Amit Enterprises Vs Central Coalfields Limited and Others

Writ Petition (T) No. 5523 of 2013

Court: Jharkhand High Court

Date of Decision: Jan. 20, 2015

Acts Referred:
Central Sales Tax Act, 1956 - Section 3, 3(a)

Citation: (2015) 2 AJR 292 : (2015) 4 JLJR 93

Hon'ble Judges: Pramath Patnaik, J.; Dhirubhai Naranbhai Patel, J.

Bench: Division Bench

Advocate: Ranjana Mukherjee, for the Appellant; Ananda Sen, Biren Poddar and D.P. Mishra, Advocates for the Respondent

Final Decision: Allowed

Judgement

Dhirubhai Naranbhai Patel, J.
This writ petition has been preferred mainly on the ground that respondent No. 6 has raised tax invoice

levying Central Sales Tax (hereinafter referred to as "CST" for the sake of brevity) instead of Value Added Tax (hereinafter referred to as "VAT"

for the sake of brevity) which is applicable within the State of Jharkhand. Petitioner is aggrieved by Annexure 4 in which CST is charged at the rate

of 5% and the total value of CST mentioned in the invoice at Rs. 7,65,383.07. Instead of CST, this should have been VAT under the Jharkhand

Value Added Tax Act, 2005, because the petitioner is e-auction purchaser of coal within the State of Jharkhand. He is a registered dealer within

the State of Jharkhand. The seller and purchaser of the goods are within the State of Jharkhand. The whole transaction of sale has been completed

within the State of Jharkhand and, therefore, the Annexure 4 as CST Invoice cannot be issued. In fact, it should have been VAT and respondent

No. 6 is at no loss at all, because the VAT is also at the rate of 5% and the CST is at the rate of 5%, but it would make a difference for this

petitioner for getting input tax credit under Section 18 of the Jharkhand Value Added Tax Act, 2005 to be read with Rule 26 of the Value Added

Tax Rules, 2006. Similarly, it also makes a difference to the subsequent purchaser of coal, who is at Uttarakhand, because the petitioner is a

registered dealer and, therefore, at Uttarakhand, the purchaser of the coal from this petitioner is in a second sale which is also altogether a different

transaction, he will have to pay CST at the rate of 2%. This will make a difference to the petitioner as well as the subsequent purchaser of the coal

from the petitioner, but, fact remains that so far as respondent No. 6 is concerned, it makes not difference, because for VAT as well as for CST,

the rate of tax is 5%. Thus, even though, there will be no change in the amount of tax which is Rs. 7,65,383.07, the petitioner as well as his

subsequent purchaser (at Uttarakhand), it will make a difference if, invoice is changed from CST to VAT. This aspect of the matter has not been

properly appreciated by the respondent No. 6 and, therefore, the present petition has been preferred for making necessary corrections through

respondent No. 6 in a Tax Cum Excise Invoice (Rail Sale). Counsel for the petitioner submitted that enough averments were made in the memo of

petition in paragraphs 7, 10, 11, 13, 15, 16, 17 and 18 and looking to the counter affidavit, it is stated by the respondents-State that the

respondent No. 6 has acted or re-acted looking to Section 3(a) of the Central Sales Tax Act, 1956, but, Section 3(a) of the Central Sales Tax

Act, 1956 is not applicable to the transaction of the sale of coal through e-auction between the petitioner (registered dealer within the State of

Jharkhand) and the respondent No. 6 (coal Company), as both are situated within the State of Jharkhand and the respondent No. 6 is not

concerned with the second sale between the petitioner and the purchaser from Uttarakhand. Section 3(a) of the Act of 1956 is talking about one

transaction of sale or a purchase and if for one sale or purchase of goods, if the movement of the goods is from one State to another State, then

Section 3(a) of Act of 1956 is applicable, but, in the facts of the present case, second sale is altogether another sale, which is between this

petitioner and the purchaser from Uttarakhand. There is no privity of contract between the purchaser of Uttarakhand and the respondent No. 6-

Coal Company. Hence, Section 3(a) of the Act of 1956 is not applicable in the facts of the present case and, hence, CST is not leviable from this

petitioner as mentioned in Tax Cum Excise Invoice which is at Annexure 4 and, hence, instead of CST, it should have been VAT under the

Jharkhand Value Added Tax Act, 2005. Amount of tax and figurative work may remain same as it is as stated herein above.

2. Counsel for the respondent No. 6 submitted that they have filed a detailed counter affidavit and as the movement of goods from one State to

another State, they have mentioned CST at the rate of 5% in their Tax Cum Excise Invoice which is at Annexure 4 to the Memo of Petition.

Counsel for the respondent has also taken this Court about the various movement of goods.

3. Having heard both sides and looking the facts and circumstances of the case, it appears that respondent No. 6 has committed gross error in

mentioning CST at the rate of 5% in Column 12 of Tax Cum Excise Invoice at Annexure 4, mainly for the following facts and reasons:-

(i) Petitioner is a registered dealer within the State of Jharkhand. During the e-auction of coal proposed by respondent No. 6-Coal Company, this

petitioner, who is situated within the State of Jharkhand, had participated in the e-auction of coal.

(ii) Petitioner being the highest bidder was a purchaser of coal from respondent No. 6 which is also situated within the State of Jharkhand. Now,

consideration has also been moved from petitioner to respondent No. 6 and the sale was completed between the petitioner and the respondent

No. 6 within the State of Jharkhand.

(iii) Looking to the provision of the Jharkhand Value Added Tax Act, 2005, the petitioner is liable to make payment of VAT which his at the rate

of 5% of the sale price of the coal, as the sale is an intra-State sale. These facts are admitted facts so far as the present case is concerned.

(iv) It further appears that the coal is not a consumable item which can be consumed by human being like a milk or fruit. It ought to have been kept

in mind by respondent No. 6 that they are selling coal and not fruits. The purchaser is bound to further sell the goods either;

(a) within the State of Jharkhand, or;

(b) outside the State of Jharkhand, or;

(c) he may even export the coal after fulfilling certain criteria under existing laws.

(v) It is none of the concern of the respondent No. 6 where the e-auction purchaser i.e. the petitioner, is selling the coal. There is no privity of

contract between the respondent No. 6 and the purchaser of the coal in a second sale from the petitioner. This aspect of the matter has not been

properly appreciated by the respondent No. 6.

(vi) It further appears that respondent No. 6 has to levy VAT at the rate of 5% and not CST at the rate of 5%.

(vii) Because of sale of coal, between the petitioner and respondent No. 6, there is no movement of coal from one State to another State .

Therefore, no CST can be levied. The goods in question has moved out of State i.e. from one State to another, due to subsequent sale (between

petitioner and purchaser from Uttarakhand), with which respondent No. 6 has nothing to do, as there is no privity of contract between respondent

No. 6 and subsequent purchaser of coal of Uttarakhand. Therefore, respondent No. 6 cannot levy CST, but it can levy only VAT.

(viii) It is submitted by the counsel for the respondents that as per section 3 of the Central Sales Tax Act, 1956, they have levied CST at the rate

of 5% on the sale value. This is a misconception in the mind of respondent No. 6 that CST is applicable in a transaction between the petitioner and

the respondent No. 6. The movement of the goods which has taken place from one State to another State is not in one sale or in a first sale. This

movement from one State to another State of the coal has taken place due to second sale between this petitioner and the Uttarakhand purchaser.

Thus, the sale is as under:-

(ix) Thus, the present matter is between A and B i.e. the first sale which is inter-state sale, whereas transaction between B and C i.e. from the

petitioner and Uttarakhand Sale, which is the second sale. For the ready reference, Section 3 of the Central Sales Tax Act, 1956 reads as under:-

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 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.

(Emphasis supplied)

(x) In view of the Section of the Central Sales Tax Act, 1956, the presumption of inter-State will come into existence only upon fulfilling the

following two conditions:-

(a) There must be one transaction of sale or purchase of goods.

(b) In this one transaction of sale or purchase of goods, movement should be from one State to another State.

In the facts of this case, in first sale between petitioner and respondent No. 6, goods have never moved out of State. But the goods have moved

out of State in second transaction of State.

(xi) In the facts of the present case, as stated herein above, there is no privity of facts between A and C i.e. between respondent No. 6 and the

purchaser of the Uttarakhand, nor from one sale or purchaser of coal, there is a movement of goods from one State to another State. Coal is not

such a commodity which will be consumer by the purchaser, always. He may purchase for captive consumption or he may not. Sometimes,

petitioner may be a trader also. A trader is bound to further sell the coal, within the State, outside the State or even outside the country. In the fact

of the present case, in the second sale, the movement of goods has taken place from one State to another State and, therefore, the respondent No.

6 could not have levied CST under Section 3 of the Central Sales Tax Act, 1956. This aspect of the matter has also not been properly appreciated

by respondent No. 6 while levying CST at the rate of 5% as stated in Tax Cum Excise Invoice (Annexure 4).

(xii) Moreover, it makes no difference to respondent No. 6 financially, because the rate of CST as well as the rate of tax of VAT are similar. Both

are at the rate of 5%, but it will surely make a difference to the petitioner, because if he is paying VAT, he will get Input Tax Credit under Section

18 of the Jharkhand Value Added Tax Act, 2005 together with Rule 26 of Jharkhand Value Added Tax Act, 2005. There is one more advantage

to the petitioner to the effect that subsequent purchaser at Uttarakhand will have to pay CST at the rate of 2% instead of 5%, because the

petitioner is a registered dealer and he has paid VAT at the rate of 5% within the State of Jharkhand. The respondent No. 6 will have to now issue

JVAT-404 Form as prescribed under the Act of 2005.

(xiii) The movement of goods from one State to another is not due to incidence of e-auction of coal between respondent No. 6 and petitioner.

Therefore, CST cannot be levied, by respondent No. 6, but, only VAT can be levied. The movement of goods-coal from Jharkhand to

Uttarakhand is independent of incidence of e-auction.

(xiv) It has been held by High Court of Madras in the case of Surya Vinayaka Industries Limited Vs. The District Forest Officer Salem Division,

Salem and The Commercial Tax Officer Salem Division, Salem, :-

Therefore, the sale in the present case either to a dealer or to a casual trader or agent is liable to be taxed as there is no dispute of sale within the

State of Tamil Nadu. The petitioners in all cases have bound themselves by the terms and conditions contained in the tender-cum-auction sale

notification and the provisions of the TNVAT Act, 2006, for payment of tax on sale of goods within the State of Tamil Nadu. Therefore, they

cannot resile from their contract nor does the law provide for payment of lesser tax, as the sale in the present case attracts the provisions of the

TNVAT Act, 2006 as set out above.

Merely because there is movement of goods from the State of Tamil Nadu to another State at the instance of the buyer, that would not take it out

of the purview of the term sale within the State. There are certain rules which provide for transportation of goods in question after the sale. But that

does not change the character of the sale within the State consequent to tender-cum-auction sale. The benefit which the petitioners may get out of

the provisions of the Income-tax Act is totally alien to the payment of tax under the TNVAT Act, 2006, as the two enactments operated in

different fields. There is no scope or provision for reading one Act into the other, unless there is an express provision. Since the sale in this case

was effected within the State of Tamil Nadu on the basis of the tender-cum-auction sale and the petitioners in all these cases have agreed to abide

by the terms and conditions unconditionally, there cannot be any manner of doubt that the case squarely falls within the mischief of section 3 of the

TNVAT Act, 2006. Therefore, the demand for payment of value added tax under the TNVAT Act, 2006 is justified. There is no basis to justify

the claim as inter-State sale. The said plea is specious and not as per law. The petitioners have not made out a case for the relief sought for both in

law and on facts.

15) A similar issue was decided by a Division Bench of this court in Karnataka Soaps and Detergents Ltd. Vs. The District Forest Officer,

Sathyamangalam Division and Others, wherein it was held as under: (pages 122 and 123 in 140 STC):

11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government

would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the

sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by

implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to

Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather

the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders

who wanted to purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government

authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P. or

some other State, or remains within Tamil Nadu. Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the

auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale.

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13. In the present case, there is no conceivable legal link between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The

said movement was purely voluntary at the option of the petitioner and not under any legal obligation. Hence, the decision in South India Viscose

Ltd. Vs. State of Tamil Nadu, is clearly distinguishable.

The decision of the Division Bench, cited supra, fortifies the view now taken by this court. For the reasons stated supra and in view of the decision

of the Division Bench of this court, the plea of the petitioners that it is an inter-State sale has no legal basis and hence, the said contention is

rejected. The challenge to levy of Tamil Nadu value added tax therefore fails.

(Emphasis supplied)

(xv) In view of the aforesaid decision, even if the movement of goods have taken place out of one State to another State, by per se, CST is not

leviable. One has to draw his attention, whether the movement of goods from one State to another has taken place due to e-auction or not. If

answer is negative, the CST is not leviable. There may be second sale. Subsequent purchaser may purchase the same goods. Now, if due to

subsequent sale, if, the very same goods are moving from one State to another, therefore seller of goods of first transaction cannot levy CST but he

can levy only VAT.

4. In view of the facts, reasons and judicial pronouncements, the CST, levied at the rate of 5% by respondent No. 6 is impermissible in the eyes of

law. Instead of that, it should have been VAT under the Jharkhand Value Added Tax Act, 2005. We, therefore, direct the respondents to make

necessary suitable changes at Annexure 4 which is Tax Cum Excise Invoice (Rail Sale). There will be no change in the amount of tax whether it is

CST or VAT. The rate of tax is the same i.e. 5%. Therefore, instead of CST in Column 12 at Annexure 4, it should be VAT. This change shall be

carried out by the respondent No. 6 within a period of four weeks from today. We, therefore, direct the respondents-authorities to issue form

JVAT-404 under Jharkhand Value Added Tax Act, 2005 within a period of four weeks from today.

5. This writ petition is allowed without imposing cost upon the respondents.