Union Of India & Anr vs K. G. Khosla & Co. (P) Ltd. & Others on 6 March, 1979

Equivalent citations: 1979 AIR 1160, 1979 SCR (3) 453, AIR 1979 SUPREME COURT 1160, 1979 SCC 242, 1979 TAX. L. R. 1817, (1979) 43 STC 457, 1979 SCC(TAX) 101, 1979 RAJLR 385, 1979 UPTC 751, 1979 STI 51, (1979) SCJ 342, (1979) 3 SC CR R 453

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, D.A. Desai, R.S. Pathak

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
K. G. KHOSLA & CO. (P) LTD. & OTHERS

DATE OF JUDGMENT06/03/1979

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
DESAI, D.A.
PATHAK, R.S.

CITATION:
1979 AIR 1160 1979 SCR (3) 453
1979 SCC (2) 242
CITATOR INFO :
R 1981 SC 446 (6)
F 1981 SC1754 (9)
E&R 1992 SC1952 (8,9,12,15)

ACT:
Central Sales Tax Act, 1956 S. 3(a) -Scope of-Goods manufactured in the State of Haryana in accordance with production programme advised by head office-Goods despatched from Delhi-Whether inter-state or intra-state sale.

HEADNOTE:
The respondent company who was a manufacturer of air compressors and garage equipment had its factory at

Faridabad (in the State of Haryana) and its head office in Delhi (Union Territory of Delhi). The head office drew the production programme and advised the factory to manufacture the goods in accordance therewith. After the goods were so manufactured in the factory they were collected by the head office and brought to Delhi and despatched to various customers whether outside Delhi or in Delhi. The price of goods was received at the head office. In other words excepting the manufacture of goods at the factory all other activities, were carried out from the head office in Delhi.

In respect of sale of goods manufactured at Faridabad the respondent company filed sales tax returns with the sales tax authorities at Delhi on the ground that the sales were effected from Delhi by the head office and that they were intra-state sales within the territory of Delhi and accordingly paid sales tax at Delhi.

In November, 1965, however, the sales tax authorities of Haryana demanded payment of sales tax under the East Punjab General Sales Tax, Act, 1948 for the period commencing from April 1, 1961 and ending with the year 1964-65 pointing out that the sales effected were inter-state sales liable to be assessed by them under the Central Sales Tax Act, 1956.

In its writ petition the respondent-company alleged that since all its activities were being carried on by or through the head office in Delhi and no sales were effected by or from the factory at Faridabad sales tax was paid by it in Delhi and since the sales tax authorities in Haryana were demanding payment of Central Sales Tax in respect of the same transaction the High Court might resolve the controversy.

The High Court held that the sales fell under s. 3(a) of the Central Sales Tax Act, 1956 and were liable to be assessed to inter-state sales tax by the Sales Tax Authorities at Faridabad and accordingly ordered that the sales tax paid by the respondent in Delhi be transferred to the Sales Tax Authorities at Faridabad.

On appeal the Union of India contended that since the situs of sale was Delhi Sales Tax was payable in Delhi.

Dismissing the appeal,

454

^

HELD: 1 (a) The High Court was right in holding that the sales were inter state sales and that the turnover on sales was assessable to sales tax under the Central Sales Tax Act, 1956 and that the amounts of sales tax wrongly paid in Delhi be transferred to the Sales Tax Authorities at Faridabad. [462 A-B]

(b) In order that a sale may be regarded as an inter-state sale it is immaterial whether the property in the goods passes in one State or another. The question as regards the nature of the sale, that is, whether it is an inter State sale or an intra-State sale does not depend upon

the circumstance as to in which State the property in the goods passes. It may pass in either and yet the sale can be an inter-State sale. [461 G-H, 462 A]

In the instant case the contracts of sales were made at Delhi and in pursuance of those contracts, goods were manufactured at Faridabad according to specifications mentioned in the contracts. This, therefore, is not that type of case in which goods are manufactured in the general course of business for being sold as and when offers are received by the manufacturer for their purchase. Contracts of sales were finalised in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. These were "future goods" within the meaning of s. 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured to agreed specifications, they were despatched to the head office at Delhi for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The despatch of goods of Delhi was but a convenient made of securing the performance of contracts made at Delhi. Thus the movement of goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi. [458 H, 459 A-D

(c) For the purpose of s. 3(a) it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of contract of sale. [459 E]

Tata Iron and Steel Co. Ltd., Bombay v. S. S. Sarkar & Ors., [1961] 1 SCR 379; Central Marketing Co. of India v. State of Mysore, [1963] 3 SCR 777; State Trading Corporation of India v. State of Mysore, [1963] 3 SCR 792; Singareni Collieries Co. v. Commissioner of Commercial Taxes, Hyderabad, [1966] 2 SCR 190; K. G. Khosla & Co. v. Dy. Commr. of Commercial Taxes, [1966] 3 SCR 352; Oil India Ltd. v. The Superintendent of Taxes & Ors., [1975] 3 SCR 797; followed.

Tata Eng. & Locomotive Co. Ltd. v. The Asstt. Commr. of Commercial Taxes & Anr., [1970] 3 SCR 862; distinguished.

State of Bihar & Anr. v. Tata Eng. & Locomotive Co. Ltd., [1971] 2 SCR 849; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2077 of 1972.

From the Judgment and Order dated 2-8-1971 of the Delhi High Court in Civil Writ No. 162-D of 1966.

E. C. Agarwala and R. N. Sachthey for the Appellants. Lal Narain Sinha, K. K. Jain, S. K. Gupta, Pramod Dayal Rameshwar Dial, Adarsh Fial, and A. D. Mathur for Respondents 2-3.

The Judgment of the Court was delivered by CHANDRACHUD, C. J.-This appeal by certificate raises an interesting controversy between the Sales Tax Authorities in the Union Territory of Delhi and those in Haryana, the question being as to which of the two authorities can assess respondent 1 to sales tax. One of the reliefs sought by respondent 1 is that until the Sales Tax authorities of the two territories settle their differences, no sales tax should be levied or recovered from it since, it does not know to whom to pay the tax. This controversy arises on the following facts.

Respondent 1 is a private limited company called K. G. Khosla & Co. (P) Ltd., having its head office in the Union Territory of Delhi at 1, Deshbandhu Gupta Road, New Delhi. The company carries on business in Air Compressors and garage equipment which it manufactures in its factory at Faridabad, which was formerly in the State of Punjab and is now a part of the State of Haryana.

For the purposes of sales tax, respondent 1 is registered as a dealer both in the Union Territory of Delhi and in the State of Haryana. It filed returns of sales tax with the sales Tax authorities in Delhi since, according to it, the sale of goods manufactured in the factory at Faridabad was being effected from Delhi by its head office. The sales tax was being paid by the company under the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, on the basis that the sales effected by the company were intra- State sales within the territory of Delhi. On November 24, 1965, however, the Sales Tax Assessing Authority at Gurgaon, which was then in the State of Punjab but which subsequently became a part of the State of Haryana, sent a notice to the company under sections 11 and 14 of the East Punjab Central Sales Tax Act, 1948 and rule 33 made thereunder that, in respect of the period commencing on April 1, 1961 and ending with the year 1964-65, the sales made by the company were liable to assessment in Haryana. On March 13, 1968 an assessment was made by the Assessing Authority at Faridabad on the basis that the sales effected by the company were inter-State sales liable to be assessed to sales tax under the Central Sales Tax Act, 74 of 1956. An appeal against the order of assessment is said to be pending.

In the meanwhile, on February 14, 1966, the company filed a writ petition before the Punjab High Court Circuit Bench at Delhi which, after the recorganisation of States, was dealt with by the Delhi High Court. The Chief Commissioner of the Union Territory of Delhi and the Assessing Authority of the territory were impleaded as respondents 1 and 2 to the writ petition. Respondent 3 was the State of Punjab and respondent 4 the Assessing Authority at Gurgaon. Respondent 3 was later substituted by the State of Haryana.

The company contended by its writ petition that except the manufacturing of goods at the Faridabad factory, all of its activities, including those of booking of orders, sales, despatching of goods, billing and receiving of sale price were being done by and through the head office in Delhi and that no sales were effected by or from the factory. Since, however, both the Sales Tax authorities, namely, at Delhi and Haryana, were demanding payment of sales tax on the same sale transactions, the company prayed by its writ petition that the High Court do resolve the controversy between the Sales Tax authorities of the two States and decide the question of their respective jurisdiction to assess its

turnover.

The State of Haryana contended by its counter affidavit to the writ petition that the goods were manufactured by the company at Faridabad in pursuance of contracts of sale with outside purchasers, that those goods were appropriated to the various contracts of sale in the State of Haryana and that the movement of the goods from Faridabad to Delhi and onwards was caused as a necessary incident of the contracts of sale made by the company. The sales, according to the State of Haryana had taken place at Faridabad during the course of inter-State trade.

The Union of India, on the other hand, contended that the goods were brought from Faridabad to Delhi and were thereafter sold by the company to the various purchasers outside Delhi. These sales according to the Union of India, were governed by the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, their situs being the Union Territory of Delhi.

The Delhi High Court by its judgment dated August 2, 1971 allowed the writ petition and granted a declaration that the sales effected by respondent 1 which fell under section 3 (a) of the Central Sales Tax Act, 1956 were liable to be assessed to inter-State sales tax by the Sales Tax authorities at Faridabad since, those sales caused the movement of goods from Faridabad to Delhi. The High Court added that the writ petition was confined to the goods manufactured at Faridabad in pursuance of pre-existing contracts of sales and therefore, its judgment would have no application to the local sales effected by respondent 1 at Delhi. In the result, the High Court passed an order directing that the amount of tax which respondent 1 had wrongly paid to the sales tax authorities at Delhi on the inter-State sales between 1.4.1961 to 30-9- 1965 be transferred by the Sales Tax authorities at Delhi to the Sales Tax authorities at Faridabad. The High Court has granted a certificate of fitness to the Union of India to file an appeal to this Court under Article 133, (1) (b) of the Constitution.

The question which arises for decision is whether the sales made by respondent 1 were made at Faridabad in the course of inter-State trade as contended by the State of Haryana or whether they are intra-State sales effected within the Union Territory of Delhi as contended by the appellant, the Union of India. The answer to this question would depend upon the course and nature of transactions in relation to which the movement of goods was caused from Faridabad to Delhi and the terms of the contracts of sales which caused that movement. But before adverting to those aspects of the matter, it would be necessary to notice the relevant provisions of the Central Sales Tax Act 74 of 1956 ("The Act").

Section 3 of the Act provides as follows:

> "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."

There are two Explanations to the section but they have no bearing on the appeal.

Section 9(1) of the Act provides as follows:-

9. "Levy and collection of tax and penalties (1) the tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced."

There is a proviso to section 9(1) to which it is unnecessary to refer since it has no application.

In the light of these provisions, what has to be considered is whether the sales effected by respondent 1 occasioned the movement of goods from one State to another State, which on the facts of the instant case would mean, from the State of Haryana to the Union Territory of Delhi. It is only if a sale occasions the movement of goods from one State to another that it can be deemed to have taken place in the course of inter-State trade or commerce within the meaning of section 3 (a) of the Act. Clause (b) of section 3 is not relevant for our purpose.

The course and manner of its business have been set out by respondent 1 in paragraphs 3 and 27 of the writ petition in the following terms:

"3. Orders for the supply of goods from various parties are received by the petitioner's company at its head office in Delhi. The head office draws out a production programme and advises the factory to manufacture the goods in accordance therewith. After the goods are so manufactured in the factory, the goods are collected by the head office and brought to its head office in Delhi. From its head office the goods are despatched to various customers whether outside Delhi or in Delhi. The price of goods is also received at the head office. In short, the position is that excepting the manufacture of goods at the factory, all other activities including that of booking of orders, sales, despatching and billing and receiving of sale price are being carried out from the head office in Delhi."

"27. The goods manufactured in the factory are future goods within the meaning of the Sale of Goods Act and the dispute does not relate to any ready goods."

It is clear from these averments that goods were manufactured by respondent 1 in its factory at Faridabad, Haryana, in pursuance of specific orders received by its head office at Delhi. The

contracts of sales were made at Delhi and in pursuance of those contracts, goods were manufactured at Faridabad according to specifications mentioned in the contracts. This, therefore, is not that type of case in which goods are manufactured in the general course of business for being sold as and when offers are received by the manufacturer for their purchase. Contracts of sales were finalised in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. Those were "future goods" within the meaning of section 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured to agreed specifications, they were despatched to the head office at Delhi for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The goods could as well have been despatched to the respective customers directly from the factory but they were sent in the first instance to Delhi as a matter of convenience, since there are better godown and rail facilities at Delhi as compared with Faridabad. The despatch of the goods of Delhi was but a convenient mode of securing the performance of contracts made at Delhi. Goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by respondent 1 only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Thus, the movement of goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi.

It is true that in the instant case the contracts of sales did not require or provide that goods should be moved from Faridabad to Delhi. But it is not true to say that for the purposes of section 3(a) of the Act it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. The true position in law is as stated in Tata Iron and Steel Co. Ltd., Bombay v. S. R. Sarkar and others(1) wherein Shah, J. speaking for the majority observed that clauses (a) and (b) of section 3 of the Act are mutually exclusive and that section 3(a) covers sales in which the movement of goods from one State to another "is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State"

> (page 391). Sarkar, J. speaking for himself and on behalf of Das Gupta, J. agreed with the majority that clauses (a) and
>
> (b) of section 3 are mutually exclusive but differed from it and held that "a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides" (page 407).

The view of the majority was approved by this Court in the Central Marketing Co. of India v. State of Mysore,(1) State Trading Corporation of India v. State of Mysore(2) and Singareni Collieries Co. v. Commissioner of Commercial Taxes, Hyderabad.(3) In K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes,(4) counsel for the Revenue invited the Court to reconsider the question but the Court declined to do so. In a recent decision of this Court in Oil India Ltd. v. The Superintendent of Taxes & others(5) it was observed by Mathew, J., who spoke for the Court, that: (1) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) it is not necessary that the sale must

precede the inter-State movement in order that the sale may be deemed to have occasioned such movement; and (3) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State Movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale (page 801). The learned Judge added that it was held in a number of cases by the Supreme Court that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale.

The decision in Tata Engineering & Locomotive Co. Limited v. The Assistant Commissioner of Commercial Taxes and Another(6) on which the Union of India relies, proceeds on a different consideration and is distinguishable. The appellant therein carried on the business of manufacturing trucks in Jamshedpur in the State of Bihar. The sales office of the appellant in Bombay used to instruct the Jamshedpur factory to transfer stocks of vehicles to the stockyards in various States after taking into account the production schedule and requirements of customers in different States. The stocks available in the stockyards were distributed from time to time to dealers. The transfer of the vehicles from the factory to the various stockyards was a continuous process and was not related to the requirement of any particular customer. It was the stockyard incharge who appropriated the required number of vehicles to the contract of sale out of the stocks available with him. Until such appropriation of vehicles was made, it was open to the company to allot any vehicle to any purchaser or to transfer the vehicles from the stockyard in one State to a stockyard in another State. At page 870 of the report, a statement occurs in the judgment of Grover, J., that it was not possible to comprehend how in the above situation it could be held that "the movement of the vehicles from the works to the stockyards was occasioned by any covenant or incident of the contract of sale." This statement is relied upon by the Union of India in support of its contention that the contract of sale must itself provide for the movement of goods from one State to another. We are unable to read any such implication in the observation cited above. At page 866 of the report, after referring to certain decisions, the Court observed that the principle admits of no doubt, according to the decisions of this Court, that the movement of goods "must be the result of a covenant or incident of the contract of sale."

This decision may be usefully contrasted with another decision between the same parties, which is reported in State of Bihar & Anr. v. Tata Engineering & Locomotive Co. Ltd.(1). In that case the turnover in dispute related to the sales made by the company to its dealers of trucks for being sold in the territories assigned to them under the dealership agreements. Each dealer was assigned an exclusive territory and under the agreement between the dealers and the company, they had to place their indents, pay the price of the goods to be purchased and obtain delivery orders from the Bombay office of the company. In pursuance of such delivery orders trucks used to be delivered in the State of Bihar to be taken over to the territories assigned to the dealers. Since under the terms of the contracts of sale the purchasers were required to remove the goods from the State of Bihar to other States, no question arose in the case whether it was or was not necessary for a sale to be regarded as an inter-State sale that the contract must itself provide for the movement of goods from one State to another. If a contract of sale contains a stipulation for such movement, the sale would, of course, be an inter-State sale. But it an also be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the

result of a covenant in the contract of sale or is an incident of that contract.

The decisions to which we have referred above show that in order that a sale may be regarded as an inter-State sale, it is immaterial whether the property in the goods passes in one State or another. The question as regards the nature of the sale, that is, whether it is an inter-

State sale or an intra-State sale, does not depend upon the circumstances as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale.

The High Court was, therefore, right in holding that the sales in question are inter-State sales and that the turnover of sales is assessable to sales tax under the Central Sales Tax Act, 1956 at the instance of the Sales Tax authorities at Faridabad. The amount of tax which respondent has wrongly paid to the Sales Tax authorities at Delhi on such inter-State sales from 1-4-1961 to 30-9-1965 shall have to be transferred by the Sales Tax authorities at Delhi to the Sales Tax authorities at Faridabad, as directed by the High Court.

The appeal is accordingly dismissed but there will be no order as to costs.

N.K.A Appeal dismissed.