IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.03.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.8432 of 2004
and
W.P.M.P.No. 9920 of 2004

M/s. General Saw and Blades Co.,
rep. By its Co-ordinator H.B. Ali,
83, Madan Mohan Burman Street,
Kolkata - 700 007. ...Petitioner

Vs.

1.The Deputy Chief Materials Manager,
Integral Coach Factory,
Avadi, Chennai - 600 038.

2.The Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005. ...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus praying to call for the records pertaining to letter bearing No.ICF/SD(G)/OT/031/03-04 dated 16.03.2004, issued by the first respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.A.Mohana Krishnan

For Respondents : Mr. M.Vijay Anand,
Additional Standing Counsel
for Railways (R1)

Mr. M.Hariharan,
Additional Government
Pleader for R2

O R D E R

The prayer sought for in the present writ petition is as to whether the transaction of sale, wherein, the petitioner had purchased scrap from the first respondent, is an inter-state sale or an intra-state sale.

2. The first respondent, herein, had floated a tender on 14.11.2003 for sale of machinery in which the petitioner, herein, had participated and was declared as a successful bidder, since the petitioner is a registered dealer in West Bengal and also under the Central Sales Tax Act, it is the submission of the learned counsel for the petitioner that, since the goods purchased requires to be moved to Kolkata, the provisions of the Central Sales Tax Act would be attracted and consequently, the transaction is deemed to be an "Inter State Sale".

3. Per contra, the learned standing counsel for the second respondent submitted that the sale had concluded in the State of Tamil Nadu as per the declaration given by the petitioner dated 14.11.2003 and as per the agreement between the petitioner and the first respondent, the sale is deemed to have been concluded in the state of Tamil Nadu itself, and therefore, the transaction is deemed to be an "Intra-State sale".

4. Section 3 of the Central Sales Tax Act defines "Inter-state Sale" as the sale or purchase of goods in the course of an inter-state trade or commerce when the sale or purchase occasions the movement of goods from one state to another; is effected by a transfer of documents of title to the goods during their movement from one state to another. In the instant case, the occasion on movement of the goods from Tamil Nadu to West Bengal did not occur in the course of the sale and as such, it cannot be said that Section. 3 (a) is attracted. The intention of the first respondent in selling the scrap materials was to conclude the sale within the state of Tamil Nadu and there was no express agreement between the parties that on completion of the sale, the goods were required to be transferred to the State of West Bengal. In the absence of such an express agreement between the parties, the sale cannot be deemed to have taken place in the course of an inter-state trade, which occasions the movement of the goods from one state to another.

5. More over, the petitioner, herein, had given an undertaking along with the tender application that he would purchase and remove all the scrap materials as per the terms and conditions of the sale and in pursuance of this undertaking, he had also entered into an agreement dated 12.01.2004 wherein, he had agreed to pay the sale price together with 12% TNGST and 5% surcharge on the sales tax. In the said agreement, he had also agreed that this sale shall be completed within 10 days from the date of receipt of advise from the first respondent premises.

6. Having expressively agreed to have the sale concluded in the premises of the first respondent itself, it is not now open to the petitioner to state that the sale is an "Inter-state

sale", since he intends to move the purchased materials to another state after completion of the sale.

7. The learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in Union of India and Another Vs. M/s.K.G.Khosla & Co Ltd., and others reported in (1979) 2 SSC Page 242, and the decision of the Division Bench of Calcutta High Court in Sajjan Kumar Sharma Vs. Commercial Tax Officer and others reported in F.M.A No.249 of 2003 dated 30.04.2003, and submitted that even in the absence of any express contract, when there is a movement of goods from one state to another, the same is deemed to be inter-state sale. I am unable to agree with such proposition, since the decision of the Hon'ble Apex Court in the said judgement does not read so. As a matter of fact, in Para 17 of the said judgement, it has been clearly held that as per the terms of the contracts of sale, if the purchasers were required to move the goods from one state to another, it has to be regarded as inter-state sale and that the contract itself provides movement of the goods from one state to another. In the instant case, there was no specific contract for movement of the goods from one state to another, and therefore, the decision of the Hon'ble Apex Court may not help the petitioner. Likewise, the decision of the division bench of the Calcutta High Court is also on the same lines.

8. The learned standing counsel for the respondents, placed reliance upon the decision of the Hon'ble Division Bench of this Court in Karnataka Soaps and Detergents Ltd., Vs. The District Forest Officer & Others reported in CDJ 2005 MHC 558 and submitted that since the petitioner had chosen to transport the purchased materials between the State on his own choice, it may not be deemed as an "inter-state sale", in the absence of any express or implied agreement between the parties. Paragraph 19 of the said decision reads as follows:-

> 19. In the present case, it cannot be said that the petitioner was under any obligation of any nature to transport the sandalwood after purchase in Tamil Nadu to the State of Karnataka. No doubt, as held by the Supreme Court in the above decision, the obligation may be imposed either expressly by the contract or impliedly by a mutual understanding. However, in this case, even by implication it cannot be said that the petitioner was under any obligation to transport the goods from Tamil Nadu to Karnataka. The goods were purchased by the petitioner itself in Tamil Nadu (through its Officers) and surely it cannot be said that the petitioner was under obligation to itself to

transport the goods from Tamil Nadu to Karnataka. "A" can be under obligation to "B", but surely "A" cannot be under an obligation to "A" himself. After having purchased the sandalwood in Tamil Nadu, the petitioner could do whatever he liked with it, and he was under no obligation to transport it to Karnataka, and that he did so was of his own choice and volition and not under any obligation. No doubt, the petitioner obtained necessary permits under the Karnataka and Tamil Nadu Acts and obtained the necessary income-tax certificate, but that was all voluntary and of its own choice. If the petitioner had not chosen to transport the goods to Karnataka it may have suffered from the business point of view as it would not get the necessary raw materials for its factory in Bangalore, but that would not get the necessary raw materials for its factory in Bangalore, but that does not amount to saying that it was under any legal obligation, either express or implied, to transport the goods to Karnataka. Hence, the auction sales cannot be called inter-state sales.

The above extract is self-explanatory, to the effect that, when there was no express agreement or implied obligation between the parties to transport the goods to West Bengal, the sale cannot be termed as an inter-state sales. As a matter of fact, the Division Bench of this Court had also considered the decision cited by the learned counsel for the petitioner in Union Bank of India and Another Vs. M/s.K.G.KHosla & Co Ltd., and others reported in (1979) 2 SCC Page 242 (Supra) and thus rendered the decision.

9. In view of the above reasonings, this Court is constrained to hold that the transaction involved in the present writ petition is one of an "Intra-state sale" and not an "Inter-state sale" and as such there are no merits in the present writ petition. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. At this juncture, the learned standing counsel for the first respondent submitted that during the pendency of the writ petition, this Court had directed the bank guarantee furnished by the petitioner to be kept alive till the disposal of the writ petition. On a perusal of the said order dated 31.03.2004 passed in Miscellaneous Petition No. 9920 of 2004, it is seen that the petitioner was permitted to lift the machineries on furnishing bank guarantee for the difference amount of sales tax

as demanded by the respondents. Now, that this Court has dismissed the writ petition, the first respondent is at liberty to invoke the bank guarantee furnished by the petitioner for the purpose of realising the sales tax.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Chief Materials Manager,
   Integral Coach Factory,
   Avadi, Chennai - 600 038.

2. The Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai - 600 005.

+1cc to Mr.R.Tholgappian, Advocate, SR.No.20489
+1cc to Mr.M.Vijay Anand, Advocate, SR.No.20703
+1cc to the Special Govt.Pleader, Vide Sr.No.21080

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and
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Kak(02/07/2019)