

\$~6, 12 to 15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: March 17, 2015

+ ST.APPL. 72/2014
+ ST.APPL. 68/2014
+ ST.APPL. 69/2014
+ ST.APPL. 70/2014
+ ST.APPL. 73/2014

B. R. FIBRES (P) LTD.

..... Petitioner

Through Mr. Vinod Bhushan Srivastava and
Mr. Ravi Choudhary, Advts.

versus

THE COMMISSIONER VALUE ADDED TAX Respondent

Through Mr. Sushil Dutt Salwan, ASC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The assessee/appellant urges the following question of law i.e. “whether the Tribunal fell into error in rejecting the assessee’s contention that the goods in question were inter state sales within the meaning of Section 3(a) of the Central Sales Tax Act?”.

2. In these appeals, the assessee is a registered dealer; it trades in cotton yarn. For the relevant assessment period, it had contended and relied upon several documents to establish that 26 inter state sale transactions have been concluded with M/s Shree Bharat International Pvt. Ltd, an UP based

registered dealer. The assessee's returns were subjected to default assessment. It preferred objections before the Objection Hearing Authority i.e. Additional Commissioner. The contention made was that the VATO fell into error in rejecting 6 out of 26 transactions as inter state sales. There is no dispute that 20 such transactions with the said UP dealer were accepted as inter state sale. They were based upon materials furnished i.e. C-forms, copies of GRs, bank statements, copies of retail invoice, relevant extracts of the ledger account etc. However, in respect of 6 such transactions of sale, the VATO was of the opinion that the assessee has been unable to discharge the burden of proving that they were, in fact, inter state sales under Section 3 of the Central Sales Tax Act. The OHA too concurred with the findings of the VATO. The relevant discussion by the OHA in this regard are as follows :

"2. DVAT-38 application, it has been pleaded that rejection of transactions/outward stock transfer on the ground of non production of GRs is not legally justified as the material send by Tempos. He further stated that all the transaction made through by challans and therefore the orders/notices of default assessment of tax, interest and penalty issued in this regard may be set aside.

3. An opportunity of hearing was provided to the objector and when Sh. Vinod Srivastava, Adv. attended the proceedings on behalf of the objector. Arguments of Sh. Vinod Srivastava were heard at length, Sh. Vinod Srivastava reiterated the same facts as have been mentioned in DVAT-38 application. In support of his claim, Sh. Vinod Srivastava filed insignificant paper without GRs/RRs :-

- 1 Copies of retail invoice*
- 2 Ledger Account*
- 3 C forms*

4. From perusal of documents submitted by the objector, it is evident that the dealer has failed to produce GRs/RRs in

support of claim of stock transfer. Consequently the claim of stock transfer was rejected by VATO (Audit) and sales in question were treated local sales and taxed accordingly. However the objector during the course of hearing of objections has also not produced relevant documents i.e. GRs/RRs, which used for transportation of goods. Accordingly, the orders/notices of default assessment of tax, interest and penalty issued in this regard are legally valid and therefore, upheld.”

3. The assessee felt aggrieved and approached the VAT Tribunal contending that the findings of the OHA on the issue of inter state sales were untenable. The relevant findings of the VAT Tribunal in the impugned order, after noticing the provisions of Section 3 of the Central Sales Tax Act, are as follows :

“The first and foremost requirement, as provided in the above section, is movement of goods. The prime requirement for movement of goods is GR/RR. The submission of the Ld. Counsel for the appellant that GRs were not issued due to the exporter’s own procedure is not satisfactory. The actual movement of goods from one State to another cannot be judged by documents like bank statement, retail invoice, ‘C’ forms, etc. Further, no Form 38 stated to be issued to the appellant is actually placed on record. Even the stamp of the security department does not mention the Regn. Number of the vehicle by which the goods were delivered. Even the judgment of the Hon’ble High court of Gujarat in the case of Commissioner of Sales Tax V. Pure Beverages Ltd. referred to by the Ld. Counsel for the appellant stipulates the condition of movement of goods which states that “Even where the goods are delivered to the purchaser or his agent in the first State if there is a movement of goods to the other State and same is occasioned as incident of contract of sale conditions specified in section 3 of the Central Act stand fulfilled”. In such a situation when there is no conclusive proof of movement of goods, even the judgment referred to above does not help the case of the

appellant. In this connection, reference made to Section 6(2) of the CST Act which also provide that where a sale of any good in the course of inter-state trade or commerce has either occasioned the movement of goods from one state to another any subsequent sale during such movement effected by transfer of document of title to such goods to a registered dealer shall be exempt from tax and not otherwise. In the present case, the appellant is not able to prove on record that the goods occasioned the movement from one state to another and hence, the claim of the appellant for inter-State sale under such a situation cannot be granted. The appeal of the appellant in this respect is, therefore, rejected.”

4. Mr. Srivastava, counsel for the appellant, relies upon the Gujarat High Court judgment reported as *Commissioner of Sales Tax V. Pure Beverages Ltd.* (2005) 142 STC 522 (Gujarat). Learned counsel particularly relied upon the following observations of the Gujarat High Court:

“In the present case, therefore, the assessee had claimed that the transactions in question were governed by Section 3(a) of the Central Act, that it was liable to be charged with tax under the said provision, but the department disputed the said averment. The contention of the department that the assessee ought to have procured evidence in the form of endorsement of the authorities at the check-post or delivery memo issued by the transporter or octroi receipts showing payment of octroi by the purchaser at the destination, etc., proceeds on the presumption that there is no movement of goods and discards the version of the assessee that both the sale and the movement of goods are part of the same transaction and there is a conceivable link between the sale and the movement of goods. In other words, the Revenue would like the court to raise a presumption that the purchaser must have diverted the goods after having taken delivery of the same at the factory gate. Not only does the Revenue fail in discharging the onus which is on it, but the presumption that it wants to draw is far-fetched in absence of any evidence to show that such an exercise had been

undertaken by the purchaser. The assessee herein, namely, the selling dealer had submitted “C” forms. It was open to the department to verify the genuineness of the transaction’ call upon the purchasers, who are registered dealers, and seek evidence to satisfy itself as to whether goods had in fact moved or not from this State to State of Rajasthan. The department does not undertake the requisite exercise, ignores the evidence produced by the assessee and merely presumes a state of affairs not warranted in law or on facts. “Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.”

5. Counsel for the revenue highlighted that in the present case, unlike in the case of the 20 transactions which were accepted as inter state sales, the authorities rejected the assessee’s contentions based upon a factual analysis. At the outset learned counsel for the revenue urged that no question of law arises given that the failure of the assessee, to prove its contention with respect to inter state sale was in the context of its repeated defaults in producing materials, at the stage of the special audit, assessment and later before the Objection Hearing Authority. Considering these circumstances and in the absence of any iota of evidence to show that goods were, in fact, subjected to movement across the border, as an integral part of their sale, the provisions of Section 3 were not attracted.

6. Section 3 of the Central Sales Tax Act is as follows :-

“3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.—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.”

7. The above provision has been interpreted in several judgments of the Supreme Court, *Tata Iron and Steel Company Ltd. V. S R Sarkar*, AIR 1961 SC 65; *Tata Engineering and Locomotive Company Ltd. V. Assistant Commissioner of Commercial Tax*, 1970 26 STC 354 and *Kelvinator of India Ltd. V. State of Haryana*, (1973) 2 SCC 629. In each of these decisions, it was underlined that a movement of goods under a covenant or an incident of the contract of sale is the subject matter of Central Sales Tax. In other words, movement of goods independent of contract of sale would not fall within the ambit of Section 3. The Authorities are also clear that movement of goods from one state to another should have been caused and be the result of the contract of sale.

8. In *Pure Beverages* (supra), the revenue's contentions were that the

entire specifications of the contract governing the transaction were contained in the reverse of the invoice. That was the basis for rejection of the claim for a lower tax levy by virtue of Section 3. Significantly, the Court also noticed that in addition, other documents such as indent memo, excise gate pass and shipping memo had been placed on record. In the present case, the assessee was able to substantiate its contention that 20 of the transactions were, in fact, inter state sales. This was because each one of them had the necessary supporting document in the form of GRs. However, in the case of these 6 transactions, there is no material to show that the movement of goods was caused by and was the result of the contract of sale. The assessee counsel contends that this Court must consider the facts in totality of circumstances i.e. 20 out of 26 transactions are undisputed and that given the factual compulsion i.e. the inability to use a formal carrier the assessee should not be prejudiced. Though this submission is attracted, the Court is at the same time aware that there is no presumption either way that an inter state sale claimed by the assessee is one per se. *Pure Beverages* (supra) relies upon the decision of *State of Rajasthan v. Sarvotam Vegetables Products* (1996) 101 STC 547 to conclude that the tender of a C form by the selling dealer raises a fundamental presumption that the purchasing dealer is a registered dealer. However, that is as far as the presumption can be taken. As to whether the transaction itself was covered by an inter state sale or otherwise is a burden that the assessee has to discharge, that it did so in other 20 cases but was unable under these 6 cases precisely underscores or highlights the burden placed upon it. In these circumstances, the Court is of the opinion that the substantial question of law sought to be urged by the assessee has to be answered against it and in

favour of the revenue.

9. The appeals are consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

MARCH 17, 2015

vld

