

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

Reserved on: April 13, 2015
Pronounced on: May 14, 2015

+ **ST.APPL.1/2015**
+ **ST.APPL.2/2015**

MRF LIMITED

..... Appellant

Through: Sh. Tarun Gulati, Sh. Sparsh Bhargava,
Sh. Anupam Mishra, Ms. Rachana Yadav, Sh.
Shashi Mathews and Sh. Kishore Kunal,
Advocates.

versus

COMMISSIONER OF TRADE AND TAXES Respondent

Through: Ms. Ruchi Sindhwani, Addl. Standing
Counsel, GNCTD with Ms. Megha Bharara with
Ms. Bandana Shukla, Advocates, for GNCTD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE R.K. GAUBA

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1. These two appeals filed under Section 81 of Delhi Value Added Tax Act, 2004 (“DVAT Act”, for short) seek to assail similar orders passed on 30.07.2014 and 04.08.2014 by Appellate Tribunal: Value Added Tax, Delhi (“the Tribunal”, for short) in the matter of assessment of the appellant company (hereinafter referred to as “the assessee”) respecting the levy of sales tax for different Assessment Years (AY), starting with 1992-93 and ending with 2004-05. In addition to the Central Sales Tax Act, 1956, reference has also been made to the law contained in the Delhi Sales Tax

Act, 1975, which was in vogue during the relevant periods prior to its repeal in terms of Section 106 of DVAT Act w.e.f. 01.04.2005. It may be added here that notwithstanding the said repeal, the remedies available under the Delhi Sales Tax Act, 1975 continue to be available in terms of the savings clause also contained in Section 106 of DVAT, *albeit* through the machinery created by the new law.

2. While issuing notice on these appeals, the questions of law raised were noted in the common order passed on 06.01.2015. On the basis of hearing held on 14.01.2015, while admitting these appeals, the following questions of law were formulated for consideration:-

“1. Whether the VAT Tribunal fell into error in holding that the discounts on sales which are subject matter of the present appeals, were not deductible?

2. Whether the VAT Tribunal fell into error in holding that the said sales were not inter-state sales within the meaning of expression under Section 3(a) of the Central Sales Tax Act, 1956?”

3. The Sales Tax Appeal No. 1/2015 relates to AYs 1992-93, 1993-94 and 1999-2000. The appeal arises out of the judgment of the Tribunal rendered on 30.07.2014 in Appeal nos. 111-115/ATVAT/04-05 for the said three assessments. Sales Tax Appeal No. 2/2015 pertains to the remaining assessments and is directed against the order dated 04.08.2014 passed by the Tribunal, commonly for Appeal Nos. 952-955/ATVAT/10-11 for the corresponding period.

4. It may be added here that in the first appeal, questions were also raised respecting the validity of the order of the Tribunal remanding for fresh consideration to the assessing authority certain issues relating to

cancelled bills, claim of RD sales, goods returned and claim on account of returned defective goods against “F” forms. But, at the hearing, the said contentions were not pressed.

5. The appellant company (the assessee) is engaged in the business of manufacture and sale of tyres and tubes and markets its products through various dealers. As part of the marketing strategy for business promotion, the assessee adopted a policy of giving discounts to its dealers. One such discount is branded as “turnover discount”, which is equal to 1% of the product value in the invoice raised. The sale invoices issued invariably bear an endorsement “entitlement for 1% discount”. Such discount, however, is given to the dealers, once in a quarter, through “credit notes”.

6. The assessee is a registered dealer under Delhi Sales Tax Act, 1975 and regularly files returns. Its claim for deduction of the “turnover discount” from the taxable turnover for AY 1992-93 was rejected by the assessing authority by order dated 31.03.1997 primarily on the ground that revised returns had not been filed. Similarly, claim for deduction for AY 1993-94 was rejected by the assessing authority by order dated 21.11.1997 on the ground that the tax had already been collected and deposited and no revised returns had been filed in such regard. Both the said orders, for AY 1992-93 and AY 1993-94, became subject matter of appeals before Addl. Commissioner, Sales Tax who, however, rejected the claim by orders dated 29.04.2004 and 30.04.2004 respectively on the ground that the amount of discount was not known at the time of giving invoice, also observing that the discount allowed by the assessee did not result in the sale price being reduced and that such discount was similar to “bonus discount”. The said first appellate authority remanded the matter for the said two years to the

assessing authority for re-consideration in light of cancellation of bills claimed by RD Sales, goods returned or claim on account of defective goods, etc.

7. The claims for deduction on account of “turnover discount” for AYs 1994-95 to 2004-05 were similarly rejected by the assessing officer by orders dated 17.09.1998, 01.11.1999, 29.02.2000, 26.09.2000, 22.01.2001, 31.12.2001, 30.09.2002, 13.03.2003, 22.03.2004, 10.02.2005 and 29.03.2006 respectively. The assessment order for AY 1994-95 was set aside by the first appellate authority by order dated 17.06.1999 and the matter remanded to the assessing officer with direction to pass a speaking order on whether the turnover discount could be allowed. The assessing authority passed a fresh order for that period on 13.01.2003 again rejecting the claim of such deduction, for the reason the dealer had not given discount to his customer. The order dated 13.01.2003 was challenged before the Commissioner by appeal which, to the extent of claim, was rejected by order dated 29.02.2004. Similarly, appeals in respect of the AY 1995-96, 1996-97, 1997-98, 1998-99, 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 were rejected by the appellate authorities by orders dated 19.02.2004, 19.02.2004, 16.02.2004, 19.02.2004, 19.02.2004, 01.12.2010, 01.12.2010 and 01.12.2010 respectively.

8. In respect of AY 1999-2000, the assessing officer by order dated 31.12.2001 under Section 9 of the Central Sales Tax Act read with Section 23 of the Delhi Sales Tax Act observed that the assessee had failed to file certain “F” forms respecting certain *inter se* sales. The matter eventually reached the Addl. Commissioner (Income Tax Appeals) but order adverse to

the interest of the assessee was passed on 01.12.2010 concerning the turnover discount.

9. The appeals preferred before the Tribunal against the above-noted orders of the first appellate authority were rejected by orders which are impugned in the two appeals brought to this court.

On turnover discount:

10. The first question of law concerns the admissibility of the claim for deduction on account of “turnover discount” @ 1% given by the assessee to its dealers. The contention of the assessee on this score have been noted by the Tribunal in its order dated 30.07.2014 as under:-

“6. ...that discount is allowable irrespective of whether it is cash discount, trade discount or any other form of discount. ... that “any concession shown in the price of the goods for any commercial reasons would be a trade discount, which can legitimately be claimed as a deduction from the turnover”. ... that the discount was not allowed at the time of sale but at a later stage does not make any difference. ... it was wrong ... to hold that the entitlement is linked with some turnover and shall come into play only after achieving some target. This is contrary to the facts and documents placed on record in support of the contention of the appellant that irrespective of any sale target, each and every turnover of the appellant’s sale to its dealer is entitled for 1% turnover discount. ...”

11. The Revenue, on the other hand, resisted the claim through submissions noted by the Tribunal in para 7 of its said order as under:-

“7. ...the very nature of endorsement on the invoices shows that entitlement of 1% discount is linked with some turnover and shall come into play only after achieving certain target and as such, the said entitlement is not admissible for cash discount. Referring to Section 2(m) of the DST Act, it was submitted that this section envisages deduction only in respect of cash

discount and not any other form of discount. Since the appellant has not given any cash discount, the discounts given by the appellant to its dealers is not entitled for deduction from the sale price. ...”

12. The Tribunal upheld the arguments of the Revenue and rejected the claim of the assessee for deduction mainly observing thus:

“8. ...Deduction is allowable only in respect of cash discount. In the instant case, it cannot be said that the discount was given in cash. On the contrary, it was to be credited to the account of the dealer on quarterly basis. It will be relevant to refer to the observations of Their Lordships in the case of M/s Indian Pistons Limited Vs. State of Tamil Nadu [(1974) 33 STC 472 (Mad)] wherein ...held as under:-

“It is well-known that a scheme of discount adopted by the commercial circles is normally of two types – cash discount and trade discount – and a discount normally denotes a deduction from the amount due as price of goods in consideration of its being paid promptly or in advance. Trade discount is the one allowed to a customer if he places an order for a certain amount or quantity or more. Such a discount is given to encourage a buyer to buy more at a time or within a period of time. When the Legislature has specifically used the words ‘cash or other discount’, it must be taken that it was aware of the normal trade practice in commercial circles of giving cash or other discounts.”

“In the above case we sustain the claim for deduction on the ground that the discount given at the end of the year based on the total purchases by a customer come within the expression “other discount”. In these circumstances, we have to hold that the bonus discount given by the assessee cannot be called a

“cash discount” so as to attract the applicability of section 2(h) of the Central Sales Tax Act which merely excludes “cash discount” and not all trade discounts.”

9. *In the case in hand, it is clear that the discount given was not a ‘cash discount’. The discount given to the dealers was to be adjusted or credited into the account of the dealers on achieving certain performances. The discount given by the appellant, as such, does not fall under Section 2(m) of the DST Act which specifically provides for deduction only on ‘cash discount’ and not of any other trade discount. ...*

10. *...that the amount of 1% of discount does not form part of cash discount according to the practice normally prevailing in the trade as per definition of sale price u/s 2(m) r/w turnover definition u/s 2(o) of the DST Act. It is so because deduction from the turnover on the basis of credit note issued by the appellant of 1% discount amount and claiming deduction of the same from the turnover does not come within the meaning of turnover which as per definition of ‘turnover’ means the aggregate of the amount of sale price receivable or actually received by the dealer in respect of the sale of the goods after deduction of the amount of the sale price as ‘sale price’ allowed only cash discount and no other discount to such like dealers under definition of sale price. ...”*

(emphasis supplied)

13. Similar reasons were set out for rejecting similar claim of the assessee for the other AYs by order dated 04.08.2014 which is impugned in the second appeal.

14. The assessee assails the adverse view taken by the Tribunal and argued that any concession shown in the price of goods for any commercial reasons would be a trade discount, which can legitimately be claimed as a deduction from the turnover. Such a concession is usually allowed by a

manufacturer or wholesale dealer with an object of improving its own prospects in the business. The appellant argues that when goods are marketed through reputed companies, firms and other individual dealers, the demand for such goods increases and correspondingly the business of the manufacturer or the wholesaler would prosper and its capacity to withstand also improves. Therefore, any concession in price shown in such circumstances by way of an additional incentive with a view to promote one's own business, qualifies for deduction as a discount.

15. It is argued that the VAT Tribunal erred in relying on *India Pistons Ltd. vs State of Tamil Nadu* (1974) 33 STC 472 (Mad.) while disallowing the deduction of turnover discount from the assessee's turnover since the facts of the present case are distinguishable from that one inasmuch as the benefit of bonus discount there had accrued to the assessee at the end of every year on achieving a pre-sale target. As a result, the credit so obtained by the assessee under bonus scheme could be used only for future transactions and the same would not vary the sale price of the product. In the present case, on the other hand, the purchasing dealer has been entitled to 1% turnover discount on every purchase made and the consideration received by the assessee herein was only after discount being given to the purchasing dealer.

16. The appellant relies on *Dy. Commissioner of Sales Tax (Law) Board of Revenue Taxes, Ernakulam vs Advani Oerlikon (P) Ltd.* (1980) 1 SCC 360 : (1983) 53 STC 48, to argue that although the turnover discount may not be a "cash discount" in the strict sense of the word yet varies the sale price of the goods sold by Appellant. It points out that the sale price which enters into the computation of the turnover is the consideration for the goods sold by the assessee and that the actual consideration is received by it from

the purchasing dealer is only after deduction of turnover discount from the invoice value received by the purchasing dealer at the end of every quarter in the form of credit notes. It was submitted that the fact that the discount is not allowed at the time of the sale but only at later date at the end of the month would not make it any the less a trade discount. It is argued that under the scheme turnover discount is passed on to the dealer through a credit note issued at the end of every quarter and although the discount in the instant case is given subsequent to sale, yet it ultimately varies the invoice value and as a result turnover also gets varied.

17. The appellant also relies upon the Madras High Court decision in *State of Tamil Nadu vs Ultramarine and Pigments Ltd.* (1980) 46 STC 220 (Mad.) while interpreting the definition of “sale price” under Central Sales Tax Act, 1956 which is in *pari-materia* with Section 2(m) of the Delhi Sales Tax Act, 1975 has held that even if a discount allowed does not strictly fall within the concept of “cash discount” still the amount is capable of adjustment in the sale tax assessment provided it goes to vary the price payable in respect of the goods. In the instant case, the turnover discount goes to vary the price payable in respect of the goods as although the sales tax is remitted by the assessee to the Sales tax authorities yet the consideration which is received by assessee from purchasing dealers is after deducting the turnover discount from the invoice value.

18. By virtue of Section 3 of Delhi Sales Tax Act, 1975, every dealer whose “turnover” in a particular financial year exceeds the taxable quantum is “liable to pay tax” under the said law “on all sales effected by him”. The Sales Tax is levied at the rates specified in Section 4. The expression “turnover” is explained in Section 2 (o) as under:-

“(o) “turnover” means the aggregate of the amount of sale price receivable, or if a dealer so elects, actually received by a dealer in respect of any sale of property in goods, made during any prescribed period in any year after deducting the amount of sale price, if any, refunded by the dealer to a purchaser in respect of any goods purchased and returned by the purchaser within the prescribed period;

PROVIDED that an election as aforesaid once made shall not be altered except with the permission of the Commissioner and on such terms and conditions, as he may think fit to impose.”

(emphasis supplied)

19. Thus, the turnover in which respect the dealer owes collection and payment of sales tax to the revenue is the sum total of the sale price received, or receivable, during the financial year. Naturally, amount if any refunded would stand excluded.

20. For appreciating as to what goes into the making of “turnover”, it is essential to understand the expression “sales price” which, in turn, is defined in Section 2 (m), of Delhi Sales Tax Act, 1975, as under:-

“(m) “Sale Price” means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation, in cases where such cost is separately charged.”

(emphasis supplied)

21. Even the plain text of the law as noted above makes it clear that in computing the turnover, the sales price received, or receivable, by the dealer is to be reduced to the extent of the “cash discount” accorded by him to the

purchasers under the normal prevailing trade practices. Unlike some other statutes governing the Sales Tax (e.g. *Kerala General Sales Tax Act 1963*, to which we shall make a reference a little later), Delhi Sales Tax Act does not specifically refer to any discount other than “cash discount”.

22. Noticeably, the language in which the meaning of these very expressions (“turnover” and “sales price”) is explained, for purposes of Central Sales Tax Act, 1956, by clauses (j) and (h) of Section 2 thereof is similar to the one of the local law (Delhi Sales Tax Act) quoted above. Contentions similar to those raised here had come up for consideration, in the context of the Central Sales Tax Act, in the case of *M/s Advani Oerlikon* (supra). The assessee in that case was a private limited company carrying on business as sole selling agent for a certain brand of welding electrodes. For the goods supplied to retailers, it charged them the catalogue price reduced by a trade discount. In the returns submitted, the assessee showed taxable turnover of inter-state sales, after deducting from the catalogue price the amount paid as trade discount to the retailers. The Sales Tax authority declined to allow such deduction. The statutory appellate authority and the High Court, in revision, however, upheld the assessee’s claim. On appeal to the Supreme Court by the Revenue, it was argued that Section 2 (h) of the Central Sales Tax Act permits deduction only of “cash discount” and makes no reference to “trade discount”. It was also contended that the case involved two distinct contracts with the retailers, one concerning the sale of goods at the catalogue price and the second according the benefit of trade discount.

23. Against the above backdrop, the Supreme Court explained the concepts of “cash discount” and “trade discount” as under:-

“5 ...It is true that a deduction on account of cash discount is alone specifically contemplated from the sale consideration in the definition of "sale price" by Section 2(h), and there is no doubt that cash discount cannot be confused with trade discount. The two concepts are wholly distinct and separate. Cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed. It is a discount granted in consideration of expeditious payment. A trade discount is a deduction from the catalogue price of goods allowed by wholesalers to retailers engaged in the trade. The allowance enables the retailer to sell the goods at the catalogue price and yet make a reasonable margin of profit after taking into account his business expense. The outward invoice sent by a wholesale dealer to a retailer shows the catalogue price and against that a deduction of the trade discount is shown. The net amount is the sale price, and it is that net amount which is entered in the books of the respective parties as the amount realizable.”

(emphasis supplied)

24. The court upheld the claim of the assessee in *Advani Oerlikon* (supra) to deduction on account of “trade discount” for the following reasons:-

“6. Under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. In a case where trade discount is allowed on the catalogue price, the sale price is the amount determined after deducting the trade discount. The trade discount does not enter into the composition of the sale price, but exists apart from and outside it and prior to it. It is immaterial that the definition of “sale price” in Section 2(h) of the Act does not expressly provide for the deduction of trade discount from the sale price. Indeed, having regard to the circumstances that the sale price is arrived at after deducting the trade discount, no question arises of deducting from the sale price any sum by way of trade discount.”

(emphasis supplied)

25. The court also rejected the argument of two successive agreements between the parties observing that having regard to the nature of a trade discount, there is only one sale price which is the price payable by the retailer calculated as the difference between the catalogue price and the trade discount.

26. In Madras High Court decision of *India Pistons Limited v. State of Tamil Nadu* (supra), followed by the Tribunal, the assessee had claimed deduction to the extent of bonus paid by it to its distributors whose net purchase from the assessee exceeded the target specified in the bonus discount scheme, whereunder the amount of rebate allowed was creditable to the customers' account and treated as a reserve from which the distributor could make future purchases. The High Court had declined the claim for deduction. Upholding the said view of the High Court, but distinguishing it from the claim on account of "trade discount", Supreme Court explained the difference in the case of *Advani Oerlikon* (supra) as under:-

"8. ...It was in the nature of an incentive bonus paid to distributors whose net purchases exceeded the target figure. It did not, and could not, affect the sale value of the goods sold by the assessee. The sale price remained undisturbed in the contract between the parties."

27. The case reported as *Govt. of India v. Madras Rubber Factory Ltd.* (1995) 4 SCC 349 concerned Central Excise and Salt Act, 1944, Section 4 whereof prescribes the mode of valuation of excisable goods for purposes of charging of duty of excise. Section 4(4)(d)(ii), as it stood at the relevant point of time, defined the expression "value", in valuation of excisable goods, making allowance, *inter alia*, for "trade discount" to be factored "in accordance with the normal practice of the wholesale trade". In the context

of the said fiscal statute, the assessee had claimed that it was granting discount to all its dealers operating under Recurring Credit Scheme (RCS), the benefit being accorded on half-yearly basis depending on the volume of purchases made by each such dealer. The assessee explained that the discount was granted by issuing “credit notes” to the dealers. The discount could not be shown in the invoice for the reason its value would be known only at the end of the half year. The objective of the scheme was to encourage the turnover of the sales. It had been found by the assessing officer that in the ultimate analysis, the dealer would pay the catalogue price reduced to the extent of credit earned. The Revenue had resisted the claim of “turnover discount” on the ground that it was neither known nor paid at the time of sale. The assessee was also granting to its dealers “prompt payment discount” though restricted to a few and for a limited period. The Supreme Court in appeal by the Revenue upheld the deduction on both counts, treating the same as “trade discount” permissible under the afore-quoted statutory provision.

28. Similar, questions arose in the case reported as *IFB Industries Limited v. State of Kerala* (2012) 4 SCC 618, though against the backdrop of the Kerala General Sales Tax Act, 1963. As alluded to earlier, the expression “turnover” is defined in the said law, in Section 2(xxvii), in phraseology more expansive than the one employed in the Central Sales Tax Act or the Delhi Sales Tax Act. The *Kerala* law would, *inter alia*, permit exclusion of “any cash or other discount on the price allowed in respect of any sale”. Rule 9(a) of the Kerala General Sales Tax Rules 1963 framed under the said statute elaborated on the method of “determining of taxable turnover”

specifying, *inter alia*, that the account must show that the purchaser had “paid only the sum originally charged less the discount”.

29. The assessee in *IFB Industries* (supra) was engaged in the manufacture and sale of home appliances. It had floated a trade discount scheme for its dealers in terms of which they would get certain discount on achieving a pre-set sales target. Since the discount was subject to achieving the sales target, the dealer would qualify for it in the later part of the financial year/assessment period, i.e. long after some sales had taken place. Of course, for the sales taking place after the sales target had been achieved, the dealer would get the articles on the discounted price. In this scheme of things, the assessee would issue “credit notes” in favour of the dealers during the period preceding the date on which sales target was achieved. The assessee claimed discount of the amount paid towards “credit notes” or the discount after the sales target, which was disallowed.

30. Reiterating the law laid down in the case of *Advani Oerlikon* (supra), the Supreme Court upheld the claim of the assessee, rejecting the contention of the Revenue against such deduction on ground of the discount not being reflected in the invoice price at the time of sale, quoting the view taken in the case of *Union of India v. Bombay Tyres International (P) Ltd.* (2005) 3 SCC 787 as under:

“25. In *Union of India v. Bombay Tyres International (P) Ltd.*, in a very brief order this Court very succinctly described “trade discount” and held it to be deductible from the sale:

“(1) Trade discounts.—Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the

nature of the discount being known at or prior to the removal of the goods. Such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

(emphasis supplied)

31. A similar view taken by Andhra Pradesh High Court in the case reported as *Godavari Fertilisers and Chemicals Ltd. v. Commissioner of Commercial Taxes* (2004) 138 STC 133 (AP) to the effect that “...a discount given by means of credit notes issued subsequent to the sale is as much a trade discount admissible to deduction in determining the turnover of a dealer” was also approved in *IFB Industries* (supra).

32. Clearly, the approach of the Tribunal in the case at hand has been misdirected. The facts here are dissimilar to those prevailing in *Indian Pistons Limited* (supra). That the provision contained in Section 2(m) of Delhi Sales Tax Act does not conceive of any deduction other than “cash discount” from the sale price on which the turnover is to be computed is of no consequence, inasmuch as, as explained by Supreme Court in *Advani Oerlikon* (supra), the effect of turnover discount, which is in the nature of a trade discount in accord with the prevailing practices of the trade, enters the calculation anterior to the computation of the sale price collected or collectible from the purchasers.

33. On facts, the Revenue does not refute that in the scheme of turnover discount applied by the assessee here each of its dealers would be entitled to 1% rebate in the sale price irrespective of any particular sales target. It makes no difference, as held in the case of *Madras Rubber Factory Ltd.* (supra), that the discount was calculated at quarterly basis and accorded through “credit notes”. The credit notes, issued pursuant to the

understanding indicated in the sale invoices declaring upfront the entitlement of the purchaser for such trade discount, would get effectuated by suitable adjustment in the payment of the sales price collected in their wake. The net effect apparently has been of the price being correspondingly varied, the amount received or receivable, thus, not being inclusive of the discount allowed.

34. The Tribunal having failed to comprehend the law laid down in *Advani Oerlikon* (supra), fell into error, because it proceeded on the wrong premise that the assessee had been in receipt of the sale price equivalent to the catalogue price from which it would subsequently allow reimbursement on the basis of turnover. Since the said assumption is factually incorrect and the turnover discount occurred “apart from and outside” the calculation of the sale price, rather “prior to it”, as in the case of *Advani Oerlikon* (supra), no question arises for deduction of any trade discount from the sale price.

35. In our view, thus, the turnover for the assessment years in question was correctly computed by the appellant herein after deducting the turnover discount granted to its dealers and rightly so declared in the returns. The assessing authorities have unjustly denied the benefit of deduction on such account. The first question of law, noted in para 2 noted above is, therefore, answered in the affirmative in favour of the assessee.

On inter-State sale:

36. We may now turn to the second question.

37. The background facts, and contentions, relevant for this part of the dispute (relating to AY 1992-93) were noted by the Tribunal in its order dated 30.07.2014 as under:-

“7. ... ₹21,63,005/- from the Returns during the year 1992-93 ...was excluded on the ground that these sales made to M/s Tyre Junction, Badarpur, Delhi had been taxed by Excise & Taxation Officer, Faridabad. Ld. Counsel for the appellant submitted that stocks related to these sales were transferred from Faridabad, but delivery of this stock was made en-route to M/s Tyre Junction at its shop at Badarpur border. The transfer of stock was recorded in the stock register of Delhi office, but sale was shown to the said dealer. There was also complete tally of stock transferred from Faridabad and sold to Tyre Junction. Further submissions made that when the goods move in pursuance to a contract to outside the State, the place of delivery in either State is not relevant and the transaction is an ISS and not a branch transfer. ...”

38. The Tribunal, however, rejected the case of the assessee on the above score for the following reasons:-

“11. ...In the instant case, the goods were transferred from the appellant's office at Faridabad to Delhi against 'F' form issued by the Delhi office of the appellant and were duly entered in the stock register. These goods were then sold to M/s Tyre Junction, Badarpur against proper invoices and also reflected in the Return. These transactions cannot, therefore, be termed as inter-State sale on the ground as submitted by Ld. Counsel for the appellant that delivery of this stock was made en-route to M/s Tyre Junction at its shop at Badarpur border and as such, the sales were rightly treated as local sale by the Ld. STO and upheld by the Ld. FAA. ...”

39. Similar reasons were set out vis-à-vis identical claim in the order concerning AY 1993-94.

40. In its challenge to the correctness of the above view, the assessee contends that the Tribunal has failed to consider that the returned turnover amounting to ₹7,65,703/- and ₹21,63,005/- for respective years was excluded by it on the ground that these sales made to M/s Tyre Junction,

Badarpur, Delhi and had been taxed by Excise & Taxation Commissioner, Faridabad. It is submitted that stocks related to these sales were transferred from Faridabad, but delivery of such stock was made en-route to M/s Tyre Junction at its shop situated at Badarpur border. The transfer of stock was recorded in the stock register of Delhi office but sale of the entire stock was shown as made to the said dealer and further that there was complete tally of stock transfer from Faridabad and sold to M/s Tyre Junction. The assessee claims to have filed the prescribed returns within prescribed time and also deposited the tax payable under Section 21(3) of the Delhi Sales Tax Act.

41. It is contended by the assessee that the Excise & Taxation Officer, Faridabad had examined in detail the Company's books of account, dispatch documents, etc. It is submitted that M/s Tyre Junction was also examined when it admitted that the goods were taken by them before reaching the Delhi godown. It is further submitted that this raises a strong presumption that there were prior orders and mutual understanding with the Company for the said supplies. When the goods are to move in pursuance to a contract outside the state, the place of delivery in either State is not relevant and the transaction is an inter-state sale and not a branch transfer.

42. In above context, Section 3 of the Central Sales Tax Act, 1956 needs to be taken note of. It reads as under:-

“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.”

(emphasis supplied)

43. It may be added that in terms of Section 9(1), the tax payable by any dealer on sale of goods effected in the course of inter-state trade or commerce is levied by the Government of India and collected by it “*in the State from which the movement of the goods commenced*”.

44. The question as to when the sale “*occasions the movement of goods from one State to another*” so as to attract the provision of Section 3 of Central Sales Tax Act came up for consideration before Supreme Court in the case reported as *Union of India and Another v. M/s K.G. Khosla & Co. Ltd. and Others* (1979) 2 SCC 242. The factual matrix was that the assessee was engaged in the manufacture of certain goods in its factory at Faridabad (Haryana). Pursuant to specific orders received by its head office at Delhi, goods were manufactured at Faridabad according to the specifications mentioned in the contracts of sale made at Delhi. It was not a case where goods were manufactured in the general course of business for being sold as and when orders are received by the manufacturer for their purchase. The contracts of sales were finalized and only thereafter specific goods were

manufactured in pursuance of such contracts. The goods in question were, thus, “future goods” within the meaning of Section 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured as per the agreed specifications, they were first dispatched to the head office at Delhi (as a matter of convenience on account to better godown and rail facilities) and then forwarded to the respective customers.

45. Upholding the contention of the assessee that the case involved inter-state sales, whilst noting that the contract of sales did not require or provide that the goods should be moved from Faridabad to Delhi, holding that the circumstances as to in which State the property in the goods passes was irrelevant, the Court held:-

“17. ...If a contract of sale contains a stipulation for such movement, the sale would, of course, be an inter-State sale. But it can also be an inter-State sale, even if, the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract.”

46. The court followed its earlier decision in *Oil India Ltd. v. The Superintendent of Taxes* (1975) 1 SCC 733, where it was held that:-

“...(1) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement; and (3) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and

incidental to the contract of sale (page 801, SCC p. 737, para 9). ”

47. Similar questions also arose in *Sahney Steel and Press Works Limited and Another v. Commercial Tax Officer and Others* (1985) 4 SCC 173, again in the context of Section 3(a) of the Central Sales Tax Act, 1956. The assessee in that case had its registered office and factory at Hyderabad (Andhra Pradesh) with branch office in various States. The branch offices were mainly engaged in effecting sales and would receive orders from customers for the supply of goods conforming to definite specifications. As in the case of *K.G. Khosla* (supra), the goods were manufactured by the Hyderabad factory after the orders for supply had been booked. Rejecting the contention of the assessee against such sales being treated as inter-state, the court following, *inter alia*, the view taken in *K.G. Khosla* (supra) held that:-

“...The manufacture of the goods at the Hyderabad factory and their movement thereafter from Hyderabad to the branch office outside the State was the result of a covenant in the contract of sale or an incident of that contract that the goods manufactured at Hyderabad according to the specifications stipulated by the buyer should be the very goods delivered to him outside the State. 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. Both the registered office and the branch office are offices of the same Company, and what in effect did not take place was that the Company from its registered office in Hyderabad took the goods to its branch office outside the State and arranged to deliver them to the buyer...”

48. We, however, find in the case at hand that the assessee (appellant) herein itself did not treat the transactions in question in its record as inter-

State sales. The provision contained in Section 6A(1) of the Central Sales Tax Act, 1956 places the burden of proving a transfer of goods claimed to have been effected “otherwise than by way of sale” upon the dealer. The clause stipulates that if a dealer claims that he is not liable to pay tax in respect of any goods on the ground that the movement thereof “from one State to another” was occasioned by reason of their transfer by him “to any other place of his business or to his agent or principal, as the case may be” not by reason of sale, he is obliged to submit a declaration to such effect in the prescribed format along with evidence, *inter alia*, of dispatch of such goods. In terms of the provision, a presumption arises that the movement of goods was “as a result of sale” in the event of the failure on the part of the dealer to furnish such declaration. The format for declaration in terms of Section 6A is prescribed by Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957 in the shape of “form F”.

49. In the case at hand, there is a clear finding of fact recorded, and noticed by the Tribunal in the impugned order, that the goods in question were transferred from the office of the appellant in Faridabad to its office in Delhi against “form F” and duly entered accordingly in the stock registers. It may be that the goods were eventually sold to M/s Tyre Junction, a dealer operating from Badarpur (Delhi). But there is no material furnished by the assessee to show that such movement of the goods from Faridabad (Haryana) to its Delhi office was for purposes of, or pursuant to the eventual sale of such goods to M/s Tyre Junction in Delhi.

50. The assessee made a claim about inter-State sales in respect of the above-mentioned goods before the assessing authority at Faridabad. The scrutiny by the assessing authority at Faridabad of such claim, *inter alia*, on

the basis of inquiry made from M/s Tyre Junction, however, cannot bind the assessing authorities in Delhi. It appears that the assessing authority in Haryana failed to take note of the manner in which the assessee treated these transactions in its records and books of account as maintained contemporaneously. The assessment proceedings in Haryana cannot lead to “presumption” in favour of the claim of the assessee before the assessing authorities in Delhi. Even otherwise, such assessment proceedings cannot be concluded on the basis of “presumption”.

51. The fact remains that the assessee itself treated the movement of goods from Faridabad to Delhi “otherwise than by way of sale” within the meaning of the clause contained in Section 6A of the Central Sales Tax Act and not only reflected it so in its stock registers but also, more importantly, made a formal declaration to such effect by issuing “form F”. No documents showing placement of orders by M/s Tyre Junction, Badarpur, Delhi for purchase of such goods have been shown the light of day and, therefore, there is nothing on which it can be inferred that the movement of goods from Haryana to Delhi had been occasioned by the sale of such goods in favour of M/s Tyre Junction.

52. The claim of the assessee about the inter-State sale of the goods, thus, remained unfounded and was rightly rejected by the authorities below including the Tribunal. We may add that if a different view has been taken by the assessing authorities in the State of Haryana or if any tax on such account has been collected from the appellant, it is for him to seek appropriate remedies there against such orders.

53. The second question of law, as mentioned in para 2 above, is thus answered in the negative against the assessee.

54. The appeals, thus, stand partly allowed to the extent indicated above.
55. Parties are left to bear their own costs.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

MAY 14, 2015
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