

CASE NO.:
Appeal (civil) 5272 of 2007

PETITIONER:
M/s.I.D.L.Chemical Ltd

RESPONDENT:
State of Orissa

DATE OF JUDGMENT: 16/11/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5272 OF 2007
{Arising out of S.L.P.(c) No.8377 of 2006}

A.K.MATHUR, J.

1. Leave granted.

2. This appeal is directed against the order passed by the Division Bench of the Orissa High Court dated 11.4.2006 whereby the High Court has reversed the finding of the Orissa Sales Tax Tribunal.

3. Brief facts which are necessary for disposal of this appeal are that the assessment under the Central Sales Tax Act, 1956 for the years 1976-77, 1977-78 to 1983-84, 1989-90 and 1990-91 was made in respect of assessee, M/s. IDL Industries (formerly IDL Chemicals Ltd.), a company under the Indian Companies Act having its registered office at Kukatpalli, Andhra Pradesh engaged in manufacturing explosive, detonators and accessories and holding licence under the Explosive Act, 1984. It has a manufacturing unit at Sonaparbet near Rourkela in Orissa which is also registered under both Orissa Sales Tax Act, 1947 and the Central Sales Tax Act, 1956 with the Sales Tax Officer, Rourkela I Circle, Rourkela. M/s. IDL Chemicals Ltd is a regular supplier of its products to different Government undertakings such as the Coal India Limited (hereinafter to be referred to as 'CIL'), National Mineral Development Corporation, Hindustan Zinc Limited etc. and supplies to these undertakings constituted almost 90 per cent of its total production. CIL placed orders on the appellant for supply of explosive, detonators, accessories etc. for its collieries inside and outside the State of Orissa with a stipulation that delivery should be made against the indent placed by the collieries. The appellant has its consignment agent at different places outside the State. During the assessment years in question the appellant effected supplies through its consignment agents against indents placed by the collieries and for this purpose it claimed to have dispatched the goods to its consignment agents on stock transfer basis otherwise than by way of sale. The contention of the appellant was that dispatches from its factory at Rourkela were stock transfers and were not liable to be assessed to tax under the Central Sales Tax Act as the sales took place when the supplies were made to the collieries against the indents placed by them with their consignment agents. It may be relevant to mention here that the appellant has its consignment agents in various States like Madhya Pradesh, Bihar, West Bengal and Maharashtra. All the goods were sent to their consignment agents and

from there those goods were dispatched to various collieries of CIL. Therefore, it was not inter-State sale. As against this, it was contended on behalf of the State before the High Court that the supplies were made on account of the order placed by CIL and the movement of the goods from the State of Orissa to outside States was incident of the CIL's order for supply. The transactions were purely inter-State sale from the State of Orissa, as the appellant would not have dispatched the goods outside the State for delivery to the collieries, had there been no order of CIL. It was also contended on behalf of the State that the indents were not contract of sale and that the indents placed by the collieries were simple follow up action of the purchase order of CIL dated 24.9.1976.

4. We need not refer to various orders that were placed from time to time by the CIL or otherwise. This matter was taken up by way of reference by the High Court and the following questions of law were referred.

" (1) That in view of the quotation offered by the assessee company and supply order issued by M/s.CIL indicating the firm order of rate of payment, quality to be purchased, period of contract etc. on acceptance of the offer, whether the Sales Tax Tribunal was correct in law to hold that it was not the contract of sale but the actual purchase and sale was triggered only when a colliery placed indent with M/s.IDL Chemicals?

(2) That in view of the fact that M/s.IDL Chemicals moved goods in pursuance to the supply order placed by M/s. CIL, whether the Sales Tax Tribunal was correct in law to hold that the transactions do not constitute sale falling U/s. 3(a) of the C.S.T. Act ?

(3) That in view of the fact that the indents placed by the constituents of M/s.IDL was mere indents to take delivery of the goods, whether the Sales Tax Tribunal as correct to hold that the actual sales were triggered by such indents and taken place inside the respective State and were intra-State sale subject to levy of tax under the of that State ?"

5. The basic question which calls for determination is whether the order placed by CIL amounted to sale triggered by CIL order or was an agreement to sell. On 24.9.1976 CIL placed order for supply of explosives and detonators to its collieries. This is a crucial document from which it would be clear whether it was an agreement to sell or it was a purchase order on behalf of CIL. The supply of these goods was triggered by the appellant to its consignment agents at various places and from there the explosives and detonators were supplied to the collieries of CIL. Therefore, whether the sale was within the State or the sale was inter-State. This is the only question which has to be answered by us.

6. Mr.Ganesh, learned senior counsel for the appellant strenuously urged before us that the order placed by the CIL dated 24.9.1976 for various purchases was not a purchase order but it was only an agreement to supply certain quantity of explosives and detonators to various collieries of CIL. There was no firm quantity and it was only approximate and it was subject to change. Therefore, this order was only an agreement to sell and not a sale order. It cannot be said that the goods triggered from Rourkela to various consignment agents in pursuance of the order dated 24.9.1976, this cannot be treated as inter-State sale. It was therefore, contended that the finding arrived at by the Sales Tax Tribunal and the Sales

Tax authorities was finding of fact and the High Court should not have interfered with the matter. In support of that learned senior counsel invited our attention to various decisions of this Court to which we will advert at appropriate stage. As against this, Mr. Rakesh Dwivedi, learned senior counsel appearing for the respondent- State of Orissa submitted that the supply of explosives and detonators triggered in view of the order placed by the CIL on 24.9.1976 and it was only the modus operandi of supply of all these explosives and detonators to various collieries through the consignment agents of M/s. IDL Chemicals Ltd.. In fact the whole purchase emanated by virtue of the sale order passed on 24.9.1976. Therefore, the order dated 24.9.1976 should be construed as a sale order, as firm order was passed by the CIL and the goods moved in pursuance of that order only. Mr. Dwivedi also contended that freight were charged on the goods supplied to the collieries and insurance was paid by CIL. Therefore, it was inter-State sale. Before we proceed to examine various contentions referred to by both the sides, let us first examine the nature of the order dated 24.9.1976 placed by CIL. The order passed by CIL on 24.9.1976 reads as under:

" COAL INDIA LIMITED
MATERIAL MANAGEMENT WING
15, PARK STREET,
CALCUTTA-700016.

Order No. CIL/C-2(D)/EXPL/IDL/517

Dated: 24th Sept. '76

M/s. IDL Chemicals Limited
Kukatpalli
Post Bag No. 1
Hyderabad (A.P.)

High Explosive Division
Rourkela-7

Dear Sirs,

Sub: Supply of Explosives, Detonators and Detonating/
Safety fuses to Coal India Ltd's collieries for
The period 1-6-76 to 31.05.1977.

Ref: Your letter dated SD/APM/ dated 6-4-1976 and
Your subsequent letter and discussions.

Please supply the quantities of Explosives, Detonators and Detonating/ safety fuses to the collieries of different areas as per their indents. The total quantities have been given in the enclosed schedule-I, II, III & IV. These are to be dispatched by Goods/ Passenger train 'Freight Paid' and/ or by road.

The Unit prices of the Explosives, Detonators and Detonating/ Safety fuses shall be as shown in Schedule-V attached herewith. Prices for non-permitted explosives, detonators and detonating/ safety fuses have not yet been finalized by DGS & D. Till finalization, the prices given in Schedule V for these items will prevail. If there is any deliveries/ dispatches should be made according to requisitions made from time to time by the different colliery authorities and adjusted against the respective colliery's account.

In case of Road delivery by your Van for supplies of Explosives the Van delivery charge shall be paid extra as shown in Schedule V enclosed herewith and mileage, covered by such Van shall be recorded on the relevant invoices. For supplies of all types of Detonators to CIL's collieries situated in Bihar and District of Burdwan, West Bengal, you shall not charge any transport charge.

Security Deposit : You are exempted from furnishing any deposit.

Insurance : Transit Insurance will be effected on us.

Dispatches :

- a) Railway freight charges will be paid extra at actual Subject to clause given in Schedule V.
- b) Actual Wagon deposit charges should be refunded if Cancellation of such Wagon arises due to our instructions.
- c) Excess supply made, if any, shall be acceptable to the extent of 15% over the quantities against each item in respect of each item in respect of each area as indicated in Schedules I to IV.
- d) Quantities of Explosives, Detonators and Detonating/ safety fuses supplied on and from 1.06.76 should be adjusted against this order and all supplies so made on and from 1-6-76 should be governed by the terms and conditions of this supply order.

Price Variation:

Prices of explosives, detonators and accessories are firm for the contract period. In case of any reduction in prices for non-permitted, explosives and accessories in the new DGS & D contract, these will however, be applicable to this order. The new prices of explosives given in this order take into account the increase in prices of ammonia which took place from the 23rd June, 1976. In the event of any further substantial increase or decrease in the price of Ammonia the explosive prices may be subject to upward or downward revision at actuals on the basis of justification to be provided by the manufacturer and accepted by CIL.

Notice of one month be given where revision in prices and delivery as well as packing and forwarding charges in terms of the above para is contemplated. Any supply made during the notice period will be paid for at the current prices and rates.

Discount:

You will give 1 (one) percent rebate on the current prices for and off-take exceeding 9000 tonnes on the full quantities of explosives ordered. The rebate will be given on each invoice of supply as and when supplies are made against this order. The rebate will be applicable from 1-6-1976 for all supplies made from that date. Please arrange to give credit notes for the past supplies made from 1-6-76. Respective General Managers are requested to be contacted for Monthwise allocation of Explosives and Accessories. IDL Chemicals Limited, and/ or their consignment agents namely M/s.B.P.Agarwalla & Sons (P) Ltd., P.O.Dhansar, Dist- Dhanbad, (ii) M/s. William Jacks & Co (India) Pvt. Ltd. Asansol/ Calcutta and (iii) Abdul Hussain Mulla Allabuxji, Nagpur, will supply explosives and accessories to mines on the basis of convenience and locations. Mines will follow the existing system of drawing their requirements from IDL and/ or their consignment agents who will raise the bills accordingly and payments will be made by cheques drawn in favour of IDL Chemicals Ltd.

Instructions contained in the attached Schedule VI should be strictly and invariably followed.

Please acknowledge receipt of this order.

Yours faithfully

Sd/-
(S.V.Gurumoorthy)

Chief Controller of Stores & Purchase."

The important feature of this order is that all the Managers of the Collieries in the three States will have to place order with the consignment agents of IDL Chemicals from their depots. This is a modality adopted by the appellant with a view to dispatch their goods from Rourkela to various consignment agents and from there all the collieries of CIL are bound to purchase through their agents mentioned in the order above. Though each colliery has to give its indents for purchase of explosives, detonators etc. as per the requirement but the fixed quantity has been given in the schedule appended to this order. The transit insurance was to be borne by the collieries. The mode of dispatches was also mentioned. It further says that excess supply made, if any, shall be acceptable to the extent of 15% over the quantities against each item in respect of each area as indicated in Schedules I to IV. The price is firm for contract period. Then there is a clause of price variation also. The respective General Managers are to be contacted for month-wise allocation of explosives. IDL Chemicals Limited, and/ or their consignment agents namely M/s.B.P.Agarwalla & Sons (P) Ltd., P.O.Dhansar, Dist- Dhanbad, (ii) M/s. William Jacks & Co (India) Pvt. Ltd. Asansol/ Calcutta and (iii) Abdul Hussain Mulla Allabuxji, Nagpur (Maharashtra), will supply explosives and accessories to mines on the basis of convenience and locations against this order. Mines will follow the existing system of drawing their requirements from IDL and/ or their consignment agents who will raise the bills accordingly and payments will be made by cheques drawn in favour of IDL Chemicals Ltd. Instructions contained in the attached Schedule VI should be strictly and invariably followed. Copy of this letter was sent to all over respective collieries. Therefore, what it transpires is that all collieries of CIL were under an obligation to purchase the explosives, detonators etc. from the appellant only through their agents situated in the States of West Bengal, Bihar and Maharashtra and each colliery has been given the quantities of explosives, detonators and detonating/ safety fuses to be purchased from the appellant only at the price fixed. This purchase order was issued from the apex body i.e. the CIL to its subsidiaries i.e. the collieries spreading over these three States. They cannot purchase the goods from any other company other than the appellant. Therefore, this firm order issued by the CIL is in the nature of purchase order specifying the quantities and the price thereof. It was only the convenient mode of supply, instead of sending the goods directly from Rourkela to various States. This convenient device was worked out by the appellant and CIL so that the goods need not directly be sent from the company at Rourkela but would be sent through their agents in various States. This order is definitely a purchase order, the nature of indent and the modalities were agreed, the quantity of the goods to be supplied to various collieries at fixed price was firm, the insurance and freight was to be borne by CIL and 98% of the payment was to be made by the collieries of CIL. From these facts it appears that this was a purchase order issued by the apex body, CIL by fixing the price and the quantities to be purchased by their collieries. Various other evidence was produced to show that in fact there was independent transaction with the subsidiaries and the consignment agents of the appellant and the order dated 24.9.1976 does not constitute a firm purchase order. But we regret that cannot be of any avail for the simple reason that all supplies were made in pursuance of the order of the CIL. Therefore, that was fountain head from where all supplies followed. If the terms of the order is to be construed as purchase order, then other evidence is secondary and irrelevant. In fact both the parties

understood that way only and paid CST for sometime but subsequently discontinued. Therefore, from this it follows that the whole movement of the goods from the factory at Rourkela was triggered in pursuance of the order dated 24.9.1976. There was no independent contract by the subsidiaries of CIL with the appellant. The subsidiaries were issuing indents on the agents of the appellant in pursuance of the order dated 24.9.1976. In fact the appellant instructed its consignment agents to supply the goods to the collieries as per the indents placed by them. The collieries were also asked by the very same order that they would place their indents to the consignment agents of the appellant on the price fixed in this order and the quantity mentioned therein. Therefore, it is not a case in which there was any independent contract between the subsidiaries of CIL with that of the appellant. It is in pursuance of this order dated 24.9.1976 the collieries were placing their indents for supply of the goods and the payment was made on the basis of the terms and conditions fixed in the order dated 24.9.1976. Therefore, the goods were moved from the appellant's factory for supply to CIL in pursuance of this order. We need not go into various evidence produced as we are of opinion that the order dated 24.9.1976 is a purchase order and in pursuance of this order all the indents were issued by the collieries of CIL and the payment was made as per this order and approximate quantity was fixed by this order. Therefore, it is a purchase order issued by the apex body, CIL and in pursuance of this, indents were placed by the collieries, It was a convenient mode of supply by the appellant instead of directly supplying the goods from the factory. This was not transfer of stock in trade to various branches. Hence, this was a firm order of purchase and the goods were dispatched from Rourkela to various consignment agents and from their it was supplied to various collieries.

7. Mr. Ganesh, learned senior counsel for the appellant submitted that all the 100% of the goods were not supplied to CIL but to various other public sector undertakings. That may be so, but the fact of the matter is that substantial quantities have been supplied to the subsidiaries of CIL to the extent of 75%. However, it was contended that 95% of the supply was made to the subsidiaries of CIL. That is a matter of evidence but it is beyond the dispute that major quantity of the goods were supplied to the subsidiaries of CIL. Mr. Ganesh, learned senior counsel alternatively submitted that 30 to 35 % of goods were supplied to other public undertakings. This is a matter of evidence and we need not to go into that question. But the substance of the matter is that major portion of the goods were supplied to the subsidiaries of CIL and only a small quantity was supplied to other public sector undertakings.

8. Both learned senior counsel for the parties have invited our attention to various decisions of this Court. In some cases after review of facts it was found to be inter-State sale and in some other cases it was found that it was a case of inter-State sale. No useful purpose will be served to refer to those judgments because each case had its peculiar facts. But the case which is nearer home is a case in *South India Viscose Ltd. v. State of Tamil Nadu* [(1981) 3 SCC 457]. In this case, sale of goods from seller's factory in Tamil Nadu to buyers residing in Gujarat and Maharashtra was effected in pursuance of a direct contract between the seller and the buyers and it was found to be inter-State sale. It was observed that mere fact of inter-position of the seller's agent at Bombay who prepared invoices and delivery orders for and on behalf of the seller, would not change the nature of the sale. It was further observed that if movement of goods delivered to the buyer was occasioned by the contract of sale, the mere fact that the actual sales pursuant to the contract were effected subsequently is

immaterial. Their Lordships observed as follows :

" If there is a conceivable link between a contract of sale and the movement of goods from one State to the other in order to discharge the obligation under the contract of sale, the inter-position of an agent of the seller who may temporarily intercept the movement ought not to alter the inter-State character of the sale."

9. In *Sahney Steel and Press Works Limited & Anr. v. Commercial Tax Officer & Ors.* [(1985) 4 SCC 173] it was observed that movement of the goods from Hyderabad to the branch office was only for the purpose of enabling the sale by the branch office and was not in the course of fulfillment of the contract of sale. But this was negated by this Court. This Court observed that it appears that the movement from the very beginning from Hyderabad all the way until delivery is received by the buyer is an inter-State movement. Relying on an earlier decision in *English Electric Company of India Ltd. v. Deputy Commercial Tax Officer* [(1976) 4 SCC 460], their Lordships held that it amounts to inter-State sale. Their Lordships observed as follows :

" What is decisive is whether the sale is one which occasions the movement of goods from one State to another. It was also pointed out that the branches had no independent and separate entity, that they were merely different agencies, and even where a branch office sold the goods to the buyer it was a sale between the Company and the buyer. It is true that in that case the goods, on manufacture at the Madras branch factory, were directly dispatched to the Bombay buyer at his risk and all prices were shown F.O.R. Madras, and the goods were delivered to the Bombay buyer at Bhandup through clearing agents. In the instant case, the goods were dispatched by the branch office situated outside the State of Andhra Pradesh to the buyer and not by the registered office at Hyderabad. In our opinion, that makes no difference at all. The manufacture of the goods at the Hyderabad factory and their movement thereafter from Hyderabad to the branch office outside the State was an incident of the contract entered into with the buyer, for it was intended that the same goods should be delivered by the branch office to the buyer. There was no break in the movement of the goods. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It would have been a different matter if the particular goods had been dispatched by the registered office at Hyderabad to the branch office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the buyer. The movement of the goods from the registered office at Hyderabad to the branch office outside the State cannot be regarded as an incident of the sale made to the buyer."

This case clinches the issue and we need not multiply other cases as the facts of this case are nearer home.

10. Mr.Ganesh, learned senior counsel for the appellant has also referred to various decisions which have peculiar facts but the case of Sahney Steel & Press Works Ltd.(supra) is nearer home and therefore it will not be necessary to multiply each case and unnecessarily overburden the judgment. Suffice it to say that one case which supports the view which we have taken and which has been relied on by the High Court also. Another case which is on the same line is Indian Oil Corporation Ltd. & Anr. V. Union of India & Ors. [1980 (Supp) SCC 426]. Similar is the case in Union of India & Anr. V. M/s.K.G.Khosla & Co.Ltd. & Ors. [(1979) 2 SCC 242]. Mr.Ganesh, learned senior counsel for the appellant has also submitted that the Court should also look at as to how the parties have understood the agreement and in support thereof placed reliance on a decision of this Court in The Godhra Electricity Co.Ltd. & Anr. V. The State of Gujarat & Anr. [(1975) 1 SCC 199] and also submitted that the finding of fact recorded by the Tribunal should not have been interfered with by the High Court and also invited our attention to a decision of this Court in Ashok Leyland Ltd. v. State of T.N. & Anr. [(2004) 3 SCC 1] in support of his contention that the goods were not subjected to inter-State sale. It is not necessary to go into all these facts as we have already held above on factual aspect that the goods which were triggered from Rourkela and sold to the subsidiaries of the CIL through the appellant's consignment agents were essentially meant to be sold to the subsidiaries of the CIL and the goods primarily triggered from Rourkela and were sent to the subsidiaries of the CIL amounted to inter-State sale and the view taken by the Division Bench of the Orissa High Court is correct.

11. Before we part with this case we may observe that the authorities will go into the factual aspects and find out how much of the quantity of the goods were sent to other undertakings other than the subsidiaries of CIL and assess tax on the supplies which were made to the subsidiaries of CIL as inter-State sale.

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