IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 07.08.2024
Date of Decision : 02.09.2024

1. **CWP No. 11972 of 2000 (O&M)**

M/s Modern Food Industries (India) Limited …Petitioner
Versus
State of Haryana and others …Respondents

2. **CWP No. 11988 of 2000 (O&M)**

M/s Modern Food Industries (India) Limited …Petitioner
Versus
State of Haryana and others …Respondents

3. **CWP No. 12048 of 2000 (O&M)**

M/s Modern Food Industries (India) Limited …Petitioner
Versus
State of Haryana and others …Respondents

4. **CWP No. 16829 of 2004 (O&M)**

M/s Bhalla Techtan Industries Limited …Petitioner
Versus
State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sandeep Goyal, Advocate, for the petitioner
in CWP Nos. 11972, 11988 and 12048 of 2000.

Ms. Shifali Bahia, Advocate for
Mr. Arjun Pratap Atma Ram, Advocate, for the petitioner
in CWP No. 16829 of 2004.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

Mr. Virish Dahiya, Advocate for
Mr. R. D. Gupta, Advocate, for the States of UP and Bihar.

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SANJEEV PRAKASH SHARMA, J.

These are four writ petitions which have been heard jointly as the petitioners therein assail essentially the same aspects relating to assessments of different years.

2. The challenge in CWP Nos. 11972, 11988 and 12048 of 2000 is to the orders passed by the Sales Tax Tribunal, Haryana whereby it decided commonly STAs No. 13 and 594 of 1998-99 and STA No. 370 of 1999-2000 and dismissed the same by a short order dated 12.05.2000 upholding the orders passed by the Joint Excise and Taxation Commissioner.

3. So far as CWP No. 16829 of 2004 is concerned, prayer made therein is for formation of Central Sales Tax Appellate Authority apart from challenging the assessment order dated 29.09.2004 and requesting for refund of the amount deposited as per assessment order dated 20.02.2004.

4. We find that the Central Sales Tax Appellate Tribunal has already been formed.

5. Since all these writ petitions were tagged and are pending since long, we propose to decide the legal issues raised therein without remanding the same on the ground of alternative remedy.

6. Brief facts which need to be noticed are being examined on the first original order passed by the Joint Excise and Taxation Commissioner (Appeal), Faridabad dated 27.02.1998 and is made the basis to decide the appeal by the Sales Tax Tribunal, Haryana. The petitioner- M/s Modern Food Industries (India) Limited (hereinafter to be referred as 'MFIL') is a public sector undertaking of the Government of India engaged in the business of manufacturing and sale of food products. It had set up manufacturing plants at several places in the country. One amongst these is located at Faridabad in Haryana. One MOU was signed between MFIL and Government of Bihar for supply of *Poshahar* to the Government for distribution amongst the vulnerable sections of the society under the Social Welfare Programmes of the Government. As per the terms of the agreement,

they were required to supply products with the concerned specification as laid down in the MOU. They were supposed to establish production facilities for catering requirement of energy food supplies in various places in Bihar. It was also agreed that till such time the facilities are established, the company would provide energy food from its various existing production facilities which included Faridabad apart from other places. The price of the energy food supplies was fixed as per the MOU. The manner of supply fixed as per the MOU is as under:-

> "*The Government of Bihar placed firm orders on MFIL for the supply of Poshahar to it and also placed some advance money at the disposal of MFIL for the purpose, vide para II a) of the MOU. The Patna Office of MFIL placed orders on Faridabad plant of MFIL on monthly/ fortnightly basis for the supply of Poshahar. The Faridabad plant manufactured and dispatched Poshahar to Patna office. The Poshahar was inspected for quality at Patna and thereafter dispatched to various block offices of the Welfare Department of the Government of Bihar according to the instructions of the government. If delivery of Poshahar from MFIL was taken FOR at the block office level by the officers of the Welfare Department of the Government of Bihar. The bills for the supply of Poshahar to the Government of Bihar were raised by the Patna office of MFIL.*"

7. The said supply was treated as a sale of *Poshahar* from MFIL to the Government of Bihar in the course of inter-State trade originating from Haryana by the Excise & Taxation Officer-cum-Assessing Authority, Faridabad assessed as inter-State sales, calculated tax on the sale and imposed tax for the years in question (supra). On the said basis, it also issued demand for payment of outstanding tax along with penalty.

8. In appeal, the Joint Commissioner & Taxation Commissioner (Appeal), Faridabad upheld the order while examining the same considering the law as laid down in ***Sahney Steel and Press Works Limited vs Commercial Tax Officer*** (1985) 60 STC 301 (SC) and held that where the goods move from one State to other as a **result of covenant** in the contract of sale, or an incident of the contract, the same shall be treated as inter-State sales and was, thus, liable to tax under the Central Sales Tax Act. The appellate authority, namely, the Sales Tax Tribunal has upheld the order.

9. Learned counsel for the petitioners has submitted that the petitioners paid sales tax at the level of the State of Bihar itself and, therefore, it cannot be said inter-State sales as the sale has to be treated at the level of the concerned State alone. Once the petitioners have already paid sales tax @ 4.43% to the Bihar Government, they cannot be taxed twice and no ulterior motive could have been attributed to them as sales tax in Haryana is only 4%.

10. During the course of arguments, learned counsel for the petitioner has submitted that the petitioner has already paid sales tax to the Bihar Government, which issued Form 'F' for stock transfer of goods from Faridabad and payment of sales tax to them but the attempt of the State of Haryana is to treat the said movement of goods as interstate sales and would be taxed which would ultimately go back to the Haryana State by virtue of the provisions contained in Articles 269 and 286 of the Constitution of India and the Central Sales Tax Act. This would tantamount to the petitioner being taxed twice, once as an intra-state sales by the Government of Bihar and UP and subsequently by the State of Haryana as inter-State sales. This would be most unjust and would cause serious harassment to the petitioner making it

impossible for it to carry on its business as already the petitioner is suffering recurring losses.

11. Learned counsel for the petitioner has further submitted that the Tribunal has misconstrued the law in holding the disputed transactions as inter-State sales. It is submitted that a transaction is termed as stock transfer and Intra-State sales where the transfer of goods is claimed otherwise than by way of sale and the burden of proof would be discharged by the dealer if he has furnished to the assessing authority "Form-F". As stated in the above mentioned paras, the methods for discharging the onus that these transactions were branch transfers and not Inter-State sales as has been envisaged under Section 6A of the CST Act, 1956 is by production of "F" Form. This is the conclusive proof of discharge as per Section 6A of the CST Act, 1956. Further, Section 3(a) of the Act (supra) lays down the principles of tests to be applied for determining whether a particular transaction is an Inter-State sales of goods or not and whether the movement of goods from one State to another were occasioned by contract of sale. As per the definition under Section 5 of the Sales of Goods Act, a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. In a contract of sale, the title in goods passes immediately on payment of price but in an agreement to sell, the title in goods passes at the future time subject to conditions to be fulfilled thereafter. In the present case, the goods have been shown as stock transfer and the MOU signed with the Bihar Government by the Delhi Head Office clearly indicates that the goods are to be supplied by the Patna Plants/ Office in Bihar and Tax has been paid in the Bihar State and similar is the case with regard to supplies

made to the State of U. P. Thus, the learned Tribunal has erred in holding that there was a prior contract of sale of these goods.

12. Learned counsel for the petitioner submitted that once the petitioner has already been assessed by the State of Uttar Pardesh and State of Bihar, State of Haryana cannot claim the sales tax. In the alternative, he submitted that the petitioner has to pay the amount to meet out the demand raised by the State of Haryana. The petitioner ought to be allowed to refund the local sales tax to the sales tax authorities of the States of U. P. and Bihar. The issue raised by the petitioner is no more *res integra* in view of judgment of the Supreme Court in ***Tata Motors Limited vs Central Sales Tax Appellate Authority and others*** 2022 (9) TMI 1000, which is as under:-

> *"4. At this stage, it is required to be noted that prior to insertion of Section 22(1B) to the Central Sales Tax Act, 1956 (hereinafter referred to as the 'Act 1956'), there was no provision by which the Appellate Authority could have issued directions for refund of the tax collected by the State which has been held by the Appellate Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, by the Finance Act, 2010, Section 22(18) has been inserted to Act 1956, which reads as under:*
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> > *"Section 22(18) - The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction.*

Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction."

4.1 It is required to be noted that in the present case the transaction is for the period prior to insertion of Section 22(18) to the Act 1956 and the impugned order has been passed by the Appellate Authority pre- Insertion of Section 22(18) to the Act 1956. Therefore, as such, it cannot be said that the Appellate Authority has committed any error in not issuing any direction which now is permissible under Section 22(18) of the Act 1956.

5. However, at the same time, the State of Andhra Pradesh cannot retain the amount of central sales tax paid by the appellant on the transaction of sale effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC. Therefore, in line with Section 22(1B) of the Act 1956, the State of Andhra Pradesh is directed to transfer to the State of Jharkhand the amount of central sales tax deposited by the appellant with the State of Andhra Pradesh with respect to transaction in question, however, subject to the appellant submitting the proof of the amount of central sales tax already paid on the transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/ buses sold to APSRTC treating the same as stock transfer sale. After due verification, the amount of central sales tax so paid by the appellant with respect to the aforesaid transaction be transferred to the State of Jharkhand immediately on such verification and the State of Jharkhand is directed to adjust the same towards the central sales tax liability of the appellant on such transaction, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC which are found to be in the nature of inter

state sale. The aforesaid exercise shall be completed within a period of three months from today."

13. In the present case, the petitioner entered into an agreement with the Bihar Government to supply energy food. However, learned counsel for the respondents submitted that the petitioner firm manufactures energy food at Faridabad factory and also at branches in a case of necessity, transfers energy Food at places of its requirement, if the same is not met by the local branch. The petitioner firm has transferred energy Food of specific formulation of its branches at Patna, Madras and Kanpur in pursuance of a prior contract and orders for supply from branch were already contracted and orders for supply from branch were already in hand and goods were supplied as per agreement. It has been held by the Supreme Court in ***M/s Bharat Electric Limited vs Union of India (1996) 8 PRT 424 (SC)*** that interstate sales Tax is leviable in the state where goods are manufactured for specific purpose and also from where movement of goods takes place. As movement of goods took place from Faridabad to Patna, Madras and Kanpur branches for specific purpose in pursuance of a prior contract and specific formulation hence it being an inter-State sales, inter-State sales tax is leviable at Faridabad. In view of the facts noted above, the branch transfer as claimed by the petitioner firm from Faridabad were rejected and the same are treated as inter-State sales.

14. The Sales Tax Tribunal vide its order dated 12.05.2000 found that the *Poshahar* supplied from Faridabad to Patna was in pursuance of a contract of sale already in existence. Only the goods rejected, being of inferior quality, could be returned or not paid for. There is no stock kept at Patna which could be said to be over and above the requirements of

Government of Bihar. So far as the sales tax is concerned, the same was appropriately imposed by creating a demand of Rs. 1,93,73,877/-. We find that merely because the petitioner has been assessed by the concerned respective States for the local sales, it cannot absolve itself from the claim raised by the State of Bihar and the petitioner was required to pay the same.

15. In this case on 17.05.2005, this Court passed the following order:-

> *"Mr. S. Ganesh, for the petitioner, learned senior counsel appearing submits that a fresh application, Including the corporate guarantee by Hindustan Lever Ltd.. which is 100% parent company of the petitioner, is being filed. Let him do so. A copy of the said application has already been supplied to the learned counsel for the respondents, who pray for some time to have instructions thereon. Mr.Ganesh has also brought to our notice that a notification [No.S0327(E)] has also been issued 17.3.2005 by the Ministry of Finance, whereby on the Authority for Advance Rulings constituted under Section 245-0 of the Income-tax Act, 1961 has been declared as the Central Sales Tax Appellate Authority to settle inter-State disputes falling under Section 6A read with Section 9 of the Central Sales Tax Act, 1956 on and from the date on which the Central Sales Tax (Amendment) Act. 2001 had come into force.*
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> *Let learned counsel for the State have instructions if the issue raised in the present writ petition could be considered by the said Appellate Authority, despite the fact that the Sales Tax Tribunal has already taken a decision in the appeal preferred by the petitioner for the relevant period."*

16. In the ordinary course, the present case ought to have been transferred to the Central Sales Tax Appellate Authority, however, this

Court finds that a corporate guarantee has been furnished by M/s Hindustan Level Limited for and on behalf of the petitioner in terms of the directions issued on 30.05.2005, wherein this Court directed that the guarantor shall be bound by the terms of both the affidavits which have been filed by and on behalf of the petitioner. The interim orders dated 20.11.2000 were directed to be continued till the final disposal of the writ petition. The interim order dated 20.11.2000 reads as under:-

> "*However, it is made clear that if the writ petition is dismissed, the petitioner shall have to pay the arrears of tax etc. with interest at the rate of 18% per annum from the date the amount became due.*"

Keeping in view that we have not accepted the contention of the petitioner and in terms of the judgment ***Tata Motors Limited*** (supra), we leave it open to the petitioner to claim refund of the amount already paid to the concerned States in terms of the observations made in ***Tata Motors Limited*** (supra). The respondents would also be entitled to the interest in terms of interim order passed by the Court.

17. The writ petitions are dismissed.

18. All pending applications shall stand disposed of.

19. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

02.09.2024
vs

(SANJAY VASHISHT)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No