State of Tamil Nadu

Vs

M/S Dharangadhara Trading Co. Ltd

Civil Appeal No. 619(NT) of 1975

(CJI R.S. Pathak, M.H. Kania JJ)

03.05.1988

JUDGMENT

KANIA, J. –

1. This is an appeal against the common judgment of a Division Bench of the High Court of Judicature at Madras in Tax Cases Nos. 2 and 3 of 1970. The appeal has been preferred pursuant to special leave granted by this Court Article 136 of the Constitution of India.

2. The facts giving rise to the appeal are as follows :

> The Dharangadhara Chemical Works Ltd. is a manufacturer of caustic soda and certain other chemicals. Dharangadhara Chemical Works Ltd. (referred to hereinafter as "the Chemical Company") entered into an agreement dated August 9, 1957 under which it agreed to sell all its products to Dharangadhara Trading Co. Pvt. Ltd. (referred hereinafter as "the Trading Company"). Under Clause 1 of the said agreement, the Chemical Company agreed to confine the sale of all the products manufactured by it at all its works to the Trading Company for a period of 5 years from March 1, 1958. Clause 2 of the agreement provided, the Chemical Company would make the sales directly to the Trading Company on a principal to principal basis against offers or indents. Clause 3 provided that the selling price would be determined by the Board of Directors of the Chemical Company on the basis of ex-factory of FOR booking or FOR destination stations as decided upon by the Directors. The delivery of the goods would, however, be given FOR at booking stations. The Trading Company would make payments to the Chemical Company within one month from the date of supply or sale of goods by the Chemical Company. Pursuant to this agreement, sales were effected by the Chemical Company to the Trading Company. Although the aforesaid agreement contained the general terms as set out earlier, neither the booking stations, nor the destination stations nor the sale price were given in the said agreement. The Trading Company used to give directions to the Chemical Company for dispatching specified quantities of goods to the stations named by the Trading Company and as per these directions, the Chemical Company booked the goods at the booking station which was invariably Arunuganeri Railway Station in the State of Tamil Nadu, showing themselves as the consignors and the Trading Company as the consignees of the goods specified in that contract of sale. After booking the goods, the invoices were handed over to the Trading Company by the Chemical Company. It may be mentioned that the actual quantities sold, the sale price, the booking station and the destination stations were not

determined under the aforesaid agreement of August 9, 1957, but in the actual contracts of sale in respect of definite or specified quantities. The mode in which sales were made was that the Trading Company obtained orders from out of State buyers and entered into agreement of purchase with the Chemical Company for these specified quantities. All the goods sold under these contracts of sale were booked at the aforesaid railway station in Tamil Nadu to the various places outside the State of Tamil Nadu where buyers from the Trading Company required the goods and after the goods were booked as aforesaid on the railway, the railway receipts and the invoices concerned were endorsed and handed over to the Trading Company.

3. Admittedly, as pointed out by the Tribunal, there were two sets of sales, one by the Chemical Company to the Trading Company and the second by Trading Company to the various out of State buyers. In the original assessment order for the assessment year 1961-62 made by the Sales Tax Officer, both the sales by the Chemical Company to the Trading Company and the sales by the Trading Company to the out State buyers were treated as inter-State sales. Consequently, central sales tax was levied on the first sale, but not on the second sale. This assessment order was revised and under the revised assessment order the assessing authority treated the sales effected by the Chemical Company to the Trading Company as intra-State sales and the sales effected by the Trading Company to the out of State buyers as inter-State sales falling under Section 3 of the Central Sales Tax Act, 1956. The assesses, namely, the Chemical Company as well as the Trading Company filed appeals before the Appellate Assistant Commissioner contending that both the said sales were inter-State sales. It was contended by the assessee that the sales by the Trading Company to the out of State purchasers were admittedly inter-State sales and as far as sales by the Chemical Company to the Trading Company were concerned, these were also inter-State sales as the sales were completed by the delivery of railway receipts and invoices only after the inter-State journey of the goods had commenced. These contentions were rejected by the Appellant Commissioner, who dismissed the appeals. Both the assesses filed appeals against the decisions of the Appellate Assistant Commissioner to the Tribunal. The Tribunal allowed both the appeals.

4. The Tribunal pointed out that there were two sets of sales, the second set of sales by the Trading Company to out of State buyers was admittedly inter-State in character. The Trading Company had filed necessary 'E-1' forms and 'C' forms in these cases and the transactions, therefore, fell within the scope of Section 6(2)(b) of the Central Sales Tax Act and were exempt from tax under local Sales Tax Act as well as the Central Sales Tax Act. As far as first set of sales, namely, by the Chemical Company to Trading Company were concerned, it was pointed out that although under the agreement dated August 9, 1957 the sales agreed to be 'FOR' Booking Stations' and the booking station was in Tamil Nadu, the delivery of goods could be either by physical delivery or by handing over documents of title. The delivery contemplated in the agreement was not actual physical delivery, as the place of delivery was neither seller's place of business, nor the buyers' place of business. Considering the manner in which the sales were effected and dispatches made by the Chemical Company, and after examining some specimen orders placed by the Trading Company with the Chemical Company, the Tribunal came to conclusion that the delivery was effected by the Chemical Company to the Trading Company by delivery of documents of title, namely, the respective invoices and the railway receipts. The nature of sales by the Chemical Company to the Trading Company and the question whether they were inter-State sales had to be decided after further taking into account the further instructions given by the buyers. The actual terms of the sales have to be determined not merely under the agreement dated August 9, 1957 as that agreement was a general agreement which did not specify the quantities to be sold, the sale price, booking stations, the destination stations, and so on, but these actual terms could be determined only by taking into

account the terms on which and the manner in which the actual sales were made by the Chemical Company to the Trading Company. For ascertaining these terms, the Tribunal examined some of the subsequent orders placed by that Trading Company on the Chemical Company. Taking into account all these, the Tribunal found that as the orders were placed for booking specified goods to out of station buyers, and the Chemical Company never gave physical delivery of the goods to the Trading Company, but booked the goods to the destinations as required by the out of State buyers and merely handed over documents of title to the Trading Company, it was clear that the movement of the goods from the State of Tamil Nadu to the outside States was occasioned by the terms of the contract themselves and the sales were inter-State sales falling within Section 3, sub-section (a) of the Central Sales Tax Act, 1956. Alternatively, if a view were taken that the sales did not fall under sub-section (a) of Section 3, the deliveries of goods sold were effected by the transfer of documents after the movement of the goods from Tamil Nadu to the other States had commenced and the sales could be regarded as covered under sub-section (b) of Section 3 of the Central Sales Tax Act. From this decision of the Tribunal, revision petitions under Section 38 of the Tamil Nadu General Sales Tax Act were preferred by the State of Tamil Nadu to the Madras High Court. The High Court upheld the views of the Tribunal and dismissed both the revision petitions which were numbered as Tax Cases Nos. 2 and 3 respectively. An appeal was preferred by the State in the case of the Trading Company, namely, the case pertaining to the assessment of the sales from Chemical Company to the Trading Company.

5. The only submission advanced by Mr Mahajan, learned counsel for the appellant, was that there were two sets of sales, namely, by the Chemical Company to the Trading Company and by the Trading Company to the out of State buyers. It was submitted by him that the first set of sales, namely, by the Chemical Company to the Trading Company were local or intra-State sales because under the agreement dated August 9, 1957 the delivery was to be effected at the booking station. In our view, as the Tribunal has rightly pointed out, the agreement dated August 9, 1957, is merely a general agreement and the actual terms of the contracts of sales as well as the instructions of the out of State buyers have to be taken into account in determining the nature of the sales in question. In view of this, the conclusions arrived at by the Tribunal as well as the High Court that the sales by the Chemical Company to the Trading Company were inter-State sales cannot be faulted and the learned counsel for the appellant has not advanced a single reason showing how that conclusion is incorrect. In fact, this conclusion finds some support from the observations of this Court in Union of India v. K. G. Khosla & Co. (P) Ltd. [(1979) 2 SCC 242, 248 : (1979) 3 SCR 453, 460 : 1979 SCC (Tax) 101 : (1979) 43 STC 457]

6. In the result, we find that there is no merit in the appeal and it must fail. The appeal is dismissed with costs.

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