
(2024) 07 CESTAT CK 0011

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Central Sales Tax Appeal No. 01 Of 2018

M/s. Keltech Energies
Ltd

APPELLANT

Vs

State of Maharashtra
And Ors.

RESPONDENT

Date of Decision: July 8, 2024

Acts Referred:

- Central Sales Tax Act, 1956 - Section 3, 3(a), 6
- Sales of Goods Act, 1930 - Section 4
- Explosives Rules, 2008 - Rule 47, 63

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Sriram Sridharan, Rama Ahluwalia, Madhumita Bhattacharjee

Final Decision: Allowed

Judgement

Dilip Gupta, J

1. This appeal has been filed by M/s. Keltech Energies Ltd., the appellant for setting aside the order dated 26.09.2017 passed by the Maharashtra

Sales Tax Tribunal, the Sales Tax Tribunal dismissing the appeal that had been filed by the present appellant against order dated 26.08.2014 passed by

the Joint Commissioner of Sales Tax (Appeals), the Joint Commissioner (Appeals). The Joint Commissioner (Appeals) had decided the appeal filed by

the appellant against the assessment order dated 30.03.2014 of the Deputy Commissioner of Sales Tax, the Deputy Commissioner for the period from

01.04.2009 to 31.03.2010. The Deputy Commissioner had held that the sale of explosives by the appellant to the subsidiaries of Coal India Limited,

Coal India in the State of Jharkhand and the State of West Bengal were inter-state sales by Coal India originating from the State of Maharashtra and

rejected the claim of the appellant that they were branch transfers by Coal India to its subsidiaries situated in the State of Jharkhand and the State of

West Bengal. The Joint Commissioner (Appeals) and the Sales Tax Tribunal maintained this part of the order.

2. The appellant is engaged in the manufacture and sale of explosives and has a manufacturing unit at Nagpur, the Nagpur Unit in the State of

Maharashtra. The products manufactured by the appellant at the Nagpur Unit are packaged explosives and are sold under the trade name

“Kelvex”™. The said products are controlled substances covered under the provisions of the Explosives Act, 1884, the Explosives Act and the

provisions of the Explosives Rules, 2008, the Explosives Rules which regulate the manufacture, sale and transport of explosives to a considerable

extent. The Rules govern the activities concerning explosives as they are a sensitive commodity and cannot be treated as regular commercial cargo.

Rules 47 and 63 provide that the movement of the vans can commence only after intimation to the police authorities and such movements are also

monitored to a great extent. The vans have to reach the destination as per the specified/appointed dates.

3. Coal India has several subsidiaries which are the actual consumers of such explosives. For the purpose of purchasing these packaged explosives,

Coal India floats tenders for the supply of these explosives on a Rate Contract basis. This exercise is undertaken for subsidiaries of Coal India like

NCL, SECL, MCL, WCL, BCCL, ECL, CCL and NECL. Coal India selects a minimum of five vendors for supply to each subsidiary to maintain the

reliability of supplies.

4. The appellant entered into a Running Contract dated 28.11.2008, the Running Contract with Coal India. This agreement provides for the supply of

explosives by the appellant to the subsidiaries of Coal India. The relevant portions of the Rate Contract are reproduced below:

“Your above mentioned offer has been accepted and accordingly, we, for and on behalf of all the subsidiary companies of Coal India

Limited including NEC are hereby pleased to enter into a RUNNING CONTRACT (RC) with you for supply of CARTRIDGE

EXPLOSIVES and ACCESSORIES to all subsidiary companies of Coal India Limited including NEC at the following price and terms

and conditions,

2. Item description, quantity, unit price & subsidiary allocation- As per Annexure “A”.

The Running Contract quantity (2008-09) is mentioned at Annexure-“A”. The monthly allocation will be placed by the respective subsidiary

companies and NEC individually within their share of the RC qty as indicated at Annexure-A. S supplies would be strictly governed by the actual

requirement of the collieries and as per the allocation/order to be placed by the subsidiary companies & NEC in every month against

their specific approved indents only. Initially monthly allocations shall be issued against the RC qty only. The quantity indicated under

column “Indicative quantity for 2nd year” and “Indicative quantity for 3rd year” are the indicative quantity for two years after the RC period

of 2008-09, in accordance with clause 01 “Duration of Contract”.

12 Delivery

The dispatch of the products indicated at Annexure “A” should be effected only after the receipt of the proper indent in Form-37 from the

respective users of the Subsidiary Companies. *****

It would be mandatory for the RC holder to maintain 90% delivery performance (supply against allocation) to be evaluated on yearly

basis for all consignees taken together. In case the delivery performance for the RC holder falls below 90%, CIL reserves the right to

rescind the RC for that particular item and the balance RC quantity for that item may be purchased from any of the existing RC holders

or empanelled "Reserve RC holders" or outside vendors by CIL/Subsidiary on risk purchase basis.

26 Statutory Obligation

b) You are requested to ensure to get proper indents in FORM-37 and no explosives van should be sent without any indent in FORM-37. This is

absolutely imperative."

(emphasis supplied)

5. Some of the subsidiaries of Coal India like ECL, BCCL and CCL are located at significant distances from the Nagpur Unit in the State of

Jharkhand and State of West Bengal and it takes about fifteen days for the explosives to reach the aforesaid destination States from the Nagpur Unit.

The appellant contends that since it is not possible to supply the explosives directly from the Nagpur Unit of the appellant to such collieries, the

appellant has to maintain licensed stock depots for the explosives in the States of Jharkhand and West Bengal to facilitate the supply of explosives to

these subsidiaries. The appellant further contends that each of the aforesaid individual subsidiaries of Coal India like ECL, BCCL and CCL place

indents on the depots/branches of the appellant in the two States and the depots/branches of the appellant sell the explosives supplied from the Nagpur

Unit to the subsidiaries. The appellant, on such sale, paid the applicable local VAT in the two States. This claim of the appellant of branch transfer

from the Nagpur Unit to the depots was not accepted by the Deputy Commissioner and this order was upheld in the appeal filed by the appellant

before the Joint Commissioner (Appeals) as also by the Sales Tax Tribunal.

6. The issue, therefore, that arises for consideration in this appeal is as to whether the movement of the packaged explosives from the manufacturing

unit of the appellant at Nagpur in the State of Maharashtra to the branch offices/depots of the appellant in the State of Jharkhand and the State of

West Bengal have resulted in a sale taking place during the course of inter-state trade or commerce pursuant to the Running Contract entered

between Coal India and the appellant or whether it would be a case of branch transfer of the goods by the appellant to its depots/branch offices in the

State of Jharkhand and the State of West Bengal.

7. To appreciate this issue, it would be appropriate to examine sections 3 and 6 of the Central Sales Tax Act, 1956, the CST Act and the relevant

portions of these sections are reproduced below:

â€œ3. 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.

6. Liability to tax on inter-State sales.â€

(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 Act 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. ■

(emphasis supplied)

8. The Sales Tax Tribunal found the Running Contract to be a purchase order and the subsequent indent issued by the subsidiaries of Coal India upon

the depots of the appellant from time to time to be only a convenient mode for uninterrupted supply of explosives and, therefore, treated it as a

requisition for supply of material and not as an independent contract of sale. The Sales Tax Tribunal, therefore, concluded that sale of goods had taken

place in the course of inter-state trade or commerce as contemplated under section 3(a) of the CST Act, which would attract tax in the State of

Maharashtra. The relevant portion of the order dated 26.09.2017 passed by the Sales Tax Tribunal is reproduced below:

¶7. ***** Appellant is having branches/agent in the respective states. They will supply explosives and accessories to mines on the

basis of convenience against the order mentioned as running contract. Subsidiary company will follow the existing system of drawing

requirement from the appellant or its agent who will pay bills. Accordingly, payments will be made to the appellant. Instructions contained in Annexure

A should be strictly and invariably followed. Therefore, what it transpires is that all subsidiaries of Coal India Ltd. were under obligation to

purchases the said goods from the appellant or its agent, branches situated in the respective states. Each subsidiary company has been

given the quantities of explosives and accessories to be purchased from the appellant only at the fixed price. This purchase order was

issued from the Apex body i.e. Coal India to its subsidiary spreading over different states. They cannot purchase goods from any other

supplier. The contention of the appellant that the goods were supplied as per indents provided i.e. purchase order and running contract dated

28/11/2008 is agreement to sale. But, indent subjected to the branches and supplies made accordingly is the convenient device, which was worked out

by the appellant and Coal India Ltd so as to have uninterrupted supplies of the impugned goods. We are not agreed with the contention of the appellant

that supplies are made as per indent received from time to time in the branch office. Various other evidences were produced to show that, in fact

there was independent transaction with the subsidiaries and branch office of the appellant, and the order dated 28/11/2008 does not constitute firm

purchase order. But we regret that cannot be of any avail for the simple reason that all supplies were made in pursuance of the order of Coal India

Ltd., with reference to tender dated 04/07/2008. On going through the terms and conditions of running contract it is to be construed as purchase order

then, other evidence is secondary and irrelevant. Therefore, it is not a case in which there was independent contract between the subsidiaries of Coal

India Ltd. and that of the appellant.

10. On the basis of factual aspect of the case, we have come to the conclusion that, appellant is entered into contract with coal India

Ltd. for supply of cartridge explosive to all subsidiary companies of Coal India Ltd. including NVC as per the tender dated 04/07/2008

and subsequent correspondence as referred in contract dated 28/11/2008. We held this running contract as purchase order because of

the terms and conditions agreed therein. In our opinion, indent issued by subsidiary companies from time to time is convenient mode

for uninterrupted supply of impugned goods. It should be treated as requisition of material and cannot be treated as independent

contract of sale. Therefore, we come to the conclusion that, impugned transactions are covered u/s. 3(a) of the C.S.T. Act, it is liable to

tax in the State of Maharashtra.â€■

(emphasis supplied)

9. Shri Sriram Sridharan, learned counsel for the appellant made the following submissions:

(i) It is a well-settled position of law that for the purpose of interpreting section 3 of the CST Act, the term "sale"™ includes both a completed sale

and an agreement to sell. This principle was laid down by the Supreme Court in Balabhagas Hulaschand vs. State of Orissa, (1976) 2 SCC 44;

(ii) Section 4 of the Sales of Goods Act, 1930, the Sales of Goods Act provides that when a contract of sale transfers the property in goods from the

seller to the buyer, the said contract is known as a sale i.e. a completed sale. However, when a contract of sale stipulates that the transfer of property

in goods will take place at a later date, such a contract of sale is known as an agreement to sell. In the present case, there is no transfer of the

property from the appellant to the subsidiaries of Coal India under the Running Contract. It cannot, therefore, be a sale i.e. a completed sale. This

apart, the Running Contract does not contain the identity of the goods sold; the quantity; or the description. The destination of the goods is also not

known. Hence, it also cannot be said to be an agreement to sell;

(iii) The Running Contract does not obligate the subsidiaries of Coal India to place indents on the appellant for the supply of explosives. It only

provides a limit for the maximum quantity of explosives that can be indented by each subsidiary and the rates at which the same is to be supplied.

Therefore, if subsidiaries of Coal India do not place indents on the appellant, it cannot sue Coal India for damages, because the Running Contract has

not been breached;

(iv) The appellant is under no obligation to supply explosives based on the Running Contract itself. As per the stipulation contained in the Running

Contract, the explosives are only supplied from the local depots of the appellant after receipt of an indent from the subsidiaries of Coal India. It is only

when subsidiaries of Coal India place an indent on the appellant that the standing offer is accepted, and a contract comes into existence. In case the

subsidiaries of Coal India do not place indents on the appellant, the appellant is not obligated to make any supplies to the subsidiaries of Coal India;

(v) The remedy for a breach of sale is a suit for the price of the goods. The remedy for the breach of an agreement to sell is a suit for damages.

Neither of the above remedies are applicable if the Running Contract between the appellant and Coal India is breached. This clearly evidences that

the Running Contract is not a sale or an agreement to sell;

(vi) The Running Contract is merely an intimation from Coal India agreeing to the terms of the standing offer of the appellant when indents are

eventually placed by the subsidiaries of Coal India. It is merely an understanding to conduct business in the future on the basis of pre-agreed terms

and conditions. The Running Contract is merely an agreement to enter into an agreement on a future date. In other words, the Running Contract is

merely a standing offer by the appellant and not a sale or any agreement to sell. It is settled law that a standing offer is a contractual arrangement that

is distinct and different from a sale or an agreement to sell;

(vii) In this connection, reliance has been placed on the decision of the Karnataka High Court in BASF India Ltd. vs. State of Karnataka and ors.,

2022 (11) TMI 434, wherein it was held that the purchase orders which do not specify quantities are merely standing offers and do not constitute any

contract of sale. It was also specifically held that such purchase orders do not constitute an "agreement to sell" and that the inter-state

movement of goods are mere stock transfers not occasioned by such purchase orders;

(viii) In any case, it is settled law that a sale cannot be an inter-state sale if the appropriation of goods to the purchaser occurs in the destination

States. In this regard, reliance has been placed on the decisions of the Supreme Court in Tata Engineering and Locomotive Co. Ltd. vs. Asst.

Commissioner, Commercial Taxes, 1970 (26) STC 354 (SC) and Kelvinator of India vs. State of Haryana, 1973 (32) STC 629 (SC); and

(ix) The appellant has not chosen to conduct stock transfer transactions to avoid payment of central sales tax as the reason for stock transferring the

goods and subsequently selling them locally are entirely logistical and technical. In fact, by choosing this model of operation, the appellant loses out on

revenue;

10. Ms. Rama Ahluwalia, learned counsel for the State of Maharashtra, however, supported the impugned order and made the following submissions:

(i) The invitation to offer by tender dated 04.07.2008 floated by Coal India was accepted and the offer of the appellant was accepted by Coal India in

the Running Contract dated 28.11.2008. Thus, the contract stood concluded with the issuance of the Running Contract. The appellant executed the

contract by supplying the goods to all the subsidiary companies of Coal India as and when the indents were raised by the subsidiary companies on the

depots of the appellant in the State of Jharkhand and the State of West Bengal. Thus, the contention of the appellant that the Running Contract is not a

contract for sale is mis-conceived and mere submission of a declaration in "Form-F" before the assessing authority is not a conclusive proof of

the fact that the movement of goods from the State of Maharashtra to other States had occasioned otherwise than by sale;

(ii) The contention of the appellant that only when indents are raised by the subsidiary companies of Coal India on the depots of the appellant in the

States of Jharkhand and West Bengal that there is an acceptance of the standing offer and sale takes place is not tenable in law. It is the Running

Contract that is the fountainhead from which all the supply takes place. To support the contention, learned counsel placed reliance upon the judgment of

the Supreme Court in IDL Chemicals Limited vs. State of Orissa, (2007) 14 SCC 386 and Hyderabad Engineering Industries vs. State of Andhra

Pradesh, (2011) 4 SCC 705;

(iii) The Sales Tax Tribunal correctly held that the Running Contract is the firm purchase order and the indents issued by subsidiary companies of Coal

India from time to time on the depots of the appellant are merely a convenient mode for uninterrupted supply of goods. The indents are merely

requisitions for material and cannot be treated as an independent contract for sale;

(iv) Even if there is movement of goods from one State to another, not in pursuance of the sale itself, but in pursuance of an agreement to sell which

later merges into the sale itself, the movement of goods would be deemed to have been occasioned by the sale itself wherever it takes place and in

this connection reliance has been placed upon the decision of the Supreme Court in *Balabhagas*;

(v) The inter-state movement of goods must be as a result of a covenant, express or implied, in the contract of sale or an incident of contract and it is

not necessary that the sale must precede the inter-state movement in order that the sale may be deemed to have been occasioned by such movement.

In this connection, reliance has been placed on the judgments of the Supreme Court in *English Electric Company of India Ltd. vs. The Deputy*

Commercial Tax Officer and others, (1976) 4 SCC 460; *Oil India Ltd. vs. The Superintendent of taxes and others*, (1975) 1 SCC 733; and *Union of*

India and another vs. M/s. K.G. Khosla & Co. Ltd. and others, (1979) 2 SCC 242; and

(vi) Reliance has also been placed on the decision of the Central Sales Tax Appellate Authority in *M/s. Solar Industries Limited vs. The State of*

Maharashtra & ors., CST/9-10/2017 and CST/26/2017 decided on 27.06.2019, wherein Coal India had executed a similar Running Contract dated

28.11.2008 with another vendor M/s. Solar Industries Limited. In the decision rendered on 27.06.2019, the Central Sales Tax Appellate Authority held

that all transfers of goods/explosives from the State of Maharashtra to branches/depots of M/s. Solar Industries Limited in other States were inter-

state sale.

11. Ms. Madhumita Bhattacharjee, learned counsel appearing for the State of West Bengal adopted the submissions made by the learned counsel for

the appellant and placed reliance upon the judgment of the Supreme Court in *Balabhagas* and to the judgment of the Delhi High Court in *MX Media*

and *Entertainment Pte Ltd. vs. M/s. Contagious Online Media Networks Private Limited*, O.M.P. (I) (Comm.) 106/2021 decided on 05.04.2021.

12. The contentions advanced by the learned counsel appearing for the appellant and the learned counsel appearing for the State of Maharashtra and the State of West Bengal have been considered.

13. What transpires from the records is that the appellant, which is engaged in the manufacture and sale of explosives, has a manufacturing unit in the State of Maharashtra but as the subsidiaries of Coal India to whom these explosives have to be supplied are situated at a distance and it takes about fifteen days time for the explosives to reach the destination States, the appellant maintains licensed stock depots for the explosives in the States of Jharkhand and West Bengal for supply of explosives. On such sale by the depots of the appellant to the subsidiaries of Coal India in the States of Jharkhand and West Bengal, the applicable local VAT is paid by the appellant.

14. According to the appellant, the Running Contract with Coal India results in neither a sale nor can it be termed as agreement to sell. The Running

Contract, according to the appellant, is merely a standing offer by the appellant. The depots of the appellant sell the explosives supplied from the

Nagpur Unit of the appellant. Thus, there is no appropriation of goods to any contract prior to the goods reaching the depots of the appellant in the two

States. The Running Contracts awarded by Coal India to various manufacturers of explosives are for pre-determining the price for supplying

explosives. There is no one-to-one correlation between the goods received by the depots of the appellant and the goods dispatched from such depots

on the receipt of indents from the subsidiaries of Coal India in the two States.

15. The following crucial facts emerge from the records:

(i) The actual quantities supplied by the appellant to the subsidiaries of Coal India are far lesser than the quantities specified in the Running Contract;

(ii) The cost of freight is entirely borne by the appellant and the risk is also borne by the appellant;

(iii) The license issued to the subsidiaries specifies the maximum quantity of explosives that can be stored in the magazine at any point of time. The

license also specifies the maximum monthly rotation of explosives i.e. the maximum quantity that can be transacted through the magazine;

(iv) The subsidiaries of Coal India like NCL, SECL, MCL and WCL possess magazines with larger licensed storage capacities. These subsidiaries are

also situated within reasonable distances from the Nagpur Unit of the appellant. Hence, each of the subsidiaries place indents directly on the Nagpur

Unit of the appellant in the State of Maharashtra;

(v) The subsidiaries of Coal India like ECL, BCCL and CCL are located at significant distances from the Nagpur Unit of the appellant in the States of

Jharkhand and West Bengal. The time required for the explosives to reach the subsidiaries after dispatch from Nagpur Unit of the appellant is

approximately about fifteen days. The capacity of these subsidiaries is very small;

(vi) The carrying capacity of the vans used by the appellant is either 9 MT or 15 MT. The magazines of the subsidiaries of Coal India do not have

sufficient licensed capacity to store all the explosives dispatched in the vans. Therefore, it would be impossible to execute the supply order directly

from the Nagpur Unit of the appellant to the ECL, BCCL and CCL subsidiaries of Coal India in the State of Jharkhand and State of West Bengal;

(vii) The appellant is, therefore, compelled to maintain licensed stock depots for the explosives in the States of Jharkhand and West Bengal for ECL,

BCCL and CCL. Hence, each of the individual subsidiaries of Coal India place indents, i.e. supply orders, on the depots of the appellant in the two

States; and

(viii) The subsidiaries of Coal India are not obligated to purchase the explosives from the appellant alone.

16. It is in the light of the aforesaid facts that the contention of the learned counsel for the appellant that the Running Contract is merely a "standing

offer"™ and not a sale or an agreement to sell has to be examined. It would, therefore, be necessary to understand what a "standing offer"™ is.

17. In Benjamin's Sale of Goods (7th Edition) it is described as:

â€œStanding Offer - A party may offer to sell such quantities of goods of a certain description as the other party may from time to time

order, usually within stated limits. Similarly, a party may offer to buy such quantities as the other may acquire (or produce) and tender

from time to time. The â€œacceptanceâ€ of such an offer does not create any binding obligation; but on each occasion when an order is

placed or a consignment tendered, the party who has made the offer is bound to sell or buy the quantity in question. Apart from this, the

offer may be withdrawn at any time, unless consideration has been given in return for an undertaking to keep it open. The offeree for his part is not

bound to place any order or tender any goods unless he has expressly or impliedly promised to do so.â€■

(emphasis supplied)

18. In Chittyâ€™s Treatise on the Law of Contract (29th Edition) it is described as:

â€œTender - A tender to supply goods up to a certain quantity at a certain price is an offer to supply on those terms if and when the

offeree chooses to give an order and this, qua that order, creates a binding contract. Even where the probable quantities which may be

required have been specified in the invitation to tender, the offeror has no remedy if the offeree does not give any orders at all or fails to order up to

the specified quantities, although the offeror is bound to deliver the specified goods as and when ordered by the offeree.â€■

(emphasis supplied)

19. In Ansonâ€™s Law of Contract (24th Edition) it is described in the following manner:

â€œThe rule that an offer is made irrevocable by acceptance is illustrated by the Great Northern Railway Co. v. Witham, a transaction which, like

that in Offord v. Davies, involved a continuing relationship:

The plaintiff company advertised for tenders for the supply of such iron articles as they might require between 1st November, 1871 and 31st October,

1872. The defendant sent in a tender to supply the articles required on certain terms and in such quantities as the company "might order from time

to time"™, and his tender was accepted by the company. Orders were given and executed for some time on the terms of the tender but finally the

defendant was given an order which he refused to execute. The Company sued him for breach of contract in that he had failed to perform this order.

It is important to note the exact relationship of the parties. The company by advertisement invited all dealers in iron to make tenders, that is, to state

the terms of the offers which they were prepared to make. The tender of the defendant stated the terms of an offer which might be accepted at any

time, or any number of times, in the ensuing twelve months. The acceptance of the tender did not in itself make a contract; it was merely an

intimation by the company that they regarded the defendant's tender as a standing offer, which on their part they would be willing to

accept as and when they required the articles to be supplied. Each fresh order constituted an acceptance of this standing offer. If the

defendant wished to revoke his offer he could have done so, but only as to the future; in the meantime he was bound to perform any order already

made. The Court therefore held that he was liable for breach of contract.■

(emphasis supplied)

20. In Sanjiva Row's Commentary on Law Relating to Contract Act, 1872 and Tenders (11th Edition) it is described as:

8. Standing offers " There are, certainly, cases in which, if it appears that the party never was bound on his part to do the act which forms the

consideration for the promise of the other, the agreement will be void for want of mutuality but there are other in which this rule does not hold. Thus,

an agreement by A to supply goods to B at certain prices and in such quantities as B may order for from time to time is not bad for want

of mutuality, although, until B had given an order for goods he cannot sue A upon his agreement. A writing whereby A agrees to supply

certain goods to B at certain prices and up to stated quantity, or in any quantity which may be required, for a certain period, is not a

contract unless B binds himself to take some certain quantity, but a mere continuing offer which may be accepted by B, from time to

time, by ordering goods upon the terms of the offer. In such a case each order given by B is an acceptance of the offer, and A can withdraw

the offer, at any time before its acceptance by an order of B. This principle has been affirmed by Their Lordships of the Privy Council in the under-

noted case.â€■

(emphasis supplied)

21. It transpires from the aforesaid that a tender to supply goods up to a certain quantity at a certain price would merely be an offer to supply goods

on those terms and it does not create a binding obligation as this does not bind the party to place any order for tender of goods and it is only when an

order is placed that a binding contract between the parties comes into existence. Thus, a standing offer is to supply goods at a fixed price and it would

not amount to a sale or an agreement to sell.

22. In the present case, the salient features of the Running Contract dated 28.11.2008 entered into between the appellant and Coal India are as

follows:

(i) The Running Contract determines the price at which the goods would be bought and sold between the two parties;

(ii) The quantities of explosives supplied would be as per the actual requirements of the subsidiaries of Coal India;

(iii) The quantities mentioned in the Running Contract merely relate to the maximum quantity of explosives which the appellant is eligible to supply to

the subsidiaries of Coal India i.e. the quantity specified are not relatable to the actual quantities of explosives to be supplied;

(iv) The cost of freight for these explosives from the Nagpur Unit of the appellant to the depots of the appellant outside the State of Maharashtra and

subsequently to the subsidiaries of Coal India is borne wholly by the appellant; and

(v) The goods are moved at the risk of the appellant since no transit insurance is undertaken.

23. The Running Contract dated 28.11.2008 would not amount to a contract of sale as it does not obligate the subsidiaries of Coal India to purchase

the explosives from the appellant or obligate the appellant to supply explosives. It is merely an agreement between the parties to the effect that they

may do business in the future under certain terms and conditions. It is a contract which merely establishes the prices at which the goods may be

traded at, if they do happen to be traded. It only provides a limit for the maximum quantity of explosives that can be indented by each subsidiary and

the rates at which the same is to be supplied. Therefore, if subsidiaries of Coal India do not place indents on the appellant, the appellant cannot sue

Coal India for damages because the Running Contract has not been breached.

24. In common or industrial parlance, a Running Contract is also known as a rate contract. A "rate contract" is a contract which only

determines the prices at which goods are bought and sold between the contracting parties. A rate contract does not itself convey property or agree to

convey property on a future date. The Running Contract entered into between the appellant and Coal India would, therefore, be in the nature of a rate

contract.

25. It would now be appropriate to examine the decisions on which reliance has been placed by the learned counsel for the appellant.

26. In *Chatturbhuj Vithaldas Jasani vs. Moreshwar Parashram and others*, 1954 SCR 817, the appellant was a partner of a firm of Moolji

Sicka & Company, which is a firm of bidi manufacturers. The Supreme Court observed that no binding engagement could be spelt out from the letters

as they merely set out the terms on which the parties were ready to do business with each other, if and when the orders were placed and it is only

when the order was placed and accepted that a contract would arise. The relevant portion of the judgment of the Supreme Court is reproduced below:

¶9. We do not intend to analyse these letters in detail here. It is enough to say that in our opinion no binding engagement can be spelt out

of them except to this extent: Moolji Sicka & Company undertook to sell to the canteen contractors only through the Canteen Stores and not direct

and undertook to pay a commission on all sales. This, in our opinion, constituted a continuing arrangement under which the Canteen Stores, i.e., the

Government, would be entitled to the commission on all orders placed and accepted in accordance with the arrangement; and in fact the Canteen

Stores did obtain a sum of Rs. 7500 in satisfaction of a claim of this kind. This money was paid long before the dates which are crucial here but the

settlement illustrates that there was an arrangement of that nature and that it was a continuing one. In our opinion, it continued in being

even after that and the mere fact that there was no occasion for any claim subsequent to the settlement does not indicate that it was no longer alive.

But except for this, the letters merely set out the terms on which the parties were ready to do business with each other if and when

orders were placed and executed. As soon as an order was placed and accepted a contract arose. It is true this contract would be

governed by the terms set out in the letters but until an order was placed and accepted there was no contract. Also, each separate

order and acceptance constituted a different and distinct contract: see *Rose and Frank Co. v. J. R. Crompton & Bros. Ltd.*¶

(emphasis supplied)

27. In *Union of India vs. Maddala Thathiah*, (1964) 3 SCR 774, the Supreme Court held that acceptance of a tender would not amount to placing

of the order for any definite quantity of jaggery on a definite date. The observations of the Supreme Court are as follows:

¶6. The respondent made an offer to supply the necessary quantity of jaggery during the period it was wanted and expressed its

readiness to abide by the terms and conditions of the tender. He agreed to supply the jaggery at the rate mentioned in his letter. This tender

was accepted by the letter dated January 29, 1948. So far, the offer of a supply of a definite quantity of jaggery during a specified period at a

certain rate and the acceptance of the offer would constitute an agreement, but would fall short of amounting to a legal contract inasmuch as the date

of delivery of the jaggery was not specified. Only the period was mentioned. The agreement arrived at therefore could be said, as urged for

the appellant, to be a contract in a popular sense with respect to the terms which would govern the order for supply of jaggery. The

acceptance of the tender did not amount to the placing of the order for any definite quantity of jaggery on a definite date. Paragraph 9 of

the tender referred to the placing of a formal order for the supply of jaggery, after the respondent had not only made a security deposit as required by

the provisions of para 8 but had also furnished a receipt issued for that deposit to the Deputy General Manager, Grain Shops. So construed, the note in

para 2 of the tender would refer to cancel this agreement, loosely called a contract, at any stage during the tenure of that agreement without calling up

the outstandings on the unexpired portion of the contract.â€■

(emphasis supplied)

28. In *State of Andhra Pradesh vs. Coromandel Paints & Chemicals Ltd.*, (1995) 98 STC 82 (AP), the Andhra Pradesh High Court held:

“16. It is thus clear that where the terms of the agreement enjoin supply of goods against an order already placed, it amounts to a contract if the

goods are specified but they are to be delivered at a future date as and when specified. But, where neither the quantity nor the goods have

been specified and the supply has to be made at a stated period of the required quantity, it cannot be said that there was a sale or even

an agreement to sell, it is merely a standing offer.â€■

(emphasis supplied)

29. In *Central Distillery & Breweries Ltd. vs. Commissioner of Trade Tax, U.P., Lucknow*, (1999) 115 STC 296, the Allahabad High Court

held:

“9. As is evident from the terms of the agreement, the intention of the parties was to bring about intra-State sales at Delhi from

warehouse of the dealer that it was required to establish within the territory of Delhi where the dealer was required to maintain a buffer

stock of at least two trucks without any guarantee of any purchase being actually made by the Delhi Administration. As and when the

Delhi Administration would make the purchases, the dealer who was to be a L1-A licensee would supply the goods and replenish the stocks and the

things would go on like that during the currency of the agreement. Therefore, as is indicated by the agreement, the movement of the goods to

Delhi was not in pursuance of any transaction of sale but in pursuance of the licence under which the dealer was to maintain a

warehouse with a minimum stock within the territory of Delhi. The agreement by itself did not bring about any sale or purchase and,

therefore, the transport of goods from the distillery in U.P. to warehouse in Delhi could not be treated as a movement of goods

occasioned by any sale or purchase.”

(emphasis supplied)

30. In *The Queen vs. Demers (Quebec)*, 1900 AC 103/ [1899] UKPC 66 (9 December 1899)

(https://www.bailii.org/uk/cases/UKPC/1899/1899_66.html), the Court of Queen’s Bench for lower Canada, Province of Quebec, The

Judicial Committee of the Privy Council held:

“The contract purports to be made between Her Majesty the Queen, represented by the provincial secretary and the respondent Demers. It does

not purport to contain any covenant or obligation of any sort on the part of the Crown. The respondent undertakes to print certain public

documents at certain specified rates. For all work given to him on the footing of the contract the Government was undoubtedly bound to pay according

to the agreed tariff. But the contract imposes no obligation on the Crown to pay the respondent for work not given to him for execution. There is

nothing in the contract binding the Government to give to the respondent all or any of the printing work referred to in the contract, nor

is there anything in it to present the Government for giving the whole of the work or such part as they think fit to any other printer.â€■

(emphasis supplied)

31. In Secretary of State vs. Madho Ram, AIR 1929 Lah 114, the Lahore High Court held:

â€œIt appears to me on the proper construction of the document in question that there has been no breach on the part of the appellant and the suit

should for this reason have been dismissed.

The plaintiffâ€™s tender is merely an offer to supply certain classes of goods at certain prices during a fixed period, and so long as the

offer remains open the plaintiff is bound to supply the goods at those prices, when called upon to do so, up to at least the estimated

quantities. The plaintiff can at any time withdraw his offer upon proper notice to the other party, and upon such withdrawal his liability to supply all or

any of the goods not already ordered terminates. The Military authorities on the other hand are not bound to order all or any of the goods

offered, but if they do give an order they are bound to pay the price set out in the schedule. They are free to accept the offer or not, as

they may think fit, and it follows that they may buy the goods in question from any other source without reference to the plaintiff.â€■

(emphasis supplied)

32. In Speech & Software Technologies (India) Pvt. Ltd. vs. Neos Interactive Ltd., 2009 (1) SCC 475, the Supreme Court held:

â€œ11. ***** It is well settled legal position that an agreement to enter into an agreement is not enforceable nor does it confer any right upon the

parties.*****â€■

33. The aforesaid decisions have considered cases where the document merely sets out the terms on which the parties agree to do business without

specifying the exact quantity of goods to be supplied and it is only when orders are placed that a contract would come into existence. The movement

of goods from the manufacturing unit to the depots, in such a case, cannot be said to have been occasioned by any sale.

34. The judgment of the Karnataka High Court in BASF India is a judgment which squarely applies to the facts of the present case. This is for the

reason that the Writ Petition that was filed before the Karnataka High Court arose out of a decision dated 27.06.2019 of the Central Sales Tax

Appellate Authority in the matter of BASF India in which the same issue namely whether a pre-existing rate contract, which is like the Running

Contract in the present case, occasioned inter-state movement of goods or it was a standing offer. The Central Sales Tax Appellate Authority held

that it would amount to inter-state movement of goods, but this decision was specifically overruled by the Karnataka High Court and it was held that

the agreement was merely a "standing offer". The case that BASF India set up in the writ petition was that the product is approved by the

customers, the petitioner receives open purchase orders and thereafter transfers the stock to its godowns situated near the manufacturing unit of the

customers and supplies the paint as and when the indent is received. The department believed that this was an inter-state movement of goods from the

manufacturing unit of the petitioner at Mangaluru to various depots in other States against pre-existing contract and, therefore, would amount to inter-

state sale liable to tax under section 3 of the CST Act. The contention that was advanced on behalf of the writ petitioner was that the open purchase

orders do not stipulate any specified quantity and so it cannot be construed as an "agreement to sell". The question, therefore, that fell for

consideration before the High Court was whether the transfer of the goods under Form-F to the depots of the petitioner situated in different States

would amount to inter-state sale under section 3(a) of the CST Act. After taking note of the fact that the open purchase orders did not mention the

quantity of the goods supplied and it was only to ensure prompt delivery of goods as and when called upon that BASF India transferred the goods and

stocks to its depot, the High Court held that the open purchase order would not constitute any contract for sale and that only the purchase orders

issued from time to time for supply of goods would constitute a contract between the parties. Thus, the sales effected pursuant to such purchase

orders would be an intra-state sale and not inter-state sale. The relevant portions of the judgment of the Karnataka High Court are reproduced below:

“3. Brief facts of the case are, petitioner is in the business of manufacture and sale of automotive paints. It is a registered dealer under

the provisions of K-VAT Act (Karnataka Value Added Tax Act, 2003 - “K-VAT Act” for short). Its manufacturing unit is situated near

Mangaluru in Karnataka. It has warehouses (Branch offices) in Maharashtra, Tamilnadu, Haryana and Uttarakhand.

4. Petitioner manufactures automotive paints for original equipment manufacturers and supplies to Tata Motors, Mahindra and Mahindra, Maruti

Udyog Ltd., etc., who procure raw materials on just-in-time (JIT) basis. To cater to their needs, petitioner has developed a business model to

ensure that stock is maintained at warehouses located near the factories of OEM Customers.

5. Petitioner’s case in substance is, after the product is approved by the customers, petitioner receives open purchase orders.

Petitioner transfers the stock to its godowns situated near the customer’s manufacturing unit and supplies the paint as and when

the indent is received.

8. Based on the Investigation Report, the Department issued proposition notices for reopening the assessment proceedings and

concluded the proceedings by rejecting “F-forms” on the Stock Transfer turnover on the ground that Inter-state movement of

goods from the manufacturing unit at Mangaluru to various depots in other States was against pre-existing Contract and amounted to

Inter-State sale liable to tax under Section 3 of the CST Act.

17. The argument of Shri Sridharan in substance, is open purchase orders do not stipulate any specified quantity. Therefore, it cannot

be construed as an “agreement to sell”. In order to satisfy the requirement under Section 3(a) of the CST Act, there must be inter-state

movement of goods pursuant to an agreement to sell or a contract.

18. Revenue’s case is, the open purchase order given by customers is an agreement to sell. The movement of goods occurs from

Mangaluru to petitioner’s depots situated at various places pursuant to the said agreement. Therefore, the transaction is an inter-state

sale within the meaning of Section 3(a) of the CST Act.

19. Thus, the question that falls for consideration is, whether in the facts of this case, inter-state transfer of goods under Form-F to

petitioner’s depots situated in different states amounts to inter-state sale under section 3(a) of the CST Act?

21. Shri Sridharan urged that for a transaction to be defined as inter-state sale, two conditions must to be fulfilled. Firstly, movement of inter-state

goods and secondly, transfer of title to the goods during their movement from one State to another. He submitted that the original equipment

manufacturers and ancillaries who purchase goods from petitioner stipulate the “quality standards” and other technical specifications in the open

purchase orders which do not contain the “quantity” and date of supply. The purchaser/s issue specific purchase order containing the quantity

based on the requirement from time to time and the same is supplied from petitioner's depots immediately on just in time model.

28. In order to hold that a transaction falls under Section 3(a) of the CST Act, the sale or purchase must cause movement of goods from one State to

another or transfer of title to the goods must take place during their movement from one State to another.

29. In the case on hand, goods have been moved to different State under Form-F. Assessee's specific case is, sale is effected

based on the indents received from time to time from the purchasers.

35. Adverting to the facts of this case, the Open Purchase Orders referred to hereinabove, do not mention the quantity of the goods

supplied. We may record that in order to avoid inventory, manufacturers have been using the "JIT" (Just in time) supply model. It was argued

on behalf of the assessee that to ensure, prompt delivery of the goods as and when called upon, the assessee transfers the goods and stocks it in its

depot. Shri Sridharan also urged that the automobile manufacturing Industries nor the ancillary units had any obligation to place purchase orders. In

case the paint had remained unsold, the option for the assessee is to either destroy it or to take it back to its Manufacturing unit.

36. It is not in dispute that goods were transferred from Mangaluru to various depots situated in different States under Form-F and assessments for

the years 2006-07 and 2007-08 were concluded by accepting the Statutory declarations filed in Form-F.

37. In view of the Authorities in the case of Maddala Thathiah and Kelvinator, we are of the considered view that the Open Purchase

Orders do not constitute any Contract. The Purchase Orders issued from time to time for supply of goods constituted Contract

between parties. Thus, the sale effected pursuant to such Purchase Orders is an Intra-State sale in that State. We say so because,

whilst Goods were stored in various States, the ownership and title of goods vested with the assessee. Pursuant to the Purchase

Orders received from time to time, assessee has delivered the goods from its depot in that State to the respective purchasers.

38. In view of the above discussion, this writ petition merits consideration. Hence the following:

ORDER

(a) Writ petition is allowed.

(b) Order dated 27th June 2019 Annexure-A is quashed holding that Open Purchase Orders are only standing offers and do not

constitute a confirmed "Agreement to sell" and movement of goods are mere stock transfers.

No costs.

(emphasis supplied)

35. It needs to be noted that the Central Sales Tax Appellate Authority in BASF India, which decision had been set aside by the Karnataka High

Court, had placed reliance on the judgment of the Supreme Court in IDL Chemicals, which judgment has also been relied upon by the Sales Tax

Tribunal in the present case and has also been relied upon both by the learned counsel for appearing for the State of Maharashtra and the learned

counsel appearing for the State of West Bengal.

36. It would, therefore, be appropriate to reproduce the relevant portions of the judgment of the Supreme Court in IDL Chemicals and they are as

follows:

¶11. The important feature of this order is that all the Managers of the collieries in the three States will have to place order with the

consignment agents of IDL Chemicals from their depots. This is a modality adopted by the appellant with a view to dispatch their goods from

Rourkela to various consignment agents and from there all the collieries of CIL are bound to purchase through their agents mentioned in the order

above. Though each colliery has to give its indents for purchase of explosives, detonators etc. as per the requirement but the fixed

quantity has been given in the schedule appended to this order. The transit insurance was to be borne by the collieries. The mode of

dispatches was also mentioned. It further says that excess supply made, if any, shall be acceptable to the extent of 15% over the quantities against

each item in respect of each area as indicated in Schedules I to IV. The price is firm for contract period. Then there is a clause of price variation also.

The respective General Managers are to be contacted for monthwise allocation of explosives. IDL Chemicals Limited, and/or their consignment

agents, namely, (i) M/s. B.P. Agarwalla & Sons (P) Ltd., P.O. Dhansar, Dist-Dhanbad, (ii) M/s. William Jacks & Co (India) Pvt. Ltd. Asansol/

Calcutta, and (iii) Abdul Hussain Mulla Allabuxji, Nagpur (Maharashtra), will supply explosives and accessories to mines on the basis of convenience

and locations against this order. Mines will follow the existing system of drawing their requirements from IDL and/or their consignment agents who

will raise the bills accordingly and payments will be made by cheques drawn in favour of IDL Chemicals Ltd. Instructions contained in the attached

Schedule VI should be strictly and invariably followed.

12. Copy of this letter was sent to respective collieries all over. Therefore, what it transpires is that all collieries of CIL were under an

obligation to purchase the explosives, detonators etc. from the appellant only through their agents situated in the States of West

Bengal, Bihar and Maharashtra and each colliery has been given the quantities of explosives, detonators and detonating/safety fuses to

be purchased from the appellant only at the price fixed. This purchase order was issued from the apex body i.e. the CIL to its subsidiaries i.e.

the collieries spreading over these three States. They cannot purchase the goods from any other company other than the appellant. Therefore, this

firm order issued by CIL is in the nature of purchase order specifying the quantities and the price thereof. It was only the convenient

mode of supply, instead of sending the goods directly from Rourkela to various States. This convenient device was worked out by the

appellant and CIL so that the goods need not directly be sent from the company at Rourkela but would be sent through their agents in various States.

This order is definitely a purchase order, the nature of indent and the modalities were agreed, the quantity of the goods to be supplied to various

collieries at fixed price was firm, the insurance and freight was to be borne by CIL and 98% of the payment was to be made by the collieries of CIL.

13. From these facts it appears that this was a purchase order issued by the apex body, CIL by fixing the price and the quantities to be purchased by

their collieries. Various other evidence was produced to show that in fact there was independent transaction with the subsidiaries and the consignment

agents of the appellant and the order dated 24-9-1976 does not constitute a firm purchase order. But we regret that cannot be of any avail for the

simple reason that all supplies were made in pursuance of the order of CIL. Therefore, that was fountainhead from where all supplies

followed. If the terms of the order is to be construed as purchase order, then other evidence is secondary and irrelevant. In fact both the

parties understood that way only and paid CST for some time but subsequently discontinued. Therefore, from this it follows that the whole movement

of the goods from the factory at Rourkela was triggered in pursuance of the order dated 24-9-1976. There was no independent contract by the

subsidiaries of CIL with the appellant. The subsidiaries were issuing indents on the agents of the appellant in pursuance of the order dated 24-9-1976.

In fact the appellant instructed its consignment agents to supply the goods to the collieries as per the indents placed by them. The collieries were also

asked by the very same order that they would place their indents to the consignment agents of the appellant on the price fixed in this order and the

quantity mentioned therein. Therefore, it is not a case in which there was any independent contract between the subsidiaries of CIL with that of the

appellant. It is in pursuance of this order dated 24-9-1976 that the collieries were placing their indents for supply of the goods and the payment was

made on the basis of the terms and conditions fixed in the order dated 24-9-1976.

Therefore, the goods were moved from the appellant's

factory for supply to CIL in pursuance of this order.

(emphasis supplied)

37. In IDL Chemicals, the Supreme Court concluded that the contract was a contract of sale based on the fixed quantities of the explosives that were

to be sold by IDL Chemicals to Coal India and were enumerated in the contract itself; the contract placed an obligation on the collieries of Coal India

to purchase all their explosives from IDL Chemicals only; the collieries could only purchase explosives as per the fixed quantities in the contract and

not on a rolling basis as per their requirement; and the insurance and freight of the explosives transported was borne by Coal India. The Supreme

Court, therefore, concluded that the contract amounted to a contract of sale.

38. The Running Contract involved in this appeal is different from the contract in IDL Chemicals, as would be apparent from the following facts:

(a) The Running Contract does not mention the fixed quantities of explosives that are to be sold by the appellant or the fixed quantities of explosives

that may be purchased by the subsidiaries of Coal India;

(b) There is no obligation on the subsidiaries of Coal India to purchase explosives only from the appellant. In fact, Coal India was simultaneously

engaged in multiple Running Contracts with multiple manufacturers of explosives in the relevant period;

(c) The subsidiaries of Coal India purchased explosives on the basis of their actual requirements and not on the basis of any fixed quantities specified

in the Running Contract;

(d) The freight on the transport of the goods was borne by the appellant and not by Coal India. The said goods were not insured and were transported

on a risk basis;

(e) The appellant conducted sales to customers other than subsidiaries of Coal India. This clearly evidences the fact that the appellant has retained the

right to divert the explosives and sell it to other customers;

(f) The goods were never earmarked for any customer at the time when the truck left the Nagpur Unit. The goods are standardized goods (and not

customized goods) and appropriation of the goods to the contract occurs only when the appellant separates out and earmarks the goods for a specific

customer at its depots in the destination States;

(g) It is clear that the appellant is stock-transferring the goods to its depots on the basis of the internal forecasts for replenishing the stocks of its

depots. Subsequently, the goods are transported from the depot of the appellant in terms of the indents received from subsidiaries of Coal India;

(h) There is no one-to-one correlation between the goods despatched from the Nagpur Unit and goods sold from the depots to the subsidiaries of Coal

India. This clearly shows a break in the movement; and

(i) The transactions are clearly stock transfers and the movements of goods is not occasioned by pre-determined contract of sale.

39. The judgment of the Supreme Court in IDL Chemicals would, therefore, not be applicable in the present case. On the other hand, the judgments of

the Supreme Court Chaturbhuj Vithaldas and Maddala Thathiah, on which reliance has been placed by the learned counsel for the appellant, would

apply to the facts of the present case.

40. Ms. Rama Ahluwalia, learned counsel appearing for the State of Maharashtra which has been impleaded as respondent no. 1 heavily relied upon

the earlier decision of the Central Sales Tax Appellate Authority in Solar Industries, in which the facts are almost identical to the facts involved in

BASF India. It needs to be noted that both Solar Industries and BASF India were decided by the same bench of the Central Sales Tax Appellate

Authority on the same date i.e. 27.06.2019. They dealt with same issue namely whether the pre-existing rate contract occasioned inter-state

movement of goods or it was merely a standing offer. As noticed above, the decision of the Appellate Authority in BASF India was challenged before

the Karnataka High Court and the Karnataka High Court set aside the decision of the Appellate Authority and held that the pre-existing rate contract

was merely a standing offer and it did not occasion inter-state movement of goods. Learned counsel for the State of Maharashtra is, therefore, not

justified in placing reliance upon the decision of the Appellate Authority in Solar Industries.

41. The Sales Tax Tribunal was, in such circumstances, not justified in holding that the supply of explosives to Coal India and its subsidiaries were

made under the Running Contract dated 28.11.2008. The Running Contract, as noticed above, was merely a standing offer. The Sales Tax Tribunal

was also not justified in rejecting the contention advanced by the appellant that each subsidiary of Coal India had to issue indent for supply of the

explosives as per its requirement for the reason that the schedule to the Running Contract mentions the quantities. The quantities mentioned in the

schedule were tentative and it has been demonstrated by the appellant that the actual quantities supplied were far lesser than indicated in the schedule

to the Running Contract. The Sales Tax Tribunal also held that all subsidiaries of Coal India were under an obligation to purchase the goods from the

appellant or its branches situated in the respective States. The Sales Tax Tribunal held that each subsidiary of Coal India had been given the quantities

of explosives and accessories to be purchased from the appellant only at the fixed price. This finding is clearly erroneous. The subsidiaries of Coal

India had the option to purchase the goods according to their requirement from any one of the five Running Contract Holders. The Sales Tax Tribunal

also fell in error in assuming that it was the contention of the appellant that supply of goods in accordance with the indents and the Running Contract

would be an agreement to sell, for it was the contention of the appellant that the Running Contract was neither a sale or an agreement to sell and was

merely a standing offer.

42. It has been submitted by the learned counsel for the appellant that as the Running Contract specifically provides that all taxes are to be

reimbursed, the appellant will not get any benefit in paying local VAT over the central sales tax as both are liable to be reimbursed to the appellant on

actuals. Learned counsel, therefore, submitted that the appellant had not chosen the model of operation to avoid payment of central sales tax and the

reason for stock-transferring the goods and subsequently selling them locally were entirely for logistic and technical reasons.

43. It, therefore, follows from the aforesaid discussion that the appellant is merely stock transferring the goods to its depots and it is only when the

subsidiaries of Coal India place indents on the appellant and the goods are supplied by the appellant that the sale takes place. The sale does not take

place on the basis of the Running Contract dated 28.11.2008. It cannot, therefore, be said that the movement of packaged explosives from the

manufacturing unit of the appellant at Nagpur in the State of Maharashtra to the depots of the appellant in the State of Jharkhand and the State of

West Bengal has resulted in a sale taking place during the course of inter-state trade or commerce. It is clearly a case of branch transfer of goods by

the appellant to its depots in the States of Jharkhand and West Bengal.

44. The impugned order dated 26.09.2017 passed by the Maharashtra Sales Tax Tribunal, therefore, cannot be sustained and is set aside. The appeal

is, accordingly, allowed.

(Order pronounced on 08.07.2024)