IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No. 15037 of 2008

Indian Rayon and Industries Limited,
represented by its
Senior Vice President,
B. Venugopal,
305-E, T.T.K. Road,
Chennai – 600 018. ..Petitioner

Vs.

1. The Commercial Tax Officer,
Mylapore Assessment Circle,
46, Greenways Road,
Chennai 600 028.

2. The Appellate Assistant
Commissioner (CT) IV,
VI Floor, Kuralagam Annexe,
Chennai 600 108.

3. The Sales Tax Appellate Tribunal
(Main Bench),
represented by its Secretary,
City Civil Court Buildings,
High Court Complex,
Chennai 600 104.

4. The Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent herein in T.A. No. 193 of 2003 dated 07.12.2007 and quash the same insofar as confirming the orders of the first and second respondents on Rs.61,39,010/- representing the transfer of cement to Hi-tech Carbon Unit of the petitioner, while directing refund of the sums recovered on the transaction during the assessment year 1998-99.

For Petitioner :: Mr.N. Inbarajan

For Respondents :: Ms. Vasanthamala,
Govt. Advocate

O R D E R

S. VAIDYANATHAN,J.
AND
MOHAMMED SHAFFIQ,J.

The writ petition is filed challenging the order of the Appellate Tribunal confirming the order of the First Appellate Authority rejecting the claim of the petitioner that the transfer of goods from one unit of the petitioner company to another unit does not constitute sale.

2. Brief facts of the case are:

(a) The petitioner is a company incorporated under the Companies Act, 1956. The petitioner had two Divisions in the State of Tamil Nadu, namely, Rajashree cement, a Cement unit and Hi Tech Carbon Unit producing carbon black. It is submitted that both the Divisions had obtained separate registration certificates under the Tamil Nadu General Sales Tax Act, 1959. Apart from the above two divisions, the company had seven other divisions across the country, in all, nine divisions across the country viz., (1) Rayon Division (2) Cement Division (3) Birla White Cement Division (4) Jayashree Textiles (5) Rajashree Syntex (6) Jayashree Insulators (7) Hi-Tech Carbon (8) Birla Periclase (9) Global Exports and Marketing.

(b) During the assessment year 1998-99, the Cement Division of Indian Rayon and Industries Limited had stock transferred cement to another unit called " Hi-Tech Carbon Unit at Gummidipundi" to the value of Rs.61,39,010/-. This inter-unit transfer was sought to be taxed on the premise that both the cement unit as well as Hi-Tech Carbon Unit had obtained separate registration certificates and therefore, the transfers would constitute sale within the meaning of Section 2(n) of Tamil Nadu General

Sales Tax Act, 1959 ('TNGST Act' in short). Aggrieved by the same, the petitioner preferred an appeal before the Appellate Assistant Commissioner and the Appellate Authority had confirmed the order of the Assessing Officer in respect of the claim of stock transfer by dismissing the appeal. The order was carried in appeal before the Sales Tax Appellate Tribunal, which in turn had confirmed the order of the Lower Authorities on the basis that (i) the two units had obtained independent registration certificates (ii) the Hi-Tech Carbon unit and the cement unit are engaged in the manufacture of different types of products/business and therefore, the inter unit transfer would constitute sale for the purpose of TNGST Act. Aggrieved by the same, the assessee is before this Court in this writ petition.

3. To resolve the issue as to whether inter unit transfer of goods would constitute a sale, it would be relevant to refer to Section 2(n) of TNGST Act which reads as follows:

> *"**Section 2(n)** "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes –*
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> *(i) a transfer, otherwise than in pursuance of a contract, of*

property in any goods of cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by installments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making (such) the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made; "

A reading of the above provision would show that for a transaction to constitute sale within the meaning of Section 2(n), for the charging section to get attracted, it should necessarily demonstrate the following:

(i) That there was transfer from one person to another;

(ii) That the transfer of property must be of goods; and

(iii) It must be supported by consideration

If any of the above requirements are not complied with/satisfied, then levy of tax may not be justified.

4. We find that the petitioner before us has furnished documents to show that Hi Tech Carbon Unit and Cement Unit, which were involved in stock transfer are nothing but different units of the petitioner company the 1st requirement of existence of two entities is thus absent and would submit as under in that regard:-

(a) Hi Tech Carbon Unit as well as Cement Unit are different units of the petitioner company, namely, Indian Rayon and Industries Limited, which alone has been registered under the Companies Act, 1956.

(b) The deferral agreement entered into between Hi Tech Carbon Unit III and the Government of Tamil Nadu wherein a reference is made to Hi Tech Carbon as being a unit of Indian Rayon and Industries Limited ;

(c) The assessment order of cement unit is made in the name of Indian Rayon and Industries Limited. The assessment order of Hi Tech Carbon is again made in the name of Indian Rayon and Industries Limited;

(d) The proceedings of Regional Provident Fund Commissioner wherein it has been stated that Hi Tech Carbon unit shall be treated for all purposes as part and parcel of the main unit, namely, M/s. Indian Rayon and Industries Limited.

(e) The order of the Deputy Chief Inspector of Factories wherein Hi Tech Carbon Unit III is referred to as unit of Indian Rayon and Industries Limited.

(f) Hi Tech Carbon itself has number of such units.

5. We find that the Tribunal has grossly misdirected itself in looking to the following factors viz., whether independent registrations are obtained by the units and whether different business are carried out by different units of the same company to conclude that two different entities are in existence.

The above enquiries in our view are irrelevent to decide the existence of different entities. As stated above, unless and until there is more than one person involved in the transaction, the same would not constitute a "sale".

We find that mere independent registrations or the fact that different lines of business would not convert an inter unit transfer as constituting a "sale". Unless and until it is shown that there are two distinct legal entities involved in a transaction, levy of tax by treating it as a transaction of sale is wholly impermissible. In this context, it would be relevant to refer to the following judgment of the Andhra Pradesh High Court in ***The K.C.P. Limited V. State of Andhra Pradesh*** reported in ***(1993) 88-STC-374*** wherein it was held that mere registration certificate obtained by different branch or unit will not by itself result in different units becoming distinct and different legal entities capable of transferring properties/goods from one entity / person to another which is a *sine qua non* for a transaction to be treated as a sale attracting the charging provision. The relevant portion of the said judgment is extracted hereunder:

> *"19. The registration certificate obtained by each branch or unit may, at best show, that they are separate assessable entities. But it has no bearing on the question whether they are distinct and different legal entities capable of transferring property in goods frcom each other. It is to be noted in this context that the language used in the provision defining "sale", either under the APGST Act or the CST Act is not "from one registered dealer to another", but "by one person to another". If the person – either natural or legal is the*

same, it could hardly be said that there is a transfer of property or title in goods. The very idea of transfer of property or title connotes that by virtue of transfer, change in the ownership is brought about. Obviously, that result does not ensue in a case where, for instance, the goods are transferred from one place of business of the dealer to another place of business of the dealer, though by virtue of the special provision governing registration, both of them may be registered dealers. Separate registration certificates issued to the units or branches of an incorporated company have never been considered to be sufficient to confer the legal personality on such units and branches."

It may also be relevant to refer to the decision of the Hon'ble Supreme Court in ***Sahney Steel and Press Works Ltd. V. Commercial Tax Officer {1985} 60 STC 301; AIR 1985 SC 1754*** wherein again, while dealing with the claim of stock transfer, it was stated that the registered office and the branch office do not possess separate juridical personalities. The relevant portion of the said judgment is extracted hereunder:

".......We must not forget that both the registered office and the branch office are offices of the same company, and what in effect does take place is that the company from its registered office in Hyderabad takes the goods to its branch office outside the State and arranges to deliver them to the buyer.

The registered office and the branch office do not possess separate jurisdical personalities".

6. It is thus evident that unless and until there are two distinct entities, the question of sale may not arise. However, the Tribunal has not even addressed this issue and has misdirected itself in looking at the factum of independent registrations and independent lines of business to conclude that the alleged inter unit transfer would constitute sale.

7. In the circumstances, we deem it appropriate to remand the matter back to the Tribunal for examining the question on the strength of the documents whether both Hi-Tech Carbon Unit and Cement Unit are different units of Indian Rayon and Industries Limited. If the answer is in the affirmative, then the question of levy of tax cannot be sustained. The Tribunal shall decide the matter within a period of three months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

(S.V.N.J.) (M.S.Q.J.)

nv/ssn 14.12.2022

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