

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

**CIVIL APPEAL NO.2288 OF 2012
(@ SPECIAL LEAVE PETITION (C)NO.12588 OF 2011)**

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

VERSUS

STATE OF CHHATTISGARH & ORS. . . . RESPONDENTS

WITH C.A.NOS.2289-2313/2012 @ SLP(C)NOS.13206-13230/2011

WITH C.A.NOS.2314-2332/2012 @ SLP(C)NOS.13721-13739/2011

WITH C.A.NOS.2333-2338/2012 @ SLP(C)NOS.13789-13794/2011

WITH C.A.NOS.2339-2341/2012 @ SLP(C)NOS.13837-13839/2011

WITH C.A.NOS.2342-2362/2012 @ SLP(C)NOS.13848-13868/2011

WITH C.A.NOS.2363-2392/2012 @ SLP(C)NOS.23669-23698/2011

WITH C.A.NOS.2396-2397/2012 @ SLP(C)NOS.19785-19786/2011

WITH C.A.NOS.2398-2406/2012 @ SLP(C)NOS.19470-19478/2011

WITH C.A.NOS.2407-2429/2012 @ SLP(C)NOS.23631-23653/2011

WITH C.A.NO.2430/2012 @ SLP(C)NO. 27388/2011

WITH C.A.NOS.2431-2440/2012 @ SLP(C)NOS.28156-28165/2011

WITH C.A.NOS.2441-2449/2012 @ SLP(C)NOS.29189-29197/2011

WITH C.A.NOS.2450-2453/2012 @ SLP(C)NOS.6980-6983/2012

O R D E R

SLP(C)NOS.13206-13230/2011:

**Respondent nos.10-12 are deleted from the array
of parties, at the risk of the petitioner(s).**

SLP(C)NOS.13721-13739/2011:

Respondent nos.10-12 are deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NOS.13837-13839/2011:

Respondent no.5 is deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NOS.13848-13868/2011:

Respondent nos.13 and 17 are deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NOS.23669-23698/2011:

Respondent nos.5-13 are deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NOS.23631-23653/2011:

Respondent no.4 is deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NOS.28156-28165/2011:

Respondent no.3 takes notice through learned counsel. Respondent nos.11,12,13,16,17,19,24,27 to

30 and 36 are deleted from the array of parties, at the risk of the petitioner(s).

SLP(C)NO.27388/2011:

Learned counsel appears and accepts notice on behalf of respondent nos.1 to 3.

SLP(C)NOS.29189-29197/2011:

Learned counsel appears and accepts notice on behalf of respondent no.3. Respondent nos.4 & 5 are deleted from the array of parties, at the risk of the petitioner(s).

1. Delay condoned in SLP(C)Nos.6980-6983/2012.
2. Leave granted in all the Special Leave Petitions.
3. The Chhattisgarh State Minor Forest Product (Trading & Development) Co-operative Federation Limited ('the Federation' for short) had initiated the tender process for sale of Tendu leaves, 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.

4. The appellants herein are successful bidders. When they were demanded to pay the taxes under the VAT Act, they thought it fit to approach the High Court by filing a petition/appeal 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.

5. 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 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 to be taxed under the VAT Act. The reasoning and the conclusions reached by the High Court is flawed by the appellants in these Civil

Appeals.

6. 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 learned counsel for the State of Chhattisgarh.

7. At the outset, we intend to remark that in these type of cases, the High Court ought not to have entertained the writ petition(s)/writ appeal(s) filed under Articles 226/227 of the Constitution. We say so for the reason, that, particularly a transaction is under the Central Sales Act, intra-state sales or inter-state sales are mixed questions of fact and law. Those 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 Central Sales Tax 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.

8. In the instant case, as we have already stated, the relevant factors 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 that the transactions in question would be purely and simply inter-state sales and not intra-state sales, as contended by the appellants, who are dealers in tendu leaves. In that view of the matter, we cannot sustain the orders passed by the High Court.

9. In view of the above, we set aside the orders passed by the High Court and now we direct the appellants/assesseees in these cases to file their monthly/annual returns before the assessing authority within a month's time from today. 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. Till such proceedings are completed, the assessing authority(s) are restrained from issuing further demand notices to the appellants/assesseees. We also make it clear that the amounts deposited by the appellants/assesseees, during the pendency of other writ petitions/writ appeals 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. The assessing authority(s) shall decide the issue and shall complete the adjudication process within two months' time from the date of filing of the returns by the assesseees, uninfluenced by the observations made by the High Court.

10. In such of those cases where the assesseees have already filed their monthly/annual returns, the assessing authority is directed to complete the assessments, if not already done. Liberty is also reserved to the appellants/assesseees to file the appeal(s) before the appellate authority within the time prescribed under the statute.

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 23, 2012