

SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

M/S. Kerala State Small Industries Development

C.A.No.2255-56 of 1999

(S.P. Bharucha, N. Santosh Hegde and Y.K. Sabharwal JJ.)

10.04.2001

JUDGMENT

Y.K.Sabharwal,J.

1. The respondent, Kerala State Small Industries Development and Employment Corporation Ltd., imported cement into India under an import licence. The ships were berthed at Tuticorin port in Tamil Nadu and the cement unloaded at the said port. The respondent had opened its branch office at Tuticorin to undertake the delivery of cement at Tuticorin port and to further transport it to various parties including those in the State of Kerala. It, however, did not make any payment of central sales tax to the State of Tamil Nadu. In respect of the cement directly despatched from Tamil Nadu to the customers in Kerala, the respondent took the stand that it had no liability to pay the sales tax in the State of Tamil Nadu as the goods were imported with the intention to deliver the same to customers and sub-allottees at Kerala. The Enforcement Wing Officers of the Sales Tax Department of the State of Tamil Nadu conducted investigation, seized the record and on the basis thereof came to the conclusion that direct sales were made by the respondent-corporation from the State of Tamil Nadu to the State of Kerala and the said sales were camouflaged as sales from Kerala depots with a view to avoid payment of inter-state sales tax by showing that the cement was despatched to the warehouse of the Corporation shown as stock-transfer whereas, in fact, it was sent directly to the customers. The fact that it was sent directly to the customers was only noted in the separate papers and not shown in despatch notes. The assessing authority on the basis of documents on record assessed the respondent to central sales tax in respect of assessment years 1982-83 and 1983-84 holding that the documents had established an inter-state sale of imported cement and the respondent had attempted to camouflage the transaction in the manner aforesaid. The appeals filed by the respondent were dismissed and the orders of assessment were upheld by the Appellate Assistant Commissioner. The second appeals preferred by the respondent before the Tamil Nadu Sales Tax Appellate Tribunal were also dismissed.

2. The aforesaid orders of the Tribunal were challenged by the respondent in two revision cases filed in the High Court. The High Court by the impugned judgment and order has set

aside the orders of assessment and also the orders passed in the first and second appeals. The State of Tamil Nadu is in appeal.

3. The only ground on basis whereof the High Court has set aside the orders of assessments is that the unloading of cement at the Tuticorin port in Tamil Nadu was purely a fortuitous circumstance as, according to the respondent, when the ship came, the port of Cochin was congested and there would have been considerable delay and additional expense if the ship had to wait for a berth at Cochin and, therefore, Tuticorin being the nearest other port, the ship berthed at the said port and cement was unloaded there for the purpose of transportation from the State of Tamil Nadu to the State of Kerala. Learned counsel for the appellant contends that before the High Court there was no material whatsoever for coming to the conclusion that the ship berthed at Tuticorin because of congestion at Cochin port and that being the only basis for setting aside the orders of Sales Tax authorities, the impugned judgment is clearly erroneous and unsustainable. Learned counsel for the respondent-corporation was unable to draw our attention to any material which may show that the unloading of the cement at Tuticorin Port had to be undertaken under the circumstances found by the High Court. It is evident that a submission in this regard was made across the Bar before the High Court which was accepted and made the basis for setting aside the findings of fact arrived at by the assessing authority and confirmed in first and second appeals. The authorities, on consideration of material on record, had recorded factual findings that the respondent had opened a branch office at Tuticorin before arrival of ships; during the period of nearly 9 months cement was unloaded at Tuticorin; sale of cement from Tuticorin was directly made to the parties in Kerala and the transactions were camouflaged to show as if cement was being sent to warehouse of respondent in Kerala. These findings have been set aside by the High Court without any material whatsoever. There was no basis for the High Court to hold that the respondent in the normal course would have transferred the entire stock of cement to its own godowns at Kerala and from there it would have delivered the cement to its customers in Kerala but it had to be unloaded at Tuticorin on account of the unforeseen congestion in the port in Kerala which led to ship being diverted to Tuticorin. There was also no basis for the High Court to conclude that:

"The fact that the lorries loaded with cement at Tuticorin were moved directly to the premises of the customer in Kerala, in the background of these facts, cannot be regarded as a factor tilting the scales in favour of a finding that these were inter-state sales."

4. It may also be noticed that the Sales Tax Authorities had also come to the conclusion on the basis of record that well before the arrival of the shipment at Tuticorin port, the respondent had opened its office at Tuticorin and that no material had been produced about the non-availability of berth at Cochin when the ship reached Indian Ocean.

5. For the foregoing reasons, we set aside the impugned judgment and order of the High Court and allow the appeals with costs.