purpose of enabling the sale by the branch office and was not in the course of fulfilment of the contract of sale. We are unable to agree. Even if, as in the present case, the buyer places an order with the branch office and the branch office communicates the terms and specifications of the orders to the registered office and the branch office itself is concerned with the sales-despatching, billing and receiving of the sale price, the conclusion must be that the order placed by the buyer is an order placed with the Company, and for the purpose of fulfilling that order the manufactured goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer. We must not forget that both the registered office and the branch office are offices of the same Company, and what in effect does take place is that the Company from its registered office in Hyderabad takes the goods to its branch office outside the State and arranges to deliver them to the buyer. The registered office and the branch office do not possess separate juridical personalities. The question really is whether the movement of the goods from the registered office at Hyderabad is occasioned by the order placed by the buyer or is an incident of the contract. If it is so, as it appears no doubt to us, its movement from the very beginning from Hyderabad all the way until delivery is received by the buyer is an inter-State movement. In *English Electric Company of India Ltd. v. Deputy Commercial Tax Officer* ((1977) 1 SCR 631 : (1976) 4 SCC 460 : 1977 SCC (Tax) 23 : AIR 1977 SC 19) this Court held that when the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale, and it does not matter which is the State in which property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. It was also pointed out that the branches had no independent and separate entity, that they were merely different agencies, and even where a branch office sold the goods to the buyer it was a sale between the Company and the buyer. It is true that in that case goods, on manufacture at the Madras branch factory, were directly despatched to the Bombay buyer at his risk and all prices were shown F.O.R. Madras, and the goods were delivered to the Bombay buyer at Bhandup through clearing agents. In the instant case, the goods were despatched by the branch office situated outside the State of Andhra Pradesh to the buyer and not by the registered office at Hyderabad. In our opinion, that makes no difference at all. The manufacture of the goods at the Hyderabad factory and their movement thereafter from Hyderabad to the branch office outside the State was an incident of the contract entered into with the buyer, for it was intended that the same goods should be delivered by the branch office to the buyer. There was no break in the movement of the goods. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It would have been a different matter if the particular goods had been despatched by the registered office at Hyderabad to the branch office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the buyer. The movement of the goods from the registered office at Hyderabad to the branch office outside the State cannot be regarded as an incident of the sale made to the buyer.

9. The law was clarified in *Union of India v. K. G. Khosla and Co. Ltd.* ((1979) 43 STC 457 : (1979) 2 SCC 242 : 1979 SCC (Tax) 101), where this Court observed that a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to another, provided, however, that such movement was the result of a covenant in the contract of sale or was an incident of that contract. Two cases on opposite sides of the line were considered by this Court in *K. G. Khosla and Co. Ltd.* ((1979) 43 STC 457 : (1979) 2 SCC 242 : 1979 SCC (Tax) 101) In *Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes* ((1970) 26 STC 354 : (1970) 3 SCR 862 : (1970) 1 SCC 622), the appellant carried on the business of manufacturing trucks in Jamshedpur in the State of Bihar. The sales office of the appellant in Bombay used to instruct the Jamshedpur factory to transfer stocks of vehicles to the stock-yards in various States after taking into account the production schedule and requirements of customers in different States. The stocks available in the stock-yards were distributed from time to time to dealers. The transfer of the vehicles from the factory to the various stock-yards was a continuous process and was not related to the requirement of any particular customer. Until an appropriation of the vehicles was made by the stock-yard incharge against a contract of sale out of the stocks available with him it was open to the appellant to allot any vehicle to any purchaser or even to transfer the vehicles from the stock-yard in one State of a stock-yard in another State. It was held on the facts that the sale by the appellant to a purchaser from its stock-yard was not an inter-State sale. On the other side of the line is *State of Bihar v. Tata Engineering & Locomotive Co. Ltd.* ((1971) 27 STC 127 : (1971) 2 SCR 849 : (1970) 3 SCC 697) In that case, the turnover in dispute related to sales made by the company to its dealers of trucks for being sold in the territories assigned to them under the dealership agreements. Each dealer was assigned an exclusive territory and under the agreement between the dealers and the company, they had to place their indents, pay the price of the goods to be purchased and obtain delivery orders from the Bombay office of the company. In pursuance of such delivery orders trucks used to be delivered in State of Bihar to be taken over to the territories assigned to the dealers. Under the terms of the contracts of sale the purchasers were required to remove the goods from the State of Bihar to other States. The Court observed that if a contract of sale contained a stipulation for such movement, the sale would be an inter-State sale.

10. Considerable reliance has been placed by the petitioners on one of the illustrations given by this Court in *Balabhagas Hulaschand v. State of Orissa* ((1976) 37 STC 207 : (1976) 2 SCC 44 : (1976) SCC (Tax) 164) where Case No. II was set out as follows : (SCC p. 52, para 12)

Case No. II.- A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his agent in State Y receives the goods on behalf of A. Thereafter the goods are delivered to B in State Y and if B accepts them a sale takes place. It will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale. The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and falls beyond the purview of Section 3(A) of the Central Sales Tax Act not being an inter-State sale.

It is not clear from this illustration whether the goods were particular and specific goods earmarked for delivery to the buyer when they commenced their movement from State X. Apparently not, because it is pointed out that the movement of the goods was neither in pursuance of the agreement to sell nor was the movement occasioned by the sale. The case is distinguishable from the present one where particular goods were manufactured in Hyderabad in satisfaction of an order placed by the buyer who desired delivery outside the State. The goods moved from the registered office at Hyderabad as the result of a covenant in the contract of sale or an incident of that contract that the goods manufactured at Hyderabad according to the specifications stipulated by the buyer should be

the very goods delivered to him outside the State.

11. Upon all these considerations, we are of opinion that the Commercial Tax Officer is right in holding that the sale transactions were inter-State sales inasmuch as they satisfy the terms of clause (a) of Section 3 of the Central Sales Tax Act.

12. Having held that the disputed transactions are inter-State sales, it is only appropriate that an opportunity should be given to the Company to collect 'C' Forms from the buyers for the purpose of obtaining relief under sub-section (1) of Section 8 read with sub-section (4) of Section 8 of the Central Sales Tax Act. The question whether the transactions could be described as inter-State sales was in doubt all long, and it is only now that the doubt can be said to have been finally resolved. Accordingly, we direct the Commercial Tax Officer to afford a reasonable opportunity to the Company to collect 'C' Forms and furnish them to the assessing authority before making an assessment against the Company in respect of such transactions. We understand that so far as the turnover for the assessment year 1979-80 is concerned, the assessment order has been set aside in appeal and the case has been remanded to the assessing authority for granting sufficient time to the Company to file the 'C' Forms in order to enable it to avail of the concessional rate of tax.

13. The petitioners have prayed for the further relief that as the aforesaid transactions have been held to be inter-State sales their inclusion in the assessments made under the corresponding State Sales Acts should be deleted. We give liberty to the petitioner Company to make an application to the assessing authority concerned for the grant of such relief, and if the application is made within two months from today, we direct the said assessing authority to entertain the application, notwithstanding any period of limitation prescribed for such a proceeding, and to dispose of the claim in accordance with law.

14. The writ petition is dismissed subject to the directions set forth above. There is no order as to costs.

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