A M/S. DCM LIMITED

v.

COMMISSIONER OF SALES TAX, DELHI

(Civil Appeal No. 1323 of 2009)

FEBRUARY 27, 2009

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[S.H. KAPADIA AND H.L. DATTU, JJ.]

Central Sales Tax Act, 1956: s.3(a) – Inter-State sales – Delivery of goods taken in Delhi by the purchasing dealers C *for their assigned territories outside Delhi amount to inter-State sales.*

The question which arose for determination in these appeals was whether the taking of the delivery in Delhi D **by the purchasing dealers for their assigned territories outside Delhi would take away the transactions in question from the category of inter-State sale.**

Dismissing the appeals, the Court

E **HELD: 1. Taking of delivery in Delhi by the purchasing dealers for their assigned territories outside Delhi would not take away the transactions in question from the category of inter-State sales. The determinative test to be applied in such case is whether the purchasing** F **dealers were obliged contractually to remove the goods from Delhi, in which they were bought, to the assigned territories and whether in fact the goods stood actually removed. This test would decide the question as to whether the sales in question were "inter-State sales" or** G **"local sales". [Para 15] [522-H; 523-A, B]**

1.2. The perusal of the contract shows that each purchasing dealer was assigned an exclusive territory. Each dealer was obliged to take the chemicals to his respective territory outside Delhi where they were to be

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sold. Despite the fact that the delivery of the goods was taken in Delhi, the purchasing dealer had to move the goods to the respective assigned territories outside Delhi and it was the essential condition of the contract itself that the chemicals would move out of Delhi and would be sold in the assigned territories allotted to each of the respective purchasing dealers. The covenant in the Contract obliged each of the purchasing dealers to move the goods to the territories outside Delhi. In fact in clause 3 there was a proviso that if on instructions from the purchasing dealer, the assessee was required to transport the goods, the freight charges would have to be paid by the distributor as a purchasing dealer and that the purchasing dealer would also be liable for sales tax. No evidence was led by the assessee as to the exact quantity of chemicals which stood removed under this clause and the reimbursement, if any, of tax and freight being made to the assessee. Clause 7 of the Contract also indicates that the chemicals were to be sold in the territories outside Delhi. The assignment of specific territories is indicated in clause 1. Under the Contract, the purchasing dealer was required to submit monthly stock of sales to the assessee. Every month, the purchasing dealer was required to submit a market report to the assessee. Under the contract, the price at which the chemicals were to be sold in different territories was also fixed by the assessee. Each purchasing dealer had executed separate contract(s) with the assessee. Thus, movement of the goods was the covenant of the Contract. The sale of chemicals effected by the assessee to its purchasing dealers who in turn were obliged to effect their sales in their respective territories outside Delhi involved inter-State movement of goods and, therefore, the sales in question were inter-State sales. Accordingly, there is no infirmity in the concurring findings of fact recorded by the Authorities below. [Para 15] [523-CH; 524-A-C]

A **1.3. It is found that the purchasing dealers were obliged under the Contract(s) to take the chemicals to their respective territories outside Delhi. The purchasing dealers were obliged to sell the chemicals in their respective assigned territories, and the said purchasing** B **dealers were obliged to enter into separate contracts with the assessee. Each of the purchasing dealers were required to sell the chemicals in their assigned territories at the price fixed by the assessee and submit monthly reports to the assessee. In such an event the mode in** C **which each of the purchasing dealers could sell their goods either by way of stock transfer or inter-State sale or local sale becomes irrelevant. The obligation of the purchasing dealers under the Contract indicates the control of the assessee over the movement of the goods.** D **[Para 17] [525-A-D]**

State of Bihar v. Tata Engineering & Locomotive Co. Ltd. **(1970) 3 SCC 697 and** *Union of India and Another v. K.G. Khosla & Co. Pvt. Ltd. & Others*, **(1979) 2 SCC 242, relied on.**

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Case Law Reference:

(1970) 3 SCC 697	**relied on**	**Para 12**
(1979) 2 SCC 242	**relied on**	**Para 12**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1323 of 2009.

From the Judgment and Order dated 3.7.2007 of the High Court of Delhi at New Delhi in STR No. 4 of 1983, STR No.8 G of 1980, STR No. 9 of 1980, STR No. 13 of 1987 and STR No. 14 of 1987.

S.K. Bagaria and Praveen Kumar for the Petitioner.

L. Nageshwar Rao, C.R. Sridharan, Rajan Narain and Raj H Rajeshwari Shukla for the Respondent.

The Judgment of the Court was delivered by A

S. H. KAPADIA, J. 1. Leave granted.

2. A short question which arises in this batch of civil appeals is : whether the taking of the delivery of chemicals in Delhi by the purchasing dealers, in the context of they being B the distributors/stockists of the assessee (appellant), for the assigned territories outside Delhi would take away the transaction in question from the category of sale inter-State sale(s)?

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Facts in Civil Appeal No. of 2009 –

arising out of S.L.P. (C) No.20624 of 2007

3. During the assessment year 1974-75 the dealer, M/s. DCM Ltd., claimed exemptions on account of the following D sales made to the registered dealers:

Name of the (purchasing/registered) Dealer	Amount of Sale claimed to be made by DCM to the Registered Dealer
1. M/s. Dayal Sons	Rs.32,33,704.74
2. M/s. Dayal Brothers	Rs.5,93,628.62
3. M/s. Vaish Brothers	Rs.35,69,571.77
	Total: Rs.73,96,905.13

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4. The Assessing Authority vide Order dated 28.3.1979 did not grant exemption in respect of the above-mentioned sales on the ground that the three above-mentioned purchasing G dealers had been assigned specific territories, under the Contract(s), outside Delhi and that they were under contractual obligations with M/s. DCM Ltd. to supply goods to the specified dealers who were also named by M/s. DCM Ltd. on a price fixed and determined by M/s. DCM Ltd. According to the said H

A order, even the quantity of chemicals stood determined by M/s. DCM Ltd. According to the Assessing Authority, under the above circumstances, the said chemicals meant for inter-State sales, however, to avoid liability under the Central Sales Tax Act, 1956, the transaction was shown by the assessee B (appellant - M/s. DCM Ltd.) as a "local sale". Accordingly by the said order dated 28.3.79, the said sales were taxed at 10% under the said 1956 Act.

5. Aggrieved by the assessment order dated 28.3.1979, appeals were preferred by M/s. DCM Ltd. before Addl. C Commissioner who dismissed the appeals vide his order dated 14.12.79 on the ground that the transaction(s) in question were inter-State sales. According to M/s. DCM Ltd., the sales were "local sales" as the said chemicals stood sold in Delhi itself. However, the Appellate Authority observed that the assessee D should be given an opportunity to produce 'C' Forms in respect of the sales in question and accordingly it remanded the case on the limited point to the Assessing Authority to give an opportunity to M/s. DCM Ltd. to produce the 'C' Forms.

E 6. Aggrieved by the decision of the Appellate Authority, the assessee filed appeal(s) before the Appellate Tribunal which held that each of the three registered/purchasing dealers were distributors who had executed Agency Agreement(s) with the assessee. According to the Tribunal, some of the clauses of F the said Agreement(s) indicated that all supplies were to be made ex-works of the assessee. Under the said Agreement(s), the purchasing dealers were required to take local delivery at the factory gate. Under the said Agreement(s), the purchasing dealer(s) were required to store the said chemicals in their own godowns in Delhi. Under the said Agreement(s), however, the G assessee had to fix the price(s) at which the chemicals were to be sold in the different assigned territories outside Delhi. Accordingly it was held by the Appellate Tribunal, under the facts and circumstances of this case, that under the said Covenant of Agency, since the chemicals were to be sold in the assigned H

territories outside Delhi, the transaction(s) was inter-State sale(s). In this connection, the Appellate Tribunal placed heavy reliance on clauses 3 & 7 of the said Agreement(s). The Appellate Tribunal once again directed the Assessing Authority to give one more opportunity to the assessee to produce the requisite 'C' Forms in respect of the sales made to the said three registered/purchasing dealers.

7. Aggrieved by the decision of the Appellate Tribunal, however, the assessee approached the High Court of Delhi by filing an application for reference under Section 45(1) of Delhi Sales Tax Act, 1975. The question referred to the High Court was : whether the Sales Tax Tribunal was right in holding that the said sale(s) was an inter-State sale(s)? Vide impugned judgment dated 3.7.07, the High Court held that the sales were inter-State sales falling under Section 3(a) of the said 1956 Act. Accordingly, the High Court directed the assessee to adduce evidence before the Assessing Authority to show that the chemicals were locally sold by the purchasing dealer and that they were not transferred to branches outside Delhi or sold in the territories outside Delhi. Against the said Order, however, the assessee has approached this Court by way of special leave petition(s).

ISSUE

8. In this case great emphasis is placed by the assessee on the fact that all supplies were made ex-works of the of the assessee and that the above three registered purchasing dealers (distributors/stockists) had taken local deliveries at the factory gate and had arranged to store the chemicals in their own godown(s) in Delhi, both in terms of the contract and in fact.

9. Therefore, the main question which arises for determination in these civil appeals is : whether the taking of the delivery in Delhi by the purchasing dealers for their assigned territories outside Delhi would take away the

A transactions in question from the category of inter-State sale?

Relevant clauses of the Agreement

"1. Territory

B *(a)* Whole of U.P. excepting towns/districts of Kanpur, Lucknow, Azamgarh, Ghaziabad, Hapur, Gorakpur, Faizabad, Pilakuwa.

(b) Ganesh Flour Mills and Birla Mills, Delhi excepting supplies to:

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(a) Our sister concerns;

(b) Government, Semi-Govt. Department

D (c) Other bulk consumers and Parties to whom we may decide to give effect supplies.

2. Period

This agreement shall be effective from 1.11.73 to 31.12.73. E In the event of a breach of any of the terms of the agreement on either side, this agreement shall be liable to cancellation by either party on tendering one month's notice.

3. Delivery

F All supplies will be made on ex-works and you shall take local delivery of the goods at factory gate and shall arrange to store the same in your godown in Delhi.

In the event of you desiring us to transport the goods to G your territory outside Delhi, you would give us freight charges and also be liable for Central Sales Tax.

4. Shortage Losses Damages in Transit

The basis of billing and payment for each supply shall be H the weight shown in the relative challan and we shall not be

responsible for any shortage/losses/damages in transit after the goods have been loaded to the satisfaction of the Railway authorities/Carriers.

5. Selling Rates

These will be fixed by us from time to time taking into consideration cartage and other incidental charges and you will not be entitled to charge higher rates.

6. Sales of Products of other Manufacturers

During the period of this agreement, you shall not deal directly or indirectly in the sale of any identical products of other manufacturers.

7. Agency Security Deposit

You shall give us a security deposit of Rs.2,000/- to ensure the due fulfillment of the agreement. This deposit shall carry interest at the rate prevailing from time to time, which will be 1% less than the Bank rate. This deposit shall be liable to forfeit in part or in full at our discretion in the event of breach of the terms of agreement."

CONTENTIONS

10. Mr. S.K. Bagaria, learned senior counsel appearing on behalf of the assessee (appellant), submitted that the sales effected by the assessee to its purchasing dealers (distributors) were "local sales" and the said sales did not occasion movement of goods from Delhi to other States. He further submitted that the purchasing dealers were registered dealers under the Local Act. They were also registered dealers under the said 1956 Act. According to learned counsel, the dealers had purchased the goods locally from the assessee in Delhi on the strength of their registration certificates by issuing prescribed declarations under the Local Act and, therefore, the said purchases were local purchases in the hands of said

A dealers. According to learned counsel, after purchasing the goods in Delhi and getting delivery ex-works at the factory of the appellant, the purchasing dealers had stored the goods in their godowns in Delhi. According to learned counsel, the purchasing dealers were selling the goods purchased from the B appellant either by making local sales in Delhi or by making inter-State sales to their own buyers outside Delhi or by making branch transfers to their own branches outside Delhi.

11. Learned counsel next contended that a local sale cannot be deemed to take place in the course of inter-State C trade or commerce simply because the buyer (purchasing dealer) has been assigned a territory. According to learned counsel, Section 3(a) of the 1956 Act creates a deeming fiction. It provides that a sale or purchase shall be deemed to take place in the course of inter-State trade or commerce if the sale D or purchase occasions movement of goods from one State to another. Thus, according to learned counsel, in order to be covered by Section 3(a), the sale in question itself must occasion movement of goods from one State to another. According to learned counsel, Section 3(a) is not attracted E merely because the purchasing dealer(s) has been assigned a territory outside the local area. According to learned counsel, assignment of territory is different from a sale occasioning movement of goods. Mere assignment of territory by itself, according to learned counsel, does not mean that the sale by F the assessee to the dealer(s) occasioned the movement of goods to the assigned territories. According to learned counsel, the goods in question were sold locally in Delhi by the appellant. According to learned counsel, appellant was not concerned with subsequent sale(s). According to learned counsel, in the G present case, the purchasing dealer(s) had no obligation to occasion the movement of goods to the assigned territories pursuant to or as an incident of the appellant's sale to them. According to learned counsel, the appellant has sold the goods locally to the purchasing dealers who were free to sale the H goods to their own buyers in the assigned territories in either

of the three ways, mentioned above. There was no bar or restriction on the purchasing dealers on selling the goods in any of the three modes, mentioned above. Learned counsel further submitted that under clause 3 of the said Agreement it was made clear that in the event of the purchasing dealer(s) desiring the assessee to transport the goods to their assigned territories outside Delhi they would pay the freight charges and also be liable to for Central Sales Tax and in such cases the appellant's sale(s) to the purchasing dealer(s) would be sale(s) in the course of inter-State trade or commerce. According to learned counsel, the Agreement in question did not cast any obligation upon the purchasing dealer(s) to sell the goods only in the assigned territories. According to learned counsel, the various clauses in the Agreement relating to the selling rates were normal commercial clauses which clauses had nothing to do with the issue as to whether the sale(s) made by the appellant to its purchasing dealers locally against the declaration forms submitted by them and such clauses did not purport to make such local sale(s) into inter-State sale(s). In support of his contention learned counsel placed reliance on number of judgments of this Court.

12. On the other hand, Mr. Ashok Panda, learned senior counsel appearing on behalf of the Department, submitted that in view of the judgment of the Constitution Bench of this Court in the case of *State of Bihar v. Tata Engineering & Locomotive Co. Ltd.* – (1970) 3 SCC 697, the sales in question in the present case were inter-State sales. Learned counsel submitted that the judgment of this Court in *Tata Engineering* (supra) is squarely applicable to the present case. In this connection, learned counsel invited our attention to various clauses in the said Contract (Agreement) by which specific territory stood assigned to the purchasing dealer(s) coupled with an obligation by the purchasing dealer(s) to move the goods to the assigned territory. Under the Contract, according to the learned counsel, the appellant had complete control over the purchasing dealer(s) coupled with the fact that the territories

A were specifically assigned to protect the continuing commercial interest of the appellant. According to learned counsel, assignment of territory under the Contract was to avoid competition between the distributors. According to learned counsel, on reading the entire Contract, the position was clear
B that the assignment of territory stood coupled with an obligation of moving the goods by the purchasing dealer(s) to the assigned territories for sale therein. Learned counsel submitted that each of the assigned territories were located outside Delhi. Learned counsel also placed reliance on the judgment of this
C Court in the case of *Union of India and Another v. K.G. Khosla & Co. Pvt. Ltd. & Others* – (1979) 2 SCC 242, in which it has been held that if a contract contains a stipulation for movement of goods then the sale would be an inter-State sale. It has been further held that such a transaction could also be an inter-State
D sale even if the contract did not expressly provide for the movement of goods but in fact such movement took place consequent upon a covenant in the contract or as an incident of that contract. According to learned counsel, both the aforestated judgments in the cases of *Tata Engineering & K.G. Khosla* (supra) were applicable to the facts of the present case
E and, therefore, no interference was warranted in the impugned judgment.

Findings

F 13. The main contention advanced on behalf of the assessee before us was that sales having been made in Delhi, ex-works of the assessee and thereafter the chemicals having been stored in the godowns of the purchasing dealers in Delhi, the transactions were local sales and not inter-State sales.

G 14. The short point which we have to decide in this batch of civil appeals is: whether the movement of chemicals was under the obligations, indicated in the contract, or whether such movement was due to reasons extraneous to such obligations?

H 15. In our view taking of delivery in Delhi by the purchasing

dealers for their assigned territories outside Delhi *per se* would not take away the transactions in question from the category of inter-State sales. The determinative test to be applied in this case is: whether the purchasing dealers were obliged contractually to remove the goods from Delhi, in which they were bought, to the assigned territories and whether in fact the goods stood actually removed. It is this test that would decide the question as to whether the sales in question were "inter-State sales" or "local sales". To answer the above question we need to examine the entire Contract(s). Under the Contract(s), each purchasing dealer(s) was assigned an exclusive territory. Each dealer(s) was obliged to take the chemicals to his respective territory outside Delhi where they were to be sold. Despite the fact that the delivery of the goods was taken in Delhi, the purchasing dealer(s) had to move the goods to the respective assigned territories outside Delhi and it was the essential condition of the contract itself that the chemicals would move out of Delhi and would be sold in the assigned territories allotted to each of the respective purchasing dealers. The covenant in the Contract obliged each of the purchasing dealers to move the goods to the territories outside Delhi. In fact in clause 3 there was a proviso that if on instructions from the purchasing dealer, the assessee was required to transport the goods, the freight charges would have to be paid by the distributor as a purchasing dealer and that the purchasing dealer would also be liable for sales tax. No evidence has been led by the assessee as to the exact quantity of chemicals which stood removed under this clause and the reimbursement, if any, of tax and freight being made to the assessee. Clause 7 of the Contract also indicates that the chemicals were to be sold in the territories outside Delhi. The assignment of specific territories is indicated in clause 1. Under the Contract, the purchasing dealer(s) was required to submit monthly stock of sales to the assessee. Every month, the purchasing dealer was required to submit a market report to the assessee. Under the Contract, the price at which the chemicals were to be sold in different territories was also fixed by the assessee. Each

purchasing dealer had executed separate contract(s) with the assessee. On reading the Contract we find that movement of the goods was the covenant of the Contract. In the circumstances, we agree with the concurring findings of fact recorded by all the Authorities below that the sale of chemicals effected by the assessee to its purchasing dealers who in turn were obliged to effect their sales in their respective territories outside Delhi involved inter-State movement of goods and, therefore, the sales in question were inter-State sales. Accordingly, we find no infirmity in the concurring findings of fact recorded by the Authorities below. In our view the judgments of this Court in the cases of *Tata Engineering* (supra) and *K.G. Khosla* (supra) are squarely applicable to the facts of the present case.

16. Before concluding, we may note that the basic contention advanced on behalf of the assessee was that the purchasing dealer(s) had to take the delivery of the goods ex-works; that they were required to store the chemicals in their godowns in Delhi and the said chemicals were to be disposed of by the said purchasing dealers in the following manners:

(a) stock transfer;

(b) inter-State sales

(c) local sales

17. It was urged on behalf of the assessee that it had no idea as to what would happen to the chemicals after the same were given to the purchasing dealers. It was urged that M/s. DCM Ltd. ceased to be the owner of the goods after they were given to the purchasing dealer(s) at the factory gate and that the assessee had no idea as to whether the goods would be sold in Delhi or transfer to the branches or sent in the course of inter-State trade. In this connection, reliance was also placed on the affidavits filed by the three purchasing dealers. We do not find merit in these arguments. Once it is found that the

purchasing dealers were obliged under the Contract(s) to take the chemicals to their respective territories outside Delhi, once it is found that the purchasing dealers were obliged to sell the chemicals in their respective assigned territories, once it is found that the said purchasing dealers were obliged to enter into separate contract(s) with the assessee, once it is found that each of the purchasing dealers were required to sell the chemicals in their assigned territories at the price fixed by the assessee and once it is found that each of the purchasing dealers was obliged to submit monthly reports to the assessee then in that event the mode in which each of the purchasing dealers could sell their goods either by way of stock transfer or inter-State sale or local sale becomes irrelevant. The obligation of the purchasing dealer(s) under the Contract indicates the control of the assessee over the movement of the goods.

18. For the aforestated reasons, we find no infirmity in the impugned judgment of the High Court and accordingly the civil appeals filed by the assessee are dismissed with no order as to costs.

D.G. Appeals dismissed.