

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2222 OF 2012
(@ SPECIAL LEAVE PETITION(C)NO.25637 OF 2010)**

M/S.ZUNAID ENTERPRISES & ORS. ... APPELLANTS

VERSUS

STATE OF M.P. & ORS. ... RESPONDENTS

WITH

C.A.NO.2223 OF 2012 (@ SLP(C)NO.26619/2010)

WITH

C.A.NO.2224 OF 2012 (@ SLP(C)NO.26622/2010)

WITH

C.A.NO.2225 OF 2012 (@ SLP(C)NO.26798/2010)

O R D E R

- 1. Leave granted.**
- 2. Since we intend to direct the appellants/assesseees in these matters to subject themselves for appropriate adjudication before the Assessing Authority, we have taken up these appeals for early hearing.**
- 3. The appellants are dealers, registered both under**

the provisions of the Madhya Pradesh Commercial Taxes Act/VAT Act and Central Sales Tax Act, 1956 (for short 'the Act'). They have also registered as exporters of Tendu leaves (*Tendu Pattas*) and Bamboos. Some of the assesseees are dealers in Tendu leaves and some of them are dealers in Bamboo.

4. The Madhya Pradesh State Minor Forest Product (Trading & Development) Co-operative Federation Limited ('the Federation' for short) had initiated the tender process for sale of Tendu leaves and the bamboos, which are minor forest produce. One of the condition that was stipulated in the tender documents was that the highest bidder whose bid is accepted, has to remit the taxes under the VAT Act to the State Government.

5. The appellants herein are successful bidders. Immediately after their tender documents were accepted, the appellants had approached the High Court by filing a petition under Article 226 of the Constitution, *inter alia*, seeking a writ in the nature of *mandamus* to the respondents/revenue to treat the sales, made by the Federation in favour of

the appellants, as purely inter-state sale and, therefore, not exigible for the levy of tax under the VAT Act. They had also sought for incidental and ancillary prayers in the writ petition.

6. The High Court, after hearing the learned counsel for the parties to the *lis*, merely relying upon certain clauses in the tender documents, has proceeded to hold that the purchase of tendu leaves and bamboos by the appellants is pursuant to the tender process initiated by the Federation and in view of a particular clause in the tender documents, the assessees are liable for payment of tax under the VAT Act. The reasoning and the conclusions reached by the High Court is flawed by the appellants in these Civil Appeals.

7. We have heard Shri Ravindra Shrivastava, learned senior counsel appearing for the appellants and other learned counsel appearing for other appellants in these appeals and also Shri Vivek Tankha, learned Additional Solicitor General for the State of Madhya Pradesh and other learned counsel appearing for the authorities under the VAT Act.

8. At the outset, we intend to note that in these type of cases, the High Court ought not to have entertained the writ petitions filed under Article 226 of the Constitution. We say so for the reason, that, whether a sale originating in a State is an inter-state sale or not is essentially a question of fact to be determined by the authorities under the Act, since it involves the application of the provisions of Sections 3, 5, 6 and 9(i) of the Act to the facts established and hence, it will be a mixed question of law and fact. The facts requires to be brought to the notice of the Assessing Authority by the appellants and it is for the assessing authority to come to a conclusion, based on those facts whether a particular transaction is intra-state sales which is exigible to the taxes under the VAT Act or inter-state sales, as envisaged under Section 3 of the Act read with Section 6 of the charging provisions therein. It is after such adjudication, the matter can travel from one stage to the other as provided under the Act.

9. In the instant case, as we have already stated,

the relevant facts were not before the Court nor the finding of the assessing authority to decide whether the transactions in question are intra-state sales or inter-state which are exigible to taxes under the VAT Act or taxes under the provisions of the Central Sales Tax Act. Merely based on certain clauses in the agreement, in our opinion, the High Court ought not to have decided and declared that the transactions in question would be purely and simply intra-state sales and not inter-state sales. In our view, whenever a question arises as to whether a sale is inter-state sale or not, it has to be answered with reference to Section 3 and Section 3 alone. See Constitution Bench judgment in Tata Iron and Steel Co. Limited v. S.R. Sarkar (1960) 11 STC 655. Similarly, when the question arises, in which State is the tax leviable, one must look to and apply the test in Section 9(i); no other provision is relevant on this question : See Bharat Heavy Electricals Ltd. v. Union of India (1996) 102 STC 373. In that view of the matter, we cannot sustain the orders passed by the High Court.

10. In view of the above, we set aside the orders

passed by the High Court and direct the appellants/assesseees in these cases to file their monthly/annual returns before the assessing authority within a month's time from today, if not already filed. We also direct the assessing authority to adjudicate upon the returns so filed in accordance with law after affording opportunity of hearing to the appellants/assesseees within two months' time from the date of filing of the returns by the assesseees, uninfluenced by the observations made by the High Court. Till such proceedings are completed, the assessing authority(s) are restrained from issuing further demand notices to the appellants/assesseees for recovery of taxes either under the VAT Act or under Central Sales Tax Act. We also make it clear that the amounts deposited by the appellants/assesseees, during the pendency of the writ petitions before the High Court or during the pendency of the Special

Leave Petitions before this Court, shall not be demanded to be refunded to them.

11. The appeals are disposed of accordingly, with no

order as to costs.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI;
FEBRUARY 22, 2012