

SUPREME COURT OF INDIA

A & G Projects & Technologies Ltd.

Vs.

State of Karnataka

C.A.No.7233 of 2008

(S.H. Kapadia and Aftab Alam JJ.)

11.12.2008

JUDGMENT

S.H. Kapadia, J.

1. Leave granted.
2. This civil appeal filed by the appellant (assessee) is directed against the judgment and order dated August 14, 2007 delivered by the Karnataka High Court in STRP No.85 of 2005.
3. Appellant is a company incorporated under the *Companies Act, 1956* and engaged in execution of electrical works contracts. Appellant is a registered dealer both under the *Karnataka Sales Tax Act, 1957* and the *Central Sales Tax Act, 1956* ("CST ACT 1956", for short). Appellant was awarded three independent contracts towards - (i) supply of capacitor banks, (ii) execution of civil works and (iii) erection and commissioning of capacitor banks at various sub-stations of the Karnataka Power Transmissions Corporation Limited ("KPTCL", for short) in the State of Karnataka. Pursuant to the contracts, appellant appointed M/s. Bay West Power and Energy Pvt. Ltd. ("M/s. Bay West", for short) as EPC contractor located outside the State of Karnataka for procuring the capacitor banks ("equipment", for short) because the said EPC contractor had a prior arrangement with the manufacturers of the said equipment. In that transaction four parties were involved, namely, the appellant, M/s. Bay West, manufacturers of the equipment and KPTCL being the ultimate consumer. Although four parties had intervened, in substance, there were three independent contracts involved in the transaction. The first contract was between the appellant and KPTCL for supply of the equipment. The second was between the appellant and M/s. Bay West. It was a procurement contract. The third contract was between M/s. Bay West and the manufacturers.
4. For the assessment year 2000-01, the appellant filed its return of turnover under the CST ACT 1956. Before the AO, appellant contended that the goods originated from the manufacturers and ultimately reached KPTCL though the title to the goods vested originally with M/s. Bay West as the EPC contractor who in turn transferred the title to the goods to the

appellant when they were in transit and in turn the appellant transferred the title by endorsing the lorry receipt in favour of KPTCL. According to the appellant, there were three sales. According to the appellant, the second and the third sales were subsequent sales, hence, the appellant claimed exemption from tax for such sales under Section 6(2) of the CST ACT 1956. This argument of the appellant stood rejected by the AO holding that the appellant's turnover fell under Section 3(a) of the CST ACT 1956. According to the AO, the first sale by the manufacturers to M/s. Bay West was a Section 3(a) sale; that, the second sale by M/s. Bay West to the appellant was also a Section 3(a) sale and not a sale under Section 3(b) and that even the subsequent sale by the appellant to KPTCL (ultimate purchaser) was also a sale under Section 3(a) and not under Section 3(b) and consequently it was held that the appellant was not entitled to exemption under Section 6(2) of the CST ACT 1956. Consequently, the claim for exemption made by the appellant stood dismissed. However, relying on the proviso to Section 9(1) of the CST ACT 1956, the AO held that the State of Karnataka was competent to levy the tax.

5. Aggrieved by the decision of the AO, the appellant herein preferred appeals before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore (hereinafter referred to as "FAA"). That Authority took the view that the AO had erred in holding that the goods stood appropriated by KPTCL at the premises of the manufacturers. However, FAA proceeded to hold that the subsequent sale stood concluded before the movement of the goods and, therefore, there was no first inter- State sale and thus Section 6(2) of the CST ACT 1956 was not applicable. Accordingly for different reasons, the FAA upheld the levy of tax under the CST ACT 1956.

6. The matter was carried in appeal to the Karnataka Appellate Tribunal, Bangalore by the appellant. It was held that mere failure of the appellant to prove its case for exemption under Section 6(2) of the CST ACT 1956 did not make the tax leviable by the State of Karnataka. The Tribunal observed that the dealer in this case was located in the State of Karnataka and the purchaser was also in the State of Karnataka. According to the Tribunal, the movement of goods under the contract was not from the State of Karnataka but into the State of Karnataka and, therefore, there was no inter-State sale in the State of Karnataka and, therefore, the levy of tax on the value of the goods supplied was totally unjustified.

7. Aggrieved by the said decision of the Tribunal, the Department preferred Sales Tax Revision Petition No.85 of 2005 under Section 23(1) of the *Karnataka Sales Tax Act, 1957*. By the impugned judgment the High Court held that the sale of goods in favour of KPTCL was completed when the goods were appropriated by KPTCL before commencement of movement of goods from the place of manufacturers in Chennai (Tamil Nadu) to KPTCL in the State of Karnataka and, therefore, the inter-State sale of goods fell under Section 3(a) of the CST ACT 1956 and, therefore, was not entitled to exemption under Section 6(2) of the 1956 Act. According to the High Court since the sale in question did not comply with the conditions under Section 6(2), the matter came under first proviso to Section 9(1) of the CST ACT 1956. In this connection it was observed that the appellant had not obtained C-Form from the State Department in respect of sale of goods sold on the basis of contract entered into by the appellant with KPTCL and, therefore, the proviso to Section 9(1) of the CST

ACT 1956 stood attracted and consequently the State of Karnataka was the "Appropriate State" entitled to collect tax in respect of the goods sold by the appellant to KPTCL under the CST ACT 1956. Hence this civil appeal is filed by the appellant seeking to challenge the impugned judgment dated August 14, 2007.

8. At the outset, it maybe noted that in this case there is no dispute regarding the nature of the transaction being inter-State sale. As stated above, before the AO the appellant had contended that in all there were three independent contracts in the entire transaction. The appellant claimed exemption under Section 6(2) in respect of the second and third contracts. They contended that the said contracts were "subsequent sales" falling under Section 3(b) and consequently they were entitled to exemption under Section 6(2) of the CST ACT 1956. This argument was rejected. The AO came to the conclusion that all the three contracts came under Section 3(a) and, therefore, the appellant was not entitled to claim exemption under Section 6(2) of the CST ACT 1956.

9. We have to proceed in this case on the above basis that all the three contracts came under Section 3(a) of the CST ACT 1956, as held by the AO. What is urged on behalf of the appellant is that if all the three contracts stood covered as inter-State sales under Section 3(a) then in that event proviso to Section 9(1) would not stand attracted. It is this argument which arises for determination in this civil appeal and for that purpose we are required to quote the relevant provisions of the CST ACT 1956 which have to be analyzed in the context of the controversy.

10. Accordingly, we quote herein below the following provisions of the CST ACT 1956 which read as under:

"SECTION 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.

Explanation 1---Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2--Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

"SECTION 6. Liability to tax on inter-State sales.-

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

PROVIDED that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(a) To the Government, or

(b) To a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

PROVIDED that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit, -

(a) A certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) If the subsequent sale is made--

(i) To a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) To the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of Section 8:

PROVIDED FURTHER that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, -

(a) The sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name); and

(b) The dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section."

"SECTION 9. Levy and collection of tax and penalties -

(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

PROVIDED that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected- (a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods; and

(b) Where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected."

11. Section 3 of the CST ACT 1956 formulates the principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce.

“The question whether a particular sale is an inter-State sale or an intra-State sale, though essentially one of fact, is not the pure question of fact inasmuch as the facts of a given case have to be examined in the light of Section 3 and, therefore, it is a mixed question of fact and law. Section 3 defines when a sale or purchase of goods takes place in the course of inter-State trade or commerce. Two tests are applied, one of which is that a sale or purchase takes place in the course of inter-State trade if it occasions movement of the goods from one State to another, and the other test is that a sale or purchase takes place by transfer of documents of title, during the movement of the goods from one State to another. A sale (transfer of property) becomes inter-State sale under Section 3(a) of the CST ACT 1956 if the movement of goods from one State to another is under the contract of sale, and the property in the goods passes

to the purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In this case, it has been held that all the three sales fell under Section 3(a) of the CST ACT 1956.

In fact, the appellant's case for exemption under Section 6(2) stood rejected by the AO specifically on the ground that all the three sales stood covered under Section 3(a). Within Section 3(b) are 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 whereas Section 3(a) covers sales, other than those included in clause (b), in which the movement of goods from one State to another is under the contract of sale and property in the goods passes in either States [SEE: *Tata Iron & Steel Co. Ltd. v. S.R. Sarkar*¹ (SC) at page 667]. The dividing line between sales or purchases under Section 3(a) and those falling under Section 3(b) is that in the former case the movement is under the contract whereas in the latter case the contract comes into existence only after the commencement and before termination of the inter-State movement of the goods. Therefore, it follows that an inter-State sale can either be governed under Section 3(a) - if it occasions movement of goods from one State to another - or under Section 3(b) - if it is effected by transfer of documents of title after such movement has started and before the goods are actually delivered. In other words, a sale which takes place under Section 3(a) shall stand excluded from the purview of Section 3(b) and vice versa. By Section 3, it was intended to define the class of sales which shall be deemed to be sales in the course of inter-State trade or commerce. Under the CST ACT 1956, tax is leviable on the sale of goods and not because of the movement of the goods. The movement of the goods is only material for the purpose of deciding whether the sale took place in the course of inter-State trade or commerce or whether such sale was purely an intra-State transaction. The name given to a transaction by the parties concerned, does not decide the nature of the transaction. In order to make a transaction taxable under the CST ACT 1956, the transaction must be a "sale" as defined in Section 2(g) taking place in the course of inter-State trade or commerce in any of the manner provided for in clause (a) or clause (b) of Section 3. Section 6(1) of the CST ACT 1956 imposes a liability to pay tax on sale of goods other than electrical energy effected by a dealer in the case of inter-State trade or commerce during a year. Sub-section (1) of Section 6 appears to provide for multi-point tax but this is subject to the other provisions of the Act. This qualification which is reflected in the other provisions of the Act restricts the levy to a single point subject to certain conditions, restrictions and circumstances. Sub-Section (2) of Section 6 exempts from levy a subsequent inter-State sale to a registered dealer of goods [described in Section 8(3)] and also to Government, provided conditions of the proviso to sub-section (2) are fulfilled.

However, a subsequent sale not falling within Section 6(2) will, however, attract tax because of Section 9(1), notwithstanding the fact that the first sale has been subjected to tax under Section 6(1) of the CST ACT 1956. Thus Section 6 makes every dealer liable to pay tax under the 1956 Act on all sales of goods other than electrical energy affected by him in the course of inter-State trade. Analysing Section 6(2), it is clear

that sub-section (2) has been introduced in Section 6 in order to avoid cascading effect of multiple taxation. A subsequent sale falling under sub-section (2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as the first sale has been subjected to tax under sub-section (1) of Section 6 of the CST ACT 1956. Thus, in order to attract Section 6(2), it is essential that the concerned sale must be a subsequent inter-State sale effected by transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-State sale. It is only then that Section 6(2) may be attracted in order to make such subsequent sale exempt from levy of sales tax. However, the proviso to sub-section (2) of Section 6 prescribes further conditions and it is only on fulfillment of those conditions that the subsequent sale stands exempted. If those conditions are not satisfied then, notwithstanding the fact that the sale is a subsequent sale, the exemption would not be admissible to such subsequent sales. This is the scheme of Section 6 of the CST ACT 1956.

12. In the present case, according to the AO, the second and the third sales were not subsequent sales. According to the AO, all the three sales are inter-State sales falling under Section 3(a) and consequently Section 6(2) (which deals with the exemption) never stood attracted and, therefore, the appellant was not entitled to exemption.

13. The question before us is: if the sales stood covered under Section 3(a) and if they were not entitled to exemption under Section 6(2), whether the appellant could have been taxed by the Department by invoking the proviso to Section 9(1) of the CST ACT 1956? The object of Section 9(1) is two-fold. Firstly, it provides that the tax on inter-State sales under Section 3(a) shall be levied by G.O.I. and collected by the State Government from which the movement of goods commenced. Secondly, it specifies the Appropriate State competent to levy tax on second and subsequent sales made during the movement of goods from one State to another as also the authority, where such second and subsequent sales are exigible to tax. As state above, Section 6(2) of the CST ACT 1956 provides for subsequent sales to be exempt from tax on the conditions prescribed therein. However, if and where those conditions are not satisfied, even such subsequent sales would attract tax and only in such circumstances the proviso to Section 9(1) which specifies the State, which is competent to levy the tax, would come in. [SEE: *Jadhavjee Laljee v. State of Andhra Pradesh*² (AP) at page 204].

“The proviso to Section 9(1) contemplates two situations, namely, (a) where such subsequent sale is made by a registered dealer and (b) where such subsequent sale is made by unregistered dealer.

In respect of situation (a), the proviso to Section 9(1) prescribes that the Appropriate State competent to levy tax on such subsequent sale shall be the State from which the registered dealer obtains a declaration in C-Form whereas in the case falling in situation (b), it provides that the Appropriate State competent to levy the tax shall be the State from which such subsequent sale has been effected. However, the entire

proviso to Section 9(1) applies only to "subsequent sales" covered by Section 3(b) and not to sales under Section 3(a) CST Act 1956.

14. Applying the above analyses to the facts of the case, we are of the view that the proviso to Section 9(1) of the CST ACT 1956 is not applicable to the facts of the present case as the AO has categorically held that all the three sales fell under Section 3(a) of the CST ACT 1956. Once the said sales fall under Section 3(a) then under Section 9(1) the tax has got to be collected by the State of Tamil Nadu from which the movement of the goods commenced. The case of the appellant regarding subsequent sales effected during the movement of the goods stood specifically rejected both by the AO and the FAA and, therefore, the question of taxing such sales under the proviso to Section 9(1) of CST ACT 1956 did not arise.

15. Our above view is fortified by the judgment of this Court in the case of *Bharat Heavy Electrical Ltd. and Others v. Union of India and Others*³. We quote herein below paras 17 and 18 of the said judgment which read as under:

"17. The aforesaid survey of the relevant provisions of the Act clearly shows that Sections 3, 4, 5, 9(1), 14 and 15 pertain to and deal with distinct topics and different aspects of Articles 286 and 269. It follows that if a question arises whether a sale is an inter-State sale or not, it has to be answered with reference to and on the basis of Section 3 and Section 3 alone. Section 4, or for that matter Section 5, is not relevant on the said question -- see the Constitution Bench decision in *TISCO v. S.R. Sarkar*⁴ and the decisions in *Manganese Ore (India) Ltd. v. Regional Asstt. Commr. Of Sales Tax*⁵ and *Union of India v. K.G. Khosla & Co. Ltd.*⁶. Similarly, where the question arises, in which State is the tax leviable, one must look to and apply the test in Section 9(1); no other provision is relevant on this question."

"18. We may, at this stage refer to the decision of the *Bombay High Court in CST v. Barium Chemicals Ltd.*⁷. A particular transaction of inter-State sale was subjected to Central sales tax in Andhra Pradesh. The same sale was again sought to be taxed under Central Sales Tax Act in Maharashtra, which was questioned. The High Court adopted the following approach: Central sales tax is levied and collected by the Central Government; it is immaterial in which State it is collected; it cannot be levied or collected twice over; the State Governments are merely agents of the Central Government in the matter of levy and collection of Central sales tax; if so, once levied and collected in one State, rightly or wrongly, it cannot be levied and collected in another State. In our opinion, this may be an oversimplification of the matter. Maybe, from the point of view of the assessee, this approach is sound enough but from the point of view of the States (keeping Article 269 in mind) and the provisions of the Central Sales Tax Act, this may not be correct. Section 9(1) specifies the State wherein Central sales tax shall be levied and collected and the Central sales tax has to be levied and collected in that State and in no other State. The approach of the Bombay High Court makes Section 9(1) [which is enacted pursuant to Section 269(2), as pointed out hereinabove] otiose and superfluous. It would not be proper to say, in the light of the above constitutional and statutory provisions, that the dispute as to in

which State a particular inter-State sale is to be taxed is a matter between the States and that so far as the assessee is concerned, it is enough if he pays the tax at one place, whether it is really leviable in that State as per Section 9(1) or not. The law requires that it should be levied and collected in the State from which the movement of goods commences [Section 9(1) read with Section 3(a)]."

16. For the foretasted reasons, we set aside the impugned judgment of the High Court and accordingly allow the civil appeal filed by the appellant with no order as to costs.

¹(1960) 11 STC 655

²(1989) 74 STC 201

³(1996) 4 SCC 230

⁴(1960) 11 STC 655

⁵(1976) 4 SCC 124

⁶(1979) 2 SCC 242

⁷(1981) 48 STC 121