

PETITIONER:
COMMISSIONER OF SALES TAX U.P. LUCKNOW, ETC. ETC.

Vs.

RESPONDENT:
S/S SURESH CHAND JAIN, TENDU LEAVES DEALER, LALITPUR, ETC.ET

DATE OF JUDGMENT 07/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1197 1988 SCR (3) 446
1988 SCC Supl. 421 JT 1988 (2) 81
1988 SCALE (1) 693

ACT:

U.P. Sales Tax Act, 1948: Section 21-Assesse-Carrying on business in Tendu leave-Case of assessee no inter State Sales-C Existence of T.P. Form IV-Whether evidences existence of inter state sales.

Central Sales Tax Act, 1956: Section 3(a)-Inter states sales-Conditions to be satisfied-What are-Onus on Department to disprove dealers claim

HEADNOTE:

%

The respondent-assessee carried on business in Tendu leaves. He contended before the Assessing Authority that there was no inter state sale of Tendu leaves, that the entire sales of Tendu leaves were effected in Uttar Pradesh, and that he did not know if the purchasers had taken these Tendu leaves to places outside Uttar Pradesh, and even if they have so taken the assessee could not be assessed to tax under the Central Sales Tax Act, as the contract between him and the purchaser was to purchase goods in U.P. This contention was not accepted and the Assessing Authority assessed the respondent.

The Assistant Commissioner (Judicial) having dismissed the appeal against the order of the Assessing Authority, the respondent went in Second Appeal to the Sales Tax Appellate Tribunal. The Tribunal took notice of T.P. Form IV which was a transport permit issued by the Forest department, regarding the validity of Nikasi of Tendu leaves from the forest, and came to the conclusion that merely because T.P. Form had been issued, it does not follow that there were inter state sales. The Tribunal allowed the appeal and quashed the order passed by the assessing authority as well as First Appellate Authority.

The Revenue went up in appeal to the High Court, which held that the goods were moved out of U.P. in pursuance of an agreement of sale entered into between the assessee and their customers and that the condition precedent for imposing sales-tax under the Central Sales Tax

447

Act was not present and dismissed the appeal.

Dismissing the Special Leave Petitions of the

Department, this Court,
^

HELD: 1. Sale could be said to be in the course of inter-state trade only if two conditions concur, viz. (1) a sale of goods, and (2) transport of those goods from one State to another. Unless both these conditions are satisfied, there could be no sale in the course of interstate trade. There must be evidence that the transportation was occasioned by the contract, and as a result goods moved out of the bargain between the parties from one State to another. [448H; 449A]

Bengal Immunity Co. v. State of Bihar, 6 STC 446 referred to

2. The condition precedent for imposing sales-tax under the Central Sales Tax Act, is that the goods must move out of the State in pursuance of some contract entered into between the seller and the purchaser. [449F-G]

3. T.P. Form IV is a transport permit issued by the Forest Department. The Forest Department has given in writing that this permit did not relate to sale but was a certificate regarding the validity of Nikasi of Tendu Leaves from the forest. Merely because T.P. Form has been issued, it does not follow that there were inter-state sales. [448F-G]

4. The onus lies on the Revenue to disprove the contention of the assessee, that a sale is a local sale and to show that it is an inter-state sale. [449C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 15054-57 of 1985.

From the Judgment and Order dated 30.1.1985 of the Allahabad High Court in Sales Tax Revision No. 334, 418, 285 and 332 of 1984.

S.C. Manchanda, R.S. Rana and Ashok K. Srivastava for the Petitioner.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an application for leave to
448

appeal under Article 136 of the Constitution against the Judgment and order of the High Court of Allahabad, dated 30th January, 1985. The respondent carried on the business at the relevant time in Tendu leaves.

The respondent's case was that there was no inter-state sales of Tendu leaves in question. On the contrary, its case was that the entire sales of Tendu leaves were effected in Uttar Pradesh. This contention was not accepted by the assessing authority. Having failed in the first appeal, the assessee went up in second appeal and the Tribunal allowed the appeal and quashed the orders passed by the assessing authority as well as the Assistant Commissioner (Judicial). The Tribunal exhaustively discussed the facts. They found that the assessee carried on business in Tendu leaves and for the year 1976-77 the assessee had been assessed under Section 21 of the U.P. Sales Tax Act on inter-state sales of Rs.21,050 to a tax of Rs.2,105 whereas the case of the assessee was that the inter-state sales were nil. It was contended on behalf of the assessee that the assessee had effected the sales in U.P. According to the assessee, out of the above sales of Rs.21,050, Tendu leaves worth Rs. 10,000 were sold on 24th April, 1976 to Sri Gulam Mohammad of Kanpur and those worth Rs.11,050 were sold in cash at

Lalitpur on 5th May, 1976.

It was further contended that the assessee did not know if the purchasers had taken these Tendu leaves to places outside U.P. and even if they had so taken, the assessee could not be assessed to tax under the Central Sales Tax Act as the contract between him and the purchaser was to purchase goods in U.P. The Tribunal took notice of T.P. Form IV which is a transport permit issued by the Forest Department. The Forest Department had given in writing that this transport permit did not relate to sale but it was a certificate regarding the validity of Nikasi of Tendu leaves from the forest. It is well-settled that even if it is established that the assessee had obtained T.P. Form IV that by itself will not show that the assessee had entered into inter-state sales. Merely because T.P. Form had been issued, it does not follow that there were inter-state sales.

The principles of inter-state sales were well-settled. In *Bengal Immunity Co. v. State of Bihar*, (6 STC 446) Justice Venkatarama Ayyar had held that sale could be said to be in the course of inter-state trade only if two conditions concur, namely, (1) a sale of goods and (2) a transport of those goods from one State to another. Unless both these conditions were satisfied, there could be no sale in the course of

449

inter-state trade. There must be an evidence that the transportation was occasioned by the contract and as a result goods moved out of the bargain between the parties from one State to another.

It is apparent from the facts found by the Tribunal that the assessee had since the very beginning been contending that he had effected only local sales. He had also filed an affidavit stating that he had not effected any sales of Tendu leaves during the course of inter-state trade and commerce and that he had never applied to the Forest Department for issue of Form T.P. IV and that no such Form was ever issued to him and the Tendu leaves in dispute were not booked by him through railways or trucks for places outside U.P. The Tribunal found nothing to discredit this version of the assessee. The onus lies on the Revenue to disprove the contention of the assessee. The Tribunal found no material to do so. On these facts the Tribunal rejected the contention of the assessee.

On these contentions the Revenue went up in appeal before the High Court. The question posed before the High Court was as follows:

"Whether on the facts and under the circumstances of the case the Tribunal Sales Tax, Kanpur, was legally justified in knocking off the tax imposed by the assessing authority?"

The High Court addressed itself to the question whether the sales effected by the respondent, were inter-state sales or not. On an analysis of the findings of the Tribunal, the High Court found that the goods were not moved out of U.P. in pursuance of an agreement for sale entered into between the assessee and their customers. The existence of T.P. Form IV was taken note of but that did not conclude the matter. The condition precedent for imposing sales-tax under the Central Sales Tax Act, is that the goods must move out of the State in pursuance of some contract entered into between the seller and the purchaser. If that is a correct principle in law, the Tribunal applied this correct principle of law to the facts of this case taking into cognizance the existence of T.P. Form.

In view of the facts of this case, the High Court found

no material to interfere and dismissed assessee's contention. We are of the opinion that the High Court was right. In the premises this application for leave must fail and is accordingly dismissed.

N.V.K.

Petition dismissed.

450

JUDIS