SUPREME COURT OF INDIA

Commissioner of Sales Tax, U.P.

Vs.

Bakhtawar Lal Kailash Chand Areti

(B.P. Jeevan Reddy, S. Rangnathan and V. Ramaswami II JJ.)

05.08.1992

JUDGMENT

B.P. JEEVAN REDDY, J.

A common question arises in this batch of Appeals and Special Leave Petitions. Leave granted in S.L.Ps.

In Commissioner of Sales Tax, U.P.v. Hanuman Trading Co. [1979) Vol. 43 Sales Tax Cases 408] a learned Single Judge of the Allahabad High Court held that the purchases made by Commission Agents in U.P. on behalf of the principals outside the State, where the goods so purchased were despatched to such principals, were inter-state purchases not exigible to tax under the U.P. Sales Tax Act, 1948. This decision was rendered on October 6,1978. Civil Appeal No. 1809 of 1982 is preferred against the same. Following the said decision a large number of cases were disposed of by the Allahabad High Court which have given rise to the other Civil Appeals and the S.L.Ps. posted before us. Since the facts in all these appeals are stated to be identical, it is enough to refer to the facts in Civil Appeal No. 1809 of 1982. The facts as found recorded in the order of the High Court are to the following effect:

The respondent-assessee, Hanuman Trading Company, is a registered dealer in Uttar Pradesh, dealing in foodgrains and oils among others. During the year in question, he purchased the said commodities both on his own account as well as for and on behalf of his ex-U.P. principals i.e. dealers located outside the State of U.P. We are not concerned with the purchases made by the respondent-dealer on his own account, but only with the purchases made by him as the commission agent of the ex-U.P. principals. These purchases were made by the respondent- dealer from three sources, namely: (1) from Registered Dealers (2) from Cartmen, and (3) from Agriculturists. So for as purchases made from registered dealers are concerned, we are not concerned with them. The learned counsel for the State of U.P., stated before us that tax thereon is payable by the selling dealer. The controversy thus narrows down to purchases made by the respondent-dealer from cartmen and agriculturists. The finding of the High Court with respect to the nature of the transactions may be set out in their own words:

"In the present cases, the purchase orders placed by the ex-U.P. principals to the assessee are not on the record but, from the conduct of the parties and on the facts found, it is clear that the ex- U.P.

Principals contracted with the assessee that he should purchase goods on their behalf in U. P. and despatch them to ex-U.P. destinations on the payment of commission.....the goods were sent to the ex-U.P. principals in fulfillment of the contract."

Sales of agricultural produce by agriculturists are exempt from tax under the U.P. Sales Tax Act by virtue of the proviso to the definition of the expression 'dealer" in clause (e) of Section 2. The proviso says that "a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner,usufructuary mortgagee, tenant or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods be treated as a dealer." In such a case, it is stated, purchase tax is leviable on the purchaser. If, however, the purchase is an inter-state purchase as defined by Section 3 of the Central Sales Tax Act, 1956 then the State Legislature becomes disabled from taxing it by virtue of Article 286(1) of the Constitution of India. It is this aspect which lies at the root of the grievance of the State, and it is precisely for this reason that it seeks to treat the purchases in question as intra-state purchases, exigible to purchase-tax under Section 3-D of the State Act.

Section 3 of the Central Sales Tax Act, 1956 defines the inter-State sale/purchase. Omitting the Explanations which are not, necessary for our purpose, the Section reads as follows:

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- 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.

Section 4 specifies when can a sale or purchase of goods be said to have taken place inside a State; once a sale or purchase is determined in accordance with the said provision to have taken place inside a particular State, it must be deemed that it has not taken place in any other State. Section 6 is the charging Section. Coming back to the definition in Section 3, an inter-State sale or purchase is deemed to take place if "the sale or purchase occasions the movement of the goods from one State to another" or where "the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one State to another." The respondent-dealer says that inasmuch as the goods purchased for and on behalf of the ex- State principals were sent to them forthwith, the said purchases squarely fall under clause (a) of Section 3 According to clause (a) of Section 3, an inter-State sale or purchase is one which occasions the movement of goods from one State to another. In other words, the movement of goods from one State to another must be the necessary incident - the necessary consequence - of sale or purchase. A case of cause and effect - the cause being the sale/purchase and the effect being the movement of the goods to another State. The purport of this clause has been succintly stated by Shah, J. In Tata Iron and Steel Co. Ltd. Bombay v S.R. Sarkar and Ors., [1961] 1 S.C.R. 379, a decision of the Constitution Bench:

"In our view, therefore, within Cl.(b) of S.3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto: cl.(a) of s.3 covers sales, other than those included in Cl.(b) in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State."

To the same effect is the decision in Union of India and Anr. v.K.G. Khosla & Co. (P) Ltd. & Ors., [1979] 3 S.C.R. 453. Chandrachud, CJ., speaking on behalf of himself, D.A. Desai and R.S. Pathak, JJ. ruled: "It is not true to say that for the purposes of section 3(a) of the Act it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale, The true position in law is as stated in Tata Iron and Steel Co. Ltd., Bombay v.S.R. Sarkar and others (1) wherein Shah, J. speaking for the majority observed that clauses (a) and (b) of section 3 of the Act are mutually exclusive and that section 3(a) covers sales in which the movement of goods from one State to another "is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State." Sarkar, J. speaking for himself and on behalf of Das Gupta, J. agreed with the majority that clauses (a) and (b) of section 3 are mutually exclusive but differed from it and held that "a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides". The view of the majority was approved by this court in the Central Marketing Co. of India v. State of Mysore, (1) State Trading Corporation of india v. State of Mysore (2) and Singareni Collieries Co. v. Commissioner of Commercial Taxes, Hyderabad. (3) In K.G. Kholsa & Co. v. Deputy Commission of Commercial Taxes, (4) counsel for the Revenue invited the court to reconsider the question but the court declined to do so. In a recent decision of this court in Oil India Ltd. v. The Superintendent of Taxes and Others (5) it was observed by Mathew, J., who spoke for the court, that: (1) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) 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, and (3) 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. The learned Judge added that it was held in a number of cases by the Supreme Court 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."

The decision in Kholsa and Co. explains that to be called an inter-State sale or purchase, it is not necessary that the contract of sale must expressly provide for and/or stipulate the movement of goods from one State to the other; it is enough if such movement of goods is implicit in the contract of sale. If, however, the movement of goods is neither expressly provided for in the contract nor is it implicit in it, the movement of goods from one State to another, - even if one takes place - cannot be related to the sale/purchase. In such a case the movement of goods would be un-connected with an independent of the sale/purchase. It would not fall under Section 3(a). To fall thereunder, the sale and the movement of the goods must be parts of the same transaction.

In the decision in A. Hajee Abdul Shakoor and Company v. State of Madras, [1964] 8 S.C.R. 217 the following statement occurs: "The mere fact that the article sold in the State had been brought from outside the State does not make the sale of that article a sale in the course of inter-State trade or commerce. It is only when A, in State X, purchased through a commission agent in a State Y and receives the articles purchased through the commercial agency that the sale comes within the expression `in the course of inter-State trade': See State of Travancore Cochin v. Shanmugha Vilas Cashew Nut Factory." This statement is in accord with the ratio of the decisions aforementioned.

If we examine the facts of this case in the light of the above principles, it would be clear that the purchases effected by the respondent-dealer were inter-State purchases. The purchases were made by the respondent as a commission agent on behalf of the ex-U.P. principals and the goods purchased under each of the purchases were duly despatched to such principals It is found that such despatched took place not later than three days from the date of purchase, as soon as the railway wagon was available. The purchase of goods and their despatch to ex- State principal were parts of the same transaction. The movement of goods from Uttar Pradesh to another State was occasioned by and was the result - or the incident of - the purchase. It was the consequence of the purchase. Such movement of goods, though not proved to have been expressly stated in the contract of sale, was yet held to have been agreed upon between the parties. We must emphasise that the question whether a sale/purchase is an inter-State sale/purchase depends on the facts of each case. The principles are well settled; it is only a question of application of these principles to the facts found in each case.

Sri Sehgal, learned counsel for the State of Uttar Pradesh contended that the purchases made by the respondent- dealer in the State of U.P. were completed purchases. Once a purchase is complete in the State of Uttar Pradesh, he contends, it is immaterial whether the goods are later despatched to another State or sold within the State. For the purpose of the U.P. Sales Tax Act, it is enough that a sale or purchase takes place within the State; the subsequent movement of the goods is irrelevant, says the counsel. We find it not possible to agree. As held by Mathew, J. in Oil India Co. Ltd. v. Superintendent of the Taxes and Ors., [1975] 3 S.C.R. 797, quoted approvingly in Khosla and Co., "a sale which occasions the movement of goods from one State to another is a sale in the course of the inter-State trade, no matter in which State the property in the goods passes. "Even if the goods move in pursuance of an agreement of sale and the sale is completed in the State in which the goods are received, it will be an inter- State sale, as explained by this Court in Balabhagas Hulaschand v. State of Orissa, [1976] 2 S.C.R. 939. Sri Sehgal placed strong reliance upon certain observations in Balabhagas v. State of Orissa. The question that arose for consideration in that case was whether the definition of "sale" in Section 2(g) of the Central Sales Tax Act takes in an agreement of sale. Fazal Ali, J; speaking for the Bench comprising Mathew, J. and himself, held that it does. Having said so, the learned Judge made certain further observations which read as follows:

"Furthermore, we can hardly conceive of any case where a sale would take place before the movement of goods. Normally what happens is that there is a contract between the two parties in pursuance of which the goods move and when they are accepted and the price is paid the sale takes place. There would, therefore, hardly be any case where a sale would take place even before the movement of the goods. We would illustrate our point of view by giving some concrete instances:

Case No.1 - A is a dealer in goods in State X and enters into an agreement to sell his goods to B in State X. In pursuance of the agreement A sends the goods from State X to State Y by booking the goods in the name of B. In such a case it is obvious that the sale is preceded by the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be deemed to be occasioned by the sale. The present case clearly falls within this category.

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 in 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.

Case No. III - B a purchaser in State Y comes to State X and purchases the goods and pays the price thereof. After having purchased the goods he then books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

Generally these are only type of cases that can occur in the day to day commercial transactions. It is, therefore, manifest that there can hardly be a case where once a sale takes place the movement is subsequent to the sale."

The Learned Judge proceeded further and held thus: "(2) That are following conditions must be satisfied before a sale can be said to take place in the course of inter-State trade or commerce: (i) that there is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another;

(ii) that in pursuance of the said contract the goods in fact move from one State to another; and (iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move. If these conditions are satisfied then by virtue of Section 9 of the Central Sales Tax Act it is the State from which the goods move which will be competent to levy the tax under the provisions of the Central Sales Tax Act. This proposition is not, and cannot, be disputed by the learned counsel for the parties."

Sri Sehgal relies particularly upon "Case No. III" contained in the first extract and clause (iii) mentioned in the second extract. Relying upon these statements, the learned counsel contends that a concluded sale must necessarily take place in the other State and not in the State from which the goods emanate. According to him, a concluded or a completed sale must follow the movement of goods and should not precede. If a purchase or sale is complete in the State from which the goods emanate, he says, it can never be an inter-State purchase or sale. We cannot accede to this understanding of the learned counsel. The said observations, no doubt rather widely worded, must be understood in the context of the question that arose for consideration in that case viz., whether an agreement of sale is included within the definition of `sale' as defined in the Central Sales Tax Act. Be that as it may, the true position has since been explained in the later decision in Khosla and Co. It is immaterial whether a completed sale precedes the movement of goods or follows the movement of goods, or for that matter, takes place while the goods are in transit. What is important is that the movement of goods and the sale must be inseparably connected. The ratio of Balabhagas is this: if the goods move from one State to another in pursuance of an agreement of sale and the sale is completed in the other State, it is an inter-State sale. The observations relied upon by Sri Sehgal do not constitute the ratio of the decision and cannot come to the rescue of appellant-State. Indeed, if one looks to the language employed in clause (a) of Section 3 it seems to suggest that the movement of goods follows upon and is the necessary consequence of the sale or purchase, as case may be, and not the other way round. Sri Sehgal is equally not right in saying that movement of goods from the State of U.P. to other State(s) is immaterial and that the U.P. Legislature is competent to tax each and every purchase that takes place within that State. Ordinarily, it is so, but where a sale or purchase, though effected within the State of U.P. occasions the movement of goods sold/purchased thereunder from the State of U.P. to other State, it becomes an inter-State sale. Such a sale cannot be

taxed by the Legislature of Uttar Pradesh. It is taxable only under the Central Sales Tax Act, 1956. Situation could have been different if the respondent- dealer had purchased the goods on behalf of the ex-U.P. principals in the first instance and thereafter in pursuance of subsequent instructions despatched the goods. In such an event the instructions to despatch the goods are independent of the instructions to purchase. There is a break between the purchase and despatch of goods. It would not be an inter-State purchase. An out-State principal may first instruct his commission agent within the State of U.P. to purchase the goods on his behalf and to await his further instructions. Depending upon the market conditions and other circumstances, the ex-State principal may instruct his agent in the State either to sell the goods within the State or to despatch the goods beyond the State. If such were the case, Sri Sehgal would have been right in saying that the State of U.P. was competent to tax the purchase by the respondent-dealer. But that is not the case here on the facts found by the appropriate authorities. For the above reasons, the Civil appeals fail and are dismissed, but in the circumstances without costs.

CIVIL APPEAL NO. 1534 OF 1990.

A Further question arises in this appeal. The respondent-dealer, who is situated similarly to the respondent-dealer in Civil Appeal No. 1809 of 1982, issued Forms III-C-I and paid tax on the purchases made by him under the U.P. Sales Tax Act. However, after the decision of the Allahabad High Court in Human Trading Company, he claimed refund of the tax paid by him and probably got it, contending that the purchases effected by him were not assessable to tax under the U.P. Sales Tax Act. He was then proceeded against under Section 3-B of the U.P. Sales Tax Act which provides that if a person issues a false or wrong certificate or declaration prescribed under the provisions of the said Act and the rules thereunder to another person by reason of which "a tax leviable under this Act" on the transaction is not collected (or collected at a lesser rate), then the person issuing such wrong or false certificate/declaration becomes himself liable to pay such tax. The case of the authorities was that the respondent- dealer represented to the authorities by issuing Form III-C- I that the purchases effected by him are intra-State purchases liable to be taxed under the State enactment and thereby prevented the authorities from taxing the transactions under the Central Sales Tax Act; he must, therefore, make good that tax amount. Assuming that what the authorities say is true, even so the respondent-dealer cannot be proceeded against under Section 3-B for the reason that the said Section applies to a situation where the tax "leviable under this Act" i.e., State Act, is evaded. It does not apply where the tax payable under the Central enactment is evaded. This appeal has to be dismissed on this short ground alone, and is accordingly dismissed. No costs.

N.P.V. Appeals dismissed.

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