

SUPREME COURT OF INDIA

Hyderabad Engineering

Vs.

State of A.P.

C.A.No.3781 of 2003

(D.K. Jain and H.L.Dattu,JJ.,)

04.03.2011

JUDGMENT

H.L.Dattu,J.,

1. This appeal is directed against the judgment and order dated 21.06.2002, passed by the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Tax Revision Case No. 54 of 1991. By the impugned judgment and order, the High Court has dismissed the Revision Petition filed by the assessee, inter-alia, holding that the disputed transactions constitute inter- State sales, as contemplated under Section 3(a) of the Central Sales Tax Act, 1956.

2. The issue that we are called upon to decide in the case is, whether in the facts and circumstances of the case, the sale or purchase of goods can be said to have taken place in the course of inter-State trade or commerce and thereby exigible to tax under the Central Sales Tax Act, 1956 (hereinafter referred to as, "the Central Act").

3. M/s Jay Engineering Works Ltd. is a Public Limited Company, registered under the Companies Act, 1956. It has its Head Office- cum-Registered Office at 23, Kasturba Gandhi Marg, New Delhi. In the State of Andhra Pradesh, the Company has registered itself in the name and style of M/s Hyderabad Engineering Industries (Prop. - The Jay Engineering Works Ltd.). It is registered as a dealer under the Andhra Pradesh General Sales Tax Act, 1957 as well as Central Sales Tax Act, 1956.

4. The Company is engaged in the manufacture and sale of electrical fans, sewing machines, fuel injection parts and accessories etc. The Company has its manufacturing units in different parts of the country including Hyderabad, Andhra Pradesh. In addition to the factory and office in Hyderabad, the company has its branch office at Vijayawada in the State of Andhra Pradesh. Outside the State of Andhra Pradesh, the company has its godowns in different States including Delhi. In Kolkata, the company has its own office in the name of Eastern India Usha Corporation.

5. M/s. Usha Sales Ltd. (subsequently known as Usha International Ltd.) (hereinafter referred to as "UIL") is a company registered under the Indian Companies Act, with its registered office at 19, Kasturba Gandhi Marg, New Delhi. It has 16 divisional offices at various places in the country with different names at every place wherever the assessee's godowns are located. The assessee and UIL had entered into a sales agreement dated 01.05.1979. It was for a period of five years. Under the said agreement, the main function of UIL was to organize the sale and distribution of the products of the assessee and to arrange for sale promotion measures of the products and to provide after sales service and such other services as might be required in the interest of sale of the said products. The agreement also envisaged that UIL would purchase the said products as an independent principal and maintain adequate stocks and sell the same as such. We will refer to these clauses in the agreement while discussing the issues raised by the learned counsel for the parties at the time of hearing of the appeal.

6. The Company has been an assessee on the rolls of the Commercial Tax Officer, Company Circle-II, Nampalli, Hyderabad. For the assessment year 1981-82, the assessee company filed its annual returns under the Central Act in the prescribed form.

7. The assessee company claimed exemption on a turnover of `8,87,75,643.00 towards goods transported to out-of-state depots otherwise than as a result of direct sale which would attract tax under Section 6 of the Central Act.

8. The assessee's case before the assessing authority, Sales Tax Appellate Tribunal and the High Court was that the transactions on which exemptions claimed cannot be regarded as sales in the course of inter-State trade, chargeable to tax under the Central Act. This contention of the assessee is negated by the assessing authority, which view is confirmed by the Tribunal and the High Court.

9. The findings of the assessing authority with respect to the nature of the transactions with its various branches, except in the case of Calcutta Depot, may be set out in his own words :-

"The assessee company in Hyderabad is engaged in the manufacture of different types of fans and fuel injection parts. In pursuance of the said sales agreement, M/s Usha Sales Limited, Delhi (now Usha International Limited, Delhi) placed monthly indent on HEI Hyderabad for the supply of the goods to its offices in various stages. This indent is sent either by telex or Telephone or through written communication. This indent shows the model wise quantity required in each of the regions and the destinations to which the goods are to be sent are clearly mentioned at Madras, Patna, Agra. At times even based on such indents received from M/s. Usha Sales Ltd. Delhi the assessee company is effecting the movement of goods from its factory in Hyderabad to its own depots in the destination given by the Usha Sales Ltd. Alongwith the goods the assessee is sending gate pass (GPO) Cum Challan proforma invoice, way bill and lorry receipt, which are in the name of its own depot or godown. Simultaneously HEI also sends a direct communication to the "constituent" and

further requesting the "constituent" of the UIL to take delivery. At times, the unit of USL also informs the HEI that it has taken delivery of goods. In pursuance of the monthly allocation made by the UIL head office New Delhi, the various constituents or units of USL directly correspond with HEI for the dispatch of the goods, such constituents issue telegrams and telex message to HEI for urgent dispatch of the goods. On receipt of the goods in the out of state depot, the depot incharge prepares invoice in favour of the constituent of M/s Usha Sales Limited such as Nalanda Sales Corporation, Western Sales Corporation, United Sales Corporation etc., generally the names of these purchasing units owned by M/s Usha Sales Ltd. are printed on the invoices issued by the assesses depots, which shown that there cannot be any other purchases. Depot wise stock register is maintained in Hyderabad Factory showing modelwise quantitative particulars of the goods sent to the depot goods sold by the depot and the goods available with the depot as stock at the end of prescribed period. The Hyderabad factory did not receive only orders or indents from any of its depots. The indent is always placed by M/s Usha Sales Ltd. But for the said indent, neither the Hyderabad factory nor any depot known the model or quantity of goods to be sent or to be received. Neither there is any communication sent by the Marketing Deptt. of the assessee company as they were never received. On receipt of goods in the out-state depot, an invoice is prepared in favour of the respective unit of M/s. Usha Sales Ltd. (such as Nalanda Sales Corporation etc.) and all the invoices are sent without fail to the Hyderabad factory. In the books of account of the factory, the account of USL is debited for the invoice value and the sales tax collection is credited to the account of the respective State. The invoice is discounted by the HEI with Canara Bank, Secunderabad and the full amount is received by drawing Hundi on M/s Usha Sales Ltd. Delhi for 10 days on the due date. USL makes payment to Canara Bank, Delhi and on receipt of such intimation the account of USL is credited in the factory of Hyderabad. There were no transfers from one depot to another depot. The depot has no option to chose its purchase. No open sales were conducted from the depots. All the sales were affected to different units of USL whose names are printed in the respective invoices as buyers."

The assessing officer has further observed :-

"Thus intimate nexus and conceivable link between the assessee and the purchaser are manifest. The receipt of incident from USL HO the follow up and pressure for supply from the USL divisions, the periodical fixation of price to hold goods for the specified future months, the confirmation of receipt of goods by the UFL division proceeded by direct dispatch intimations to the purchasers supply of goods at "current prices" and complaints direct from USL divisions for non delivery or short delivery all in pursuance of sale agreement make me conclude that the sales from HEI to USL occasioned the movement of goods. The delivery and raising of invoice by the State godown are immaterial."

10. The assessing officer has concluded that "from a factual description of the mode of transactions, it is evident that the inter- State sales effected by the assessee to UIL have been

camouflaged as branch transfers with a view to evade tax legitimation (sic) due to the State on these transactions". It is not necessary to refer to the tax and the penalties levied by the assessing officer under the Central Act, for the issue involved in the case is legal.

11. The sole question that arises for our consideration is whether the turn-over under dispute for the assessment year 1981-82, is an inter-State sale or a branch transfer.

12. Shri S.K. Bagaria, learned senior counsel for the assessee, submitted that while the goods certainly moved from the factory at Hyderabad to the branch office of the assessee, such movement cannot be regarded as having any connection with any particular order or orders placed by M/s Usha Sales Ltd. Therefore, it is submitted that the goods moved from Hyderabad to Delhi on what were described as 'stock transfers' and such stock transfers cannot be brought within the charging provisions of the Central Act, since they cannot be regarded as sales in the course of inter-State trade and commerce. It is further submitted by referring to clauses in the sales agreement and relying on the decision of this Court that the transaction in question is merely 'branch transfers' and not 'inter-State sales'. It is submitted that the findings of the assessing authority that the movement of goods from the assessee's factory to their godowns was in pursuance of the agreement of sale between the assessee and UIL is not based on any material and, therefore, on mere presumption and assumptions the assessing authority could not have treated the branch transfers as inter-State sales. It is further submitted that there was no firm commitment between the assessee and UIL at the time of movement of goods from assessee's manufacturing unit to their godowns situated at different places in the country. It is further submitted that the assessing authority was not justified in relying on the letters of allocation issued by UIL as a contract of firm commitment for purchase of goods manufactured by the assessee. According to Shri Bagaria, the letters of allocation issued by UIL cannot be construed to be a contract of firm commitment to purchase the goods manufactured by the assessee and those letters of allocation were mere forecast of UIL's estimate of their requirements. It is further contended that there was no firm commitment on the part of UIL to purchase specific number of specified varieties of fans and for that matter the assessee had not allotted any specific number of specified varieties of fans in favour of UIL at the time the goods manufactured by the assessee were being transferred from their factory to their godowns. It is contended that the assessing authority is bound to examine each individual transaction and decide whether it constitutes an inter-State sale. Reliance is placed on the observations made by this Court in *Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes* at page 381 (SC). In conclusion, it is submitted that the assessing authority and the High Court were not justified in relying on the decision of this Court in the case of *Sahney Steel and Press Works Ltd. and English Electric Company of India Ltd.*

13. We did not have the advantage of hearing the learned counsel for the Revenue. However, with the permission of the Court, they have filed their written submissions which, to say the least, does not touch upon any of the submissions made by learned senior counsel for the assessee. Their written submissions are just the repetition and reiteration of the findings and conclusions reached by the assessing authority.

14. To resolve the controversy raised in this appeal, Section 3(a) of the Central Act requires to be noticed. The Section reads as under :-

"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."

15. The purport of Section 3(a) is explained by this Court in *Tata Iron and Steel Co. Ltd. Vs. S.R. Sarkar*² wherein it is stated "in our view, therefore, within Clause (b) of Section 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: clause (a) of Section 3 covers sales, other than those included in clause (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".

16. To make a sale as one in the course of inter-State trade or commerce, there must be an obligation, whether of the seller or the buyer to transport the goods outside the State and it may arise by reason of statute, contract between the parties or from mutual understanding or agreement between them or even from the nature of the transaction which linked the sale to such transportation such an obligation may be imposed expressly under the contract itself or impliedly by a mutual understanding. It is not necessary that in cases, there must be pieces of direct evidence showing such obligation in a written contract or oral agreement. Such obligations are inferable from circumstantial evidence.

17. Section 6 of the Central Act which is the charging Section, levies tax under the Central Act on all inter-State sales, determined as such under Section 3 of the Central Act. Section 9 of the Central Act provides that the tax payable by any dealer under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce, whether such sale falls within Clause (a) or Clause (b) of Section 3, shall be levied by the Govt. of India and shall be collected by that Govt. in accordance with the provisions of sub-Section (2) of

that Section, in the State from which the movement of the goods commenced. The proviso enumerates an exception, but we do not consider it necessary to refer to it for the purpose of this case. Section 3 of the Act deals with inter-State sales and details the circumstances as to when a sale or purchase of goods can be said to take place in the course of inter-State trade or commerce. A perusal of Section 3 of the Central Act shows that it raises a presumption of law and that is, 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 transfer of documents of title to the goods during their movement from one State to another. For purposes of clause(b) of Section 3, Explanation I says that where the goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall 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 II clarifies that when the movement of goods commences and terminates in the same State, the movement of goods will not be deemed to be from one State to another merely because of the fact that in the course of such movement, the goods pass through the territory of any other State. For a sale to be in the course of inter-State trade or commerce under Section 3(a), the two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another within the meaning of clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State. With a view to find out whether a particular transaction is an inter-State sale or not, it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase. Section 6A of the Central Act provides that if any dealer claims that he is not liable to pay tax under the Central Act in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. It also provides the mode of discharge of that burden of proof.

18. What follows from a conjoint reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment. Where the department takes advantage of the presumption under Section 3(a) and/or to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase of goods in the course of inter- State trade or commerce, then the assessee can rebut the presumption by filing declaration in form `F' under Section 6A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by way of sale. When the department does not take advantage of the presumption under Section 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax under Section 6, the declaration in Form `F' under section 6A would be of no avail.

19. It is an accepted position in law that a mere transfer of goods from a head office to a branch office or an inter-branch transfer of goods, which are broadly brought under the phrase 'Branch transfers' cannot be regarded as sales in the course of inter-State trade, for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of these stock transfers.

20. In the instant case, the case of the Revenue is not only based on the agreement of sale but also on the presumption under Section 3(a) of the Central Act.

21. In the instant case, the assessing authority and the Tribunal have recorded a finding of fact that there were prior contracts between Usha Sales Ltd. and the assessee and in pursuance of those contracts, the goods moved from the assessee's factory at Hyderabad to its Branch offices to be delivered to Usha Sales Ltd. or their nominees. In order to appreciate the contention canvassed, it is necessary to set out certain clauses from the sales agreement. The sales agreement dated 01.05.1979 contained, inter alia, the following :-

"Clause 1 The agreement products shall comprise sewing machines fan, their component parts/ accessories, and such other products as may be mutually agreed upon from time to time.

Clause 2 The territory covered by the agreement shall comprise of all states of India excluding West Bengal/Andaman & Nicobar.

Claues 3 USL shall undertake to organize sale and distribution of agreement products in the market. Maintain adequate stocks at all times in its godowns in different regions.

Arrange for sales promotion measures as may be necessary from time to time on mutually agreed basis.

Provide after sales service.

Provide such other services as may be required in the interest of sales, a mutually agreed basis from time to time.

Clause 4 USL shall make all purchases of agreement products as an independent principal and sell the same as such.

Price (5)(a) JE's selling prices to Usha sales shall be intimated by JE from time to time.

The prices at which Usha Sales shall sell the agreement products to their agents/dealers shall be determined by them so however that Usha sales make up on their purchases price shall not exceed:-

Sewing Machines/Accessories 10.00 Rs. 5/- (per top) Fans 7.35% Component parts 13.35% The price so computed shall be maximum price and Usha sales shall be free to sell at prices lower than the said maximum.

(b) Consumer prices (except for hire purchase) sales shall not exceed the maximum authorized by JE from time to time. However, Usha sales/their dealers/agents shall be free to charge prices lower than the said maximum.

(c) Any sales tax/other tax payable may be charged additionally by Usha Sales.

Freight/handling charges shall be reimbursed on an agreed basis.

(d) In the event of any reduction prices by JE corresponding rebate shall be allowed on unsold stocks held by Usha sales/their dealers/agents. Sales to Third Parties In case it is considered expedient by JE to supply/bill the goods directly to any of the USHA sales dealers agents against orders procured by Usha Sales make JE shall pay to Usha sales the difference between JE's subsisting selling prices and the invoiced value exclusive of sale tax and other local taxes.

Payment

a) Payment for all purchases shall be made to JE within 75 days of the date of the bill falling which Usha sales shall pay interest at JE's Maximum borrowing rates from their bankers at that time.

b) Usha sales shall be liable to make payment in respect of supplies invoiced by JE on its nominees in case of default by the letter. Sales Deliveries Sales/deliveries shall be made to Usha Sales their nominees at any of JE's factories region godowns at the company's option."

22. Clause (1) of the agreement speaks of the products that the assessee is required to supply to the purchaser. Clause (2) speaks of the territory in which the purchaser is permitted to sell the products supplied by the assessee. Clause (3) speaks of the obligations of the purchaser in organizing the sale and distribution of the products supplied by the assessee. It also provides that the purchaser shall keep the adequate stocks in its godowns in different regions and also arrange sales promotions as may be required from time to time. Purchaser is also required to provide after sales service to the products supplied. Clause (4) specifically provides that the purchaser/UIIL shall make all purchases of the agreed products as an independent principal and sell the same as such. Clause (5) which is a clause where price is fixed by the assessee and that price is the maximum price and UIL - purchaser is permitted to sell at prices lower than the maximum price fixed by the assessee. Clause (6) speaks of sales that may be made by the assessee to the third parties. Clause (7) speaks of the time limit within which payments for the supply of goods to be made by UIL to the assessee. Clause (8) is an important clause in the sales agreement. It specifically says that the sales/deliveries shall be

made to UIL/their nominees at any of the assessee's factories, region, godowns at the option of the company. It is clear from the aforesaid clauses set out herein above, that the assessee firstly undertakes to sell and supply its manufactured products to UIL and the UIL will have the entire country, except West Bengal and Andaman and Nicobar Islands, as its distribution/selling zone. The agreement also provides that UIL will purchase the products agreed under Clause (1) and sell the same as an independent principal. Clause (8) is very relevant for the purpose of this case. It obligates the assessee to make delivery of the products manufactured either to the UIL's nominees or in any one of the godowns of the assessee at the option of UIL.

23. From the above Clauses in the agreement, what can be inferred is that the assessee has undertaken to supply their manufactured products to UIL or to its nominees at the agreed price at any of the assessee's godowns at the option of UIL. A contract of sale of goods would be effective when a seller agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in presenti, it is called a `sale'; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called "an agreement to sell". When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred are fulfilled, the "agreement to sell" becomes a `sale'.

24. Before we deal with the issues raised in the appeal, we will first notice some of the decisions of this Court on interpretation of Section 3(a) of the Act.

25. In *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar & Others* (supra), the majority view of this Court was that where the goods are moved from one State to another as a result of a covenant in the contract of sale, that would be clearly a sale in the course of inter- State trade. The Court further proceeded to hold that even a movement of goods from one State to another, which is merely incidental to, and which is not part of, the contract of sale, is also brought within the fold of Section 3(a) of the Central Act.

26. In *Oil India Ltd. v. The Superintendent of Taxes and Others*³ this Court held "No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the course of inter-State trade". The inter state movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. 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. 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."

27. In *English Electric Company of India Ltd. v. The Deputy Commercial Tax officer and Others*⁴ this Court observed, that "when a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to dispatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be sale

between the factory and its branch. If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter State trade or commerce as such a sale or purchase occasioned the movement of goods from one State to another. The presence of an intermediary, such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller is the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position."

28. In *South India Viscose Ltd. vs. State of Tamil Nadu*⁵ this Court observed that if there is a conceivable link between a contract of sale and the movement of goods from one State to another in order to discharge the obligation under the contract of sale, it must be held to be an inter-State sale and that character will not be changed on account of an interposition of an agent of the seller who may temporarily intercept the movement.

29. In *Union of India & Anr. v. K.G. Khosla and Co. Ltd.*⁶, this Court reiterated and approved the decision in *Oil India Ltd.*'s case (supra) and held that if a contract of sale contains stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale. But for the purposes of Section 3(a) of the Act, it is not 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.

30. In *State of Bihar v Tata Engineering and Locomotives Ltd.*⁷ it is observed "if a contract of sale contains a stipulation for such movement, the sale would, of course, be an inter state sale. But it can also 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 but such movement is the result of a covenant in the contract of sale or is an incident of that contract."

31. In *Bharat Heavy Electricals Ltd. v. State of Andhra Pradesh*⁸ it is observed that "In the light of the settled legal position, it cannot be and it has not been seriously disputed that the movement of goods from the Hyderabad Unit of the petitioner-company direct to the customer's site in the other State are inter-State sales pursuant to the contracts entered into by BHEL with the customers/purchasers. The fact that the contracts were entered into with the head office or the unit having overall responsibility for execution is a different one or that the executing unit itself raises the invoices and realizes the price from the customers does not in any way detract from the position that the inter-State movement of goods from Hyderabad is pursuant to and a necessary consequence of the contract of sale. In the instant case, the goods are tailor-made, manufactured according to certain specification and designs and the components/equipment which go into the plant are directly dispatched by the Hyderabad unit to the customer in the other State and the goods are received from the common carrier by the customer's representative. The movement of such goods from Andhra Pradesh to other States cannot but be ascribed to contracts of sale entered into by the head office of the

petitioner-company of which the petitioner is part and parcel. The fact that the contract was not entered into with Hyderabad unit or that the inter-State movement had taken place at the instance of another unit of the same company does not make material difference. It is to be noted that for the value of the goods dispatched, the debit note is sent by Hyderabad unit to the executing unit. It may be that the customer does not pay the amount direct to the Hyderabad unit which manufactures and dispatches the goods. But in the light of the settled propositions that the branches and head office constitute one single legal entity, it does not matter by whom the billing is done or to whom the payment is made by the customer."

32. From the above decisions, the principle which emerges is - when the sale or agreement for sale causes or has the effect of occasioning the movement of goods from one State to another, irrespective of whether the movement of goods is provided for in the contract of sale or not, or when the order is placed with any branch office or the head office which resulted in the movement of goods, irrespective of whether the property in the goods passed in one State or the other, if the effect of such a sale is to have the movement of goods from one State to another, an inter-State sale would ensue and would result in exigibility of tax under Section 3(a) of the Central Act on the turn over of such transaction. It is only when the turnover relates to sale or purchase of goods during the course of inter-State trade or commerce that it would be taxable under the Central Act.

33. The learned counsel Shri Bagaria mainly contends that there is nothing in the sales agreement, express or implied, which may be regarded as specific covenant under which the assessee's manufacturing unit was obliged to move the specific goods from its manufacturing unit at Hyderabad to its branch offices for delivery of the goods to UIL. The learned counsel submitted that a sale can be regarded as having occurred in the course of inter- State trade, if the concerned contract of sale itself includes a covenant either express or implied, to the effect that the goods must move from one State to another for the purpose of implementing the `sales agreement'. We cannot agree with the submission of learned counsel Shri Bagaria. We say so for the reason that the inter-State movement must be the result of a sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned at such movement. 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 [See Oil India Ltd. (supra)].

34. We now turn to the facts of the present case to determine whether the transaction in question is inter-State trade or commerce or mere stock transfers to branch offices.

35. Shri Bagaria, learned senior counsel, submits that the movement of the goods from the assessee's factory to its godowns situated outside the State was not in pursuance of the agreement between the assessee and UIL; that there was no firm commitment between the assessee and UIL at the time of movement of the goods from the factory to the godowns; that the only communication between the assessee and UIL were in the nature of forecasts; and the completion of the sale to the UIL did not take place at the factory place and the

appropriation of the goods were done at the godowns and it was open to the assessee till then to allot the goods to any purchasers. Therefore, the learned senior counsel contends that the findings and conclusions reached by the statutory authorities under the Central Act are perverse. In our considered view, though the submission of the learned senior counsel is attractive, but on a deeper consideration, it lacks merit.

36. The assessee, for the assessment year 1981-82 under Central Act, claimed exemption on a turnover of ₹7,88,13,639/- towards stock transfer of USHA brand electric fans. The same was disallowed by the assessing officer and assessed to tax @10% in the absence of 'C' declaration forms by classifying the transactions falling under Section 3(a) of the Central Act.

37. It is not in dispute that there is "sales agreement" between the parties which was entered into sometime in the year 1979 and the same was to expire sometime in the year 1984. Under this agreement, UIL had agreed to purchase the products manufactured by the assessee and sell it as an independent principal. The assessee has its godown in every State including Delhi. The UIL has also its divisional office in different names at every place wherever the assessee's godown is located.

38. In pursuance to the sales agreement, UIL placed monthly indents on the assessee with instructions to dispatch the goods of given size and quantity to the named destination. Pursuance to such indents, the assessee dispatched the goods to its godowns to the given destination and sent goods dispatch intimation directly to the concerned UIL divisional office at the destination furnishing size and quantity dispatched with L.R.No. and name of the transport company. The statutory authorities, from the correspondence between UIL and the assessee noticed in their order that UIL divisional offices correspondent directly with the assessee for the supply of stocks and also informs them about the receipt or non-receipt of the stocks. The assessee, on receipt of the request for supply of goods dispatches the same to its state godowns and the person-in-charge of the godowns to the UIL division office by raising sales invoice.

39. We have already noticed the relevant clauses in the 'sales agreement'. A close reading of the clauses would clearly indicate that the parties have agreed to discharge certain obligations cast on them under the agreement. The agreement provides for the products to be supplied, sales zone, to organize sales and service for UIL to make purchases and sell products as an independent principal, selling prices to be informed from time to time, payments against purchases to be made within a particular time and the goods to be delivered to UIL either at the assessee's factory or at its regional godowns. Clause 8 of the agreement, if it is read with other clauses, makes it clear that there is stipulation for the movement of the goods from the factory to the godowns situated in different places to be delivered to UIL. It is because of these covenants, the assessee is obliged to move the goods from its factory to the godown situated in other States to fulfill its part of the contract.

40. Section 2(g) of the Central Act defines the meaning of the expression 'sale'. This expression was explained by this Court in *Balabahas Hulsachand Vs. State of Orissa*⁹ at

page 213. This Court stated that the words 'Sale of goods' used in this Section includes 'an agreement of sale' as such an agreement is an element of sale and is also an essential ingredient thereof, in terms of Section 4(1) of the Sales of Goods Act, that is, it is sufficient if the agreement of sale contemplates an inter-State movement of the goods though the sale itself may take place, at the destination or in the course of the movement of the goods. This view was reiterated and further explained by this Court in *Union of India Vs. K.G. Khosla and Co*¹⁰. The consistent view of this Court appears to be that even if there is no specific stipulation or direction in the agreement for an inter-State movement of goods, if such movement is an incident of that agreement, or if the facts and circumstances of the case denote it, the conditions of Section 3(a) would be satisfied.

41. Shri Bagaria contends that the assessee has received only 'allocations' in the nature of market or distribution forecasts and such allocations are neither in the nature of indents nor orders and the assessee never accepted such allocations letter sent by UIL. It is further submitted that except in few instances, the actual dispatches of the goods to its godowns never tallied with the allocations letter sent by UIL. Therefore, such allocations letter cannot be construed as "firm orders". Therefore, the transactions cannot be brought within the purview of inter-State trade or commerce to attract charging provisions under the Central Act. In our view, though the ultimate purchaser UIL placed orders for a particular quantity of goods to be supplied, the assessee did not supply the actual quantity indented for. We do not, however, think that this makes any difference to the application of Section 3(a) of the Central Act. In our view, it does not matter how much goods were delivered to the branch office which just acted as a conduit pipe before it ultimately reached the purchaser's hands. All that matters is that movement of the goods is in pursuance of the contract of sale or as necessary incident to the sale itself. Further, the sales agreement is for a period of five years. If there is short supply of the goods than what was indented for, then the same could be adjusted in the subsequent dispatch. Therefore, to contend that there was no firm order placed by UIL with the assessee and accordingly, it would not come within the purport of Section 3(a) of the Central Act and they are mere branch transfers, cannot be accepted. We may also note that the assessing officer, while considering this stand of the assessee, has made reference to several correspondence for the period from April, 1981 to March, 1982 and has come to the conclusion though both the assessee and UIL terms those correspondence as mere letter of allocations, they are infact in the nature of indents placed by UIL with the assessee for the supply of a particular model of fans, particular quantity and the destinations of delivery. This finding of fact is confirmed by the final fact finding authority namely, the State Tax Tribunal. To us, this finding of fact does not appear to be perverse, which would call for our interference.

42. Shri Bagaria, learned senior counsel for the assessee, laid much stress on the issue that in the instant case, there is no firm order placed by UIL on the assessee for the supply of particular type or quantity of goods and the only communication that they had placed only a 'forecasts' which only depicts the requirement in a particular State and therefore, those forecasts cannot be even remotely considered as either purchase orders or indents for supply of goods. It is also contended that the "sales agreement" is only an understanding between the parties for the supply of manufactured goods by the assessee to UIL and the agreement is

not binding on the parties, since it does not provide for any claim for damages, if there is any breach of any of the conditions stipulated therein by any one of the parties. It is stressed by the learned senior counsel that the assessee company, since it has branches in various parts of the country, its manufactured products are stocked in those branches and the branches in turn, have effected sales of those goods to consumers which would include UIL also. This argument is also noticed by the final fact finding authority, namely the Sales Tax Appellate Tribunal and has negated the same by assigning cogent reasons. The Tribunal, after reappreciating the entire documents available on the record and also the modus operandi adopted by the assessee in its well considered order, has concluded that the so called 'forecasts' are nothing but request made by UIL for supply of goods to meet the requirements of the consumers in various parts of the country. Though, the said communication is termed as 'forecasts', according to the Tribunal, they are nothing but firm orders placed by the UIL with the assessee for supply of particular type of goods and particular quantity pursuant to their understanding reflected in the 'sales agreement', which is continuing one for the continuous supply of goods during the period of agreement which stretches over a period of 5 years, it is difficult to accept the submission of the learned senior counsel that the 'sales agreement' is only for the purpose of purchasing of their goods and selling in different parts of the country by UIL which has its offices wherever the assessee has its godowns of branch offices and also difficult to accept that there was no movement of goods pursuant to their 'letter of allocations', which the assessee would contend that it is not a firm commitment or firm order for the supply of goods. To be fair to the learned senior counsel, we also perused number of 'letters of allocations' sent by UIL to the assessee from time to time and the response thereof of the assessee. On a perusal of the same, it is clear that an order was placed by UIL is a composite form to supply of goods through their branch offices and the movement of the goods thereto from the assessee's factory to the assessee's godown was to fulfill the demand made pursuant to the 'letters of allocation' which the assessee claims that the same is in the nature of forecast. In our view, the movement of the goods from the assessee's factory to its various godowns situated in different parts of the country was pursuant to 'sales agreement' coupled with 'forecasts' which are nothing but 'indents' or firm orders. Therefore, in our opinion, the transaction between the assessee with its branch offices is a clear case of inter-State sales and not branch transfers, as claimed by the assessee.

43. Shri Bagaria, learned senior counsel, submitted that the branch offices of the assessee would also effect sales of products supplied by the assessee to other customers including State and Central Govt. Therefore, it is contended that the branch offices of the assessee had full discretion to sell the goods to any person of their choice. In our view, merely because the branch office could also effect supplies directly to some of the bulk consumers, it cannot be said that all supplies that are made to branch offices are not pursuant to the Sales Agreement and letter of allocation of UIL. Since the assessee could not furnish the exact figure insofar as such sales the assessing authority has granted exemption on a turnover of `87,57,071/-, being 10% of the total value of the claim towards stock transfer.

44. The learned senior counsel Shri Bagaria contended that the case law on which reliance placed by the High Court and other Statutory authorities are distinguishable and none of those decisions support the case of the Revenue. This contention of the learned senior

counsel need not detain us for long, since the assessing authority, in the instant case, after carefully considering the relevant clauses in the sales agreement and the voluminous correspondence between the assessee and the UIL, has given its finding that the transaction in question is pure and simple inter-State sales and falls within the purview of Section 3(a) of the Central Act. This finding of fact has received the approval of the First Appellate Authority and the Sales Tax Appellate Tribunal which is the last fact finding authority in the appeals filed by the assessee.

45. The learned senior counsel also contended that the assessing officer is expected to look into each transaction in order to find out whether a completed sale had taken place which could be brought to tax under Section 3(a) of the Central Act. Reliance is placed on the Constitution Bench decision of this Court in the case of Tata Engineering and Locomotive Co. Ltd. (supra). We are bound by the view expressed by the Constitution Bench decision of this Court. However, in the present case, the assessing officer has not just picked up a stray transaction to hold that the entire transaction for the entire period of assessment is inter-State sales, which would attract the charging provision. In our considered view, the assessing officer, in his detailed and well considered order, has looked into nearly 378 documents and voluminous correspondence between the assessee and UIL and has discussed and co-related the documents to prove on facts that the disputed transaction is inter-State sales though the assessee claims that it is a mere stock transfer. Therefore, we cannot accept the submission of the learned senior counsel in this regard. Bearing in mind the provisions of Section 3(a) of the Central Sales Tax Act, 1956 and on the facts of the case, the transactions in question were inter-State sales taxable under the Central Act.

46. As a result of our above discussion, we do not find any merit in this appeal and the same is accordingly dismissed. No order as to costs.

¹(1970) 26 STC 0354

²(1960) 11 STC 0655 (SC)

³(1975) 35 STC 0445 (SC)

⁴(1976) 38 STC 0475 (SC)

⁵(1981) 48 STC 0232 (SC)

⁶(1979) 43 STC 0457

⁷(1971) 27 STC 0127(SC)

⁸(1996) 102 STC 0345 (A.P.)

⁹(1976) 37 STC 0207

¹⁰(1979) 43 STC 0457