

Supreme Court of India

Sales Tax Officer, Sector II, ... vs Coal And Coke Supplies ... on 26 November, 1987

Equivalent citations: JT 1987 (4) SC 472, 1987 (2) SCALE 1226, 1987 Supp (1) SCC 471, 1988 68 STC 392 SC, 1988 (1) UJ 376 SC

Bench: M Kania, S Ranganathan

JUDGMENT

1. These four appeals are from the common judgment of the Allahabad High Court dated 19.12.1973 in Writ Petitions Nos. 2706, 2784, 2785 and 2786 of 1973. They can be disposed of by a common order as they relate to the case of the same respondent M/s. Coal & Coke Supplies Corporation of Kanpur (hereinafter referred to as 'the assessee'. They relate to the four assessment years 1967-68, 1968-69, 1969-70 and 1970-71 and involve the same issue as to the interpretation of the provisions of the Central Sales Tax Act, 1956 ('the Act', for short).

2. The assessee had filed the writ petitions praying for the issue of writs of certiorari to quash the assessment orders passed for the assessment years in question resulting in demands of various amounts of sales tax from the assessee.

3. The assessee made the following averments in the writ petition:

xx The petitioner is a Coal Agent pure and simple carrying on his business at Kanpur. He does not take actual delivery of goods. The prospective purchasers in U.P. place their orders or register their demand for the purchasers of coal with the petitioner, who in turn forward the demand to Jharia or Calcutta. The Coal is despatched by the collieries invariably by rail and the R/Rs are either made out direct in the names of the purchasers or alternatively in the name of the petitioners.

The Collieries send these R/Rs. in each case to the petitioners at Kanpur. The R/Rs which are made out direct in the names of purchasers are handed over as such to the purchasers for taking delivery of the Coal from the railways, after making payment of the Railway freight etc. Others which are made out in the name of the petitioners are endorsed by them to the respective purchasers who in turn take delivery of coal from the Railway on payment of freight charges etc. The petitioners do not handle the goods, as such. The suppliers charge Central Sale Tax in their bills and deposit the same in Bengal/Bihar.

The petitioner did not purchase any goods from outside the State nor did he ever keep stock of any goods, with him.

The assessee contended that the above transactions only gave rise to inter-State sales which were taxable under Section 9(1) of the Act in the State of origin, namely, Bihar or West Bengal. According to the assessee, sales tax could be charged and assessed on it only if there had been subsequent sales within the meaning of the proviso to Section 9(1) of Central Sales Tax Act but there were none. It was further contended that even the charge under proviso was attracted only in the case of registered dealers. The assessee not being a registered dealer, it was urged, this proviso was not applicable and hence no sales tax was leviable. Strong reliance was placed on behalf of the petitioner

on a decision of the Allahabad High Court in *Kasturi Lal Har Lal v. State of U.P. and Ors.* (1972) 29 S.T.C. 495.

4. The writ petitions were disposed of by the High Court on a very short ground. After referring to the petitioner's challenge to the validity of the assessment orders on the ground that, since it was an unregistered dealer, the proviso was inapplicable and, therefore, it could not be assessed to Central Sales Tax by the State of Uttar Pradesh, which was the State where the coal was consumed, the Court proceeded to observe:

The modus operandi of the petitioner's business is that the purchasers from him in the State of Uttar Pradesh place their orders with him. The petitioner in his turn forwards the orders to the manufacturers of coal at Jharia in Bihar or Calcutta in the State of West Bengal. The Collieries despatch the coal by Railway and the Railway receipt is either made out in the name of the purchaser or in the name of petitioner. The petitioner endorses the railway receipt and hands the same over to the purchaser. The purchaser takes delivery of the coal from the railway authorities. It is thus clear that the movement of coal starts in the State of Bihar or West Bengal and the same is consumed in the State of Uttar Pradesh. In *Kasturi Lal Har Lal v. State of Uttar Pradesh* 29 S.T.C. 495) a Division Bench of this Court has held that an unregistered dealer would not be liable to tax under the Central Sales Tax Act by the receiving State. Since the State of U.P. was the receiving State in respect of the coal in dispute the sales tax authorities of this State had no jurisdiction to assess the turn-over of this Coal and to tax the same under the Central Sales Tax Act.

5. The Sales Tax Officer has preferred these appeals from the judgment of the Allahabad High Court. Shri Manchanda, learned Counsel appearing on behalf of the appellants, submitted that there were two types of transactions entered into by the assessee. In some cases it placed orders with the collieries on behalf of constituents in U.P. and when the goods were received delivered the same to them. In respect of these transactions perhaps it could be said that the assessee was only functioning as an agent. However, it was urged, there were certain transactions in which the assessee placed orders with the collieries on its own account and, when these goods were in the process of transit, it sold them away by endorsement of the documents of title for consideration. In respect of these transactions, counsel says, the assessee was acting as a dealer effecting subsequent sales and, that, therefore, liability was attracted under the proviso to Section 9(1).

6. It should be mentioned here that, at the time, when the High Court decided the matter, the said proviso read as follows:

Provided that in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods the tax shall, where such sale does not fall under Sub-section (2) of Section (6) be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or as the prescribed for the purpose of Clause (a) of the Sub-section (4) of Section 8 in connection with the purchase of such goods.

In other words, it cast a liability only on a registered dealer. This is what was pointed out by the Allahabad High Court following the decision in *Kasturi Lal Har Lal v. State of U.P.* (1972) 29 S.T.C.

449 which has also been subsequently affirmed by this Court in the case reported as State of U.P. v. Kasturi Lal Har Lal 4 J.T. (1978) 3 S.C. 234.

7. Shri Manchanda, however, submits that the position has changed by reason of the amendments made to the Act by Act 103 of 1976. By this amendment Act the proviso to Section 9(1) has been amended to read as follows:

9. Levy and collection of tax and penalties x x x Provided that, in the case of a sale of goods during their movement from one State to another being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within Sub-section (2) of Section 6, the tax shall be levied and collected-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

x x x Section 9 of the Amendment Act also enacted a validation provision in the following terms:

9. Validation (1)-The provisions of section 9 of the Principal Act shall have effect, and shall be deemed always to have effect, in relation to the period commencing on the 5th day of January 1957, and ending with the date immediately preceding the date of commencement of this Act as if that section also provided....

Counsel points out that the new proviso to Section 9(1) has been substituted with full retrospective effect and that, therefore, the position today is that, even for the assessment years in question here, Clause (b) of the new proviso will have effect and will impose a tax liability even in the hands of unregistered dealers. learned Counsel, therefore, submits that decision of the High Court has to be set aside or modified in view of this retrospective amendment.

8. It is not in dispute before us that the retrospective amendment has nullified the effect of the decision of the High Court in so far as it laid down that under the proviso only registered dealers could be taxed and not unregistered dealers. Shri Rohatgi, learned Counsel for the assessee, however, submits that this circumstance is totally immaterial because, according to him, in the present case, the terms of the proviso are not attracted at all. learned Counsel points out that the proviso, both before and after its amendment, comes into operation only where there is subsequent sale by a dealer in the State. He submits that the assessee in the present case was not a dealer at all as he did not carry on any business of buying, selling, supplying or distributing goods belonging to any principal and that, in any event, there was no subsequent sale effected by him within the meaning of proviso to Section 9(1). He submits that the modus operandi of the assessee's business as set out in the judgment of the High Court reinforces this contention and that, therefore, we

should affirm the High Court's judgment and dismiss these appeals.

9. We are of the opinion that in the circumstances of the case the judgment of the High Court should be set aside and the matter remanded to the High Court for fresh consideration having regard to the facts of the case and the effect of the amendment of the statute by Act 103 of 1976. We say this because the writ petitions were disposed of by the High Court on the short ground that the assessee was only an unregistered dealer and that, therefore, the proviso was not attracted to the case. Because of this approach, the High Court had no occasion to consider the facts of the case, to examine the nature of the assessee's business and to find out whether there were any subsequent sales effected by the assessee which would become chargeable under the proviso to Section 9(1). It is true that the assessee also took a contention in the writ petition that the proviso was not attracted to the case (vide paragraph 11 of the writ petition). We, however, find that the respondents in their short counter affidavit had controverted this allegation. Paragraph 11 of the counter affidavit filed on behalf of the Sales Tax Officer is relevant and be set out:

11. That in reply to paragraphs 11 and 12 of the writ petition the deponent is advised to state that the petitioner, having endorsed the railway receipt in favour of his buyers while the goods were in movement from one State to another, had made subsequent sale and was liable to pay Central Sales Tax on such inter-State sales and the deponent had assessed the petitioner correctly under the provision of Section 9(1) read with proviso to that section of the Act.

From what has been stated above, it would be clear that this aspect of the issue between the parties was not gone into by the High Court in the view that it took that the proviso was only applicable in the case of registered dealers. Now that statute has been amended with full retrospective effect to include the case of unregistered dealers as well, it is necessary to examine the facts of the case and examine whether the provisions of the new proviso are applicable thereto. We, therefore, set aside the judgment of the High Court and remand the matter to the High Court for fresh disposal of the writ petitions in the light of the above discussion and in accordance with law.

10. We would like to add that, in view of the amendment to the statute, both parties should be allowed liberty to place affidavits and counter affidavits setting out the correct factual position and also their respective contentions before the matter is disposed of afresh.

11. The appeals are allowed accordingly. There will be no order as to costs.