NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 618 of 2008

- Vijay Traders A Proprietorship Firm (Proprietor Vijay Agarwal) Through Shri Ajay Agarwal General Power Of Attorney Holder, Aged about 35 years, S/o Shri Sambhu Lal Agarwal, R/o Shailendra Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Commercial Tax, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Chhattisgarh State Minor Forest Produce (Trading & Development) Co-Operative Federation Ltd. Through Its Managing Director, A-25, VIP Estate, Near VIP Club, Khamardih, Shankar Nagar, Raipur (C.G.)
3. Commissioner, Commercial Tax, Vanijyik Kar Bhawan, Civil Lines, Raipur (C.G.)
4. Union Of India, Through Secretary, Department Of Commercial Tax, New Delhi

---- Respondent

For Petitioner	:	None
For Respondent-State	:	Shri Gary Mukhopadhyay, Dy. GA for the State

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/07/2017

1. Considering the fact that the present is a case of the year 2010, the same is disposed of by taking assistance from the Government Advocate, who is representing the State Government.

2. The challenge in the present writ petition is to the imposition of 20% sale tax and surcharge on the sale and purchase of Tendupatta by the petitioner. The claim of the petitioner primarily is on the fact that the transaction which

has been undertaken by the petitioner would fall within the category of inter-State Trade and Commerce and therefore, imposition of 20% of tax is bad in law.

3. The issue raised by the petitioner in the present writ petition seems to have been already settled by the Supreme Court in the matter of **Zunaid Enterprises and Others Vs. State of Madhya Pradesh and Others[1],** it would be trite at this juncture to refer to paras 8, 9, 11, 27, 29 & 30 (first five lines), which are reproduced hereunder:-

> "**8.** In the instant case, as we have already stated, the relevant facts 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.
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> **9.** Merely based on certain clauses in the agreement, in our opinion, the High Court ought not to have decided and declared that the transactions in question would be purely and simply intra-State sales and not inter-State sales. In our view, whenever a question arises as to whether a sale is inter-State sale or not, it has to be answered with reference to Section 3 and Section 3 alone. See the Constitution Bench judgment in *TISCO Ltd.* v. *S.R. Sarkar*[1].
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> **11.** In view of the above, we set aside the orders passed by the High Court and direct the appellant assessees in these cases to file their monthly/annual returns before the assessing authority within a month's time from today, if not already filed. We also direct the assessing authority to adjudicate upon the returns so filed in accordance with law after affording opportunity of hearing to the appellant assessees within two months' time from the date of filing of the returns by the assessees, uninfluenced by the observations made by the High Court. Till such proceedings are completed, the assessing authority(ies) are

1 **(2012) 4 SCC 211**

restrained from issuing further demand notices to the appellant assessees for recovery of taxes either under the VAT Act or under the Central Sales Tax Act. We also make it clear that the amounts deposited by the appellant assessees, during the pendency of the writ petitions 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.

27. 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 require 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.

29. 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.

30. In view of the above, we set aside the orders passed by the High Court and now we direct the appellant assessees 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 appellant assessees.”

4. In view of the aforesaid settled legal position by the Supreme Court, nothing further remains to be adjudicated in the present case. The present writ petition also stands disposed of in similar terms.

Sd/-

P.Sam Koshy
Judge

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