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WPA 3587 of 2017

TIL LIMITED
Vs
Senior Joint Commissioner, Commercial/Sales Taxes & Ors.

Mr. J.P. Khaitan, Ld. Sr. Adv.
... For the Petitioner.
Mr. A. Ray, Ld. GP.,
Mr. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal
... For the State.

Heard Mr. Khaitan, learned Senior Advocate appearing for the petitioner and Mr. Siddiqui, learned Additional Government Pleader appearing for the State/Revenue Authority.

By this writ petition, petitioner has challenged the impugned order of assessment dated 29th June, 2010 disallowing the claim of exemption made by the petitioner under Section 6(2) of the Central Sales Tax Act. 1956 and the order of the Appellate Authority dated 30th December, 2011, confirming the aforesaid impugned assessment order and the order of the Revisional Authority dated 9th March, 2016 dismissing the revisional petition and confirming the orders of the aforesaid two Authorities.

Facts involved in this case, in short as recorded by the Assessing Authority is that petitioner has made a claim of exemption under Section 6(2) of the Central Sales Tax Act on the subsequent sale of the consignment in question to the ultimate buyer which according to the petitioner effected during the course of inter-State movement. The aforesaid claim of the petitioner was denied by the respondent/Assessing Authority on the ground that the sale in question to the ultimate buyer was not taken place during the inter-State movement of the goods in question and according to the Assessing Officer sale by the petitioner to its ultimate buyer took place prior to the purchase by it from its seller. The reason for disallowing the claim of exemption made by the petitioner has been recorded by the Assessing Authority, the relevant portion of which is recorded as hereunder:

> "(iv) Claim u/s 6(2) of the Act, was for Rs.24,37,56,963/-C & E-1 forms produced for Rs.23,72,18,408/- along with purchase & sale bills & xerox copies of consignment notes. In xerox copies of consignment notes it was found that on the body of it, the consignment was endorsed in favour of the ultimate buyers, but no date was mentioned. So the dealer failed to prove that the consignment was endorsed in favour of the ultimate buyer when the goods are in transit Sect. 6(2) of the act, clearly states that where a sale of any goods in the course of interstate trade of commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during either movements 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 under this act, In the instant case the dealer has failed to fulfil these conditions. Mere production of C & E-1 forms does not prove the transfer of documents of title to goods when the goods are in transit. All these are supportive evidence, but no the sole evidence in

support of this claim. So this claim cannot be allowed."

Against the aforesaid assessment order rejecting the claim of the petitioner, petitioner filed appeal before the Appellate Authority which was dismissed by the Appellate Authority by recording the reason particularly paragraph 3 of the said order of the Appellate Authority is relevant, which is recorded as hereunder:

"3) Claim of sales of Rs.237218408/-(with C and E1 Forms) and Rs.1425153/-(with C Form) u/s 6(2) of the Act had been rightly disallowed by the Ld. Assessing Authority. For the benefit of exemption, subsequent sale of any goods must be effected by transfer of document of title to such goods to a registered dealer during movement of such goods. So it is clear that, title must be transferred during movement of goods. In all cases of this claim it is seen that, title had been transferred to the ultimate consignee prior to starting of movement of goods from the first seller. The necessity of any endorsement is not understood. Example i) C.N. No.5220 dated 29.3.008 clearly indicates consignor-M/s. Caterpillar India Pvt. Ltd. and final Consignment M/s. Suraj Products Ltd. Kesramal, Orissa and the goods had been dispatched from Meinallathur, Tamilnadu to Sundargarh, Orissa. Example ii) C.N. No.5219 dated 29.3.2008- Consignor Caterpillar India Pvt. Ltd. directly consigned the goods to the ultimate consignee Maithon alloys Ltd. Debipur, Burdwan from Tamilnadu.

Although not very important in this particular case another point is discussed, as has been raised in the grounds of appeal. The dealer has argued, if any date is legally required during endorsement u/s 6(2) of the Act. In my opinion, it is definitely required. In absence of the date of endorsement, there remains no scope to prove if the title had been transferred during movement of goods or not. It may safely be concluded that, even if there had been requirement of endorsement for valid claim of exemption under the Act the Ld. Assessing Authority would definitely have to disallow this kind of endorsement which is no endorsement in the eye of law. The claim has no

validity at all and it is cancelled, ab initio. The dealer has to pay interest as per provision f the Act.
In the result, both the orders of assessment under the relevant Acts are modified. The Ld. Assessing authority is asked to act accordingly."

Being aggrieved by the aforesaid order of the Appellate Authority, petitioner filed revisional application, which by its order dated 9th March, 2016, upheld the order of the Appellate Authority. The concluding portion of which is recorded as hereunder:

"The name of the ultimate purchaser should be declared by the dealer who is claiming the benefit of subsequent sale and that is the meaning of endorsement and it is made on the backside of the consignment note as there is no space on the frontside of it. Before endorsement the name of the ultimate purchaser is not possible to be disclosed either to the transporter or the consignor. So if the name of the ultimate purchaser arises on the front side of the consignment note under the name of the consignee having no space for it, it is proved conclusively that the dealer has effected the purported inter-state sales under u/s 3(b) not during the movement of goods from one State to another, pursuant to sales u/s 3(a) but prior to the commencement of movement of goods from one State to another. Hence the conditions as laid down u/s 6(2) are not fulfilled in this case.
Hence, we are of the view that as per judgement of Hon'ble Apex Court these consignment notes were not endorsed during the course of movement. Hence the claim of subsequent sale u/s 6(2) of the CST Act 56 in the instant case is not allowable."

Before dealing and discussing and concluding the matter some relevant provisions of Central Sales Tax, 1956 which are quoted hereunder:

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 purchse 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. …

6. Liability to tax on inter-State sales.- (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this AC t on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State."

(2) Notwithstanding anything contained in sub-section (1) OR SUB-SECTION (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goofds from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act."

Provided …

Mr. Khaitan, learned Senior Advocate appearing for the petitioner has also relied on a clarifactory Trade circular No.11/2010 dated 4th October, 2010 issued by the Government of West Bengal, Directorate of Commercial Taxes. Relevant portion of the said circular is recorded herein:

i) in case of sale falling u/s. 3(a), any kind of endorsement of consignment note/LR etc. cannot be invited;

ii) as contract of sale and sale itself are altogether different in case of inter state sale, pre-existing order or pre-determined parties will not negate any 3(b) sale if other requirements are found fulfilled i.e. physical or constructive transfer of documents of title to the goods in made;

On a plain reading of Section 3 along with explanation (i) and (ii) and Section 6(2) of the Central Sales Tax Act along with the aforesaid Trade circular it clearly appears that the commencement of movement of the goods is effected in case of movement from one State to another State from the time of delivery of such consignment to the transporter and is terminated at the time when delivery is taken from such transporter and also is effected by transfer of documents of title of such consignment to a subsequent buyer during the movement from one State to another State. It also appears from the aforesaid notification on a plain reading that in case of inter-State sale, pre-existing order or pre-determined parties will not negate any

3(b) sale, if other requirements are found fulfilled i.e. physical or constructive transfer of documents of title to the goods is made and sale in such type of cases is different from a contract of sale in other cases.

The main grounds of refusal to grant exemption to the petitioner, under Section 6(3) of the Central Sales Tax Act, 1956, by all the Authorities below are that the transfer of title/sale by the petitioner to the ultimate buyer was effected before the commencement of movement and not during the movement of the goods in question which finding on considering the facts and circumstances of the case and provisions of law I am of the considered view, is perverse and misinterpretation of relevant provisions of the Act and the notification in question. It appears from record annexed to the writ petition at page 38 that the transporter issued consignment note on 29th March, 2008 which must be obviously after receiving the goods in question by the transporter from the primary seller and the endorsement on the consignment note made by the petitioner in favour of the ultimate buyer though it does not bear any date but it could not have been made before the date of issuance of consignment note and before the date of receipt of consignment in question by the transporter. It appears from page 36 of the writ petition being invoice issued by the primary seller in favour of the petitioner and final delivery to the ultimate buyer that it bears the date, 29th March, 2008.

It appears from page 37 of the writ petition being delivery challan cum invoice that the same has been issued by the petitioner on 31st March, 2008, in favour of the ultimate buyer.

The respondents could not show any piece of evidence to establish that the subsequent sale to the ultimate buyer effected prior to the commencement of movement of goods in question as defined under Section 6(2) read with explanation 2 and 3 under Section 3 of the Central Sales Tax Act as well as the aforesaid notification dated 4th October, 2010. Furthermore, on a plain reading of the aforesaid two provisions of the Act as well as the aforesaid Trade notification, it appears that the movement of goods starts the moment, the goods in question is handed over to the transporter which in fact has effected it this case as appears on considering the relevant documents annexed to the writ petition, after the handing over the goods in question to the transporter.

Considering the facts and circumstances of the case as appears from record annexed to the writ petition and relevant provisions of law and in view of Trade notification referred hereinabove and submission of the parties and in view of the discussion made above, I am of considered view that the impugned order of all the aforesaid three impugned Authorities are not sustainable in law and, accordingly the same are quashed. In view of quashment of the aforesaid impugned orders, all legal consequences will follow automatically and petitioner will be entitled to get its claim of exemption.

With this observation and direction this writ petition being WPA 3587 of 2017 is disposed of.

(Md. Nizamuddin, J.)