

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5693 OF 2008
(Arising out of S.L.P.(C) No.7650/2007)

Commissioner of Sales Tax

...Appellant(s)

Versus

M/s. Tata Iron & Steel Co. Ltd.

...Respondent(s)

ORDER

Leave granted.

Was the High Court right in rejecting the Reference Application No.3/2002 and Reference Application No.4/2002 in terms of the following observation made in paragraph 11 of the impugned judgment, which reads as under:

“Thus, the findings recorded by the Tribunal that the sales occasioned the movement of goods into the country and hence covered under the first limb of section 5(2) of the Central Act are findings passed on analysis of facts which are recorded.”

The Department has sought to levy sales tax on sales made by M/s. Tata Iron & Steel Co. Ltd. (TISCO) in favour of Indian buyer(s) which was challenged by the respondent-assessee on the ground that the said sale had occasioned the import and, consequently, they fell within the first limb of Section 5(2) of the Central Sales Tax Act, 1956, which reads as under:

“A sale shall be deemed to take place in the course of the import of goods into the territory of India only if it occasions such import.”

In the present case, there were two contracts, broadly speaking. One was between TISCO and the Indian buyer(s). The other was between TISCO India on one hand and Tata Inc. (USA) on the other hand. The question which arose before the High Court was whether the two contracts were so integrated so as to constitute a “sale” which, in turn, occasioned the imports. According to the assessee, the Indian buyer(s) had entered into the contract on tripartite basis. According to the assessee, the tripartite contract and its terms mentioned therein occasioned the import of the goods from USA to the Indian buyer(s) into India, therefore, the goods stood exempted in terms of the first limb of Section 5(2) of the 1956 Act. It is urged on behalf of the assessee that if there is contract between the Indian importer (TISCO) and its customer in India just not only for sale of goods as such but for import of goods which can only be supplied to the Indian buyer and which cannot be diverted and if the foreign source is clearly identifiable under the contract, then, the Indian importer (TISCO) is importing goods only for the Indian buyer and that it was not necessary for the foreign supplier to know about the identity of the Indian buyer. According to the learned counsel appearing for the assessee, once there is a contract between the Indian importer and its customer in India for import of goods to be supplied to the Indian buyer, the contract would come within the first limb of Section 5(2) of the 1956 Act.

As against this argument, Shri Dholakia, learned counsel appearing for the Department, submits, on the facts of the case, that in this case, the Indian buyer was

promised by TISCO, the assessee, to procure goods from USA. According to the Department, two contracts, referred to above, were not inextricably interlinked. According to the Department, TISCO was the only supplier of the goods to the Indian buyer. The only obligation undertaken by TISCO was to arrange for imports from abroad. Therefore, according to the Department, the sales effected by TISCO to the Indian buyer did not fall within the first limb of Section 5(2) of 1956 Act.

In our view, the High Court had failed to consider various documents which were placed on record before it, namely, the invoices, the bill of lading, the modality of payment, the name of the consignee etc. We do not wish to express any opinion on these documents at this stage. Suffice it to state that the above question needs to be examined by the High Court *de novo* in accordance with law. The High Court had erred in proceeding on the basis that no question of law arose on the interpretation of the documents placed on record before it.

To simplify the matter, we re-frame the question as under:

“Whether on the facts and circumstances of the case, could it be said that the contract between the Indian buyer and TISCO on the one hand and the contract between TISCO and Tata Incorporated, USA on the other are so inextricably interlinked so as to attract the first limb of Section 5(2) of the 1956 Act?”

All contentions on both sides are expressly kept open. Parties are given liberty to file additional documents, if so advised, before the High Court.

Before concluding, it may be mentioned that before the High Court one additional question arose for determination from the decision of the Tribunal,

namely, whether the sales were in any event exempt under the second limb of Section 5(2) of the 1956 Act. This question remained unanswered as the High Court was of the opinion that since the assessee has succeeded in showing that the sales stood covered under the first limb of Section 5(2), it was not necessary to examine the question as to whether such sales stood exempted under the second limb of Section 5(2). However, since we are of the view that an important question of law arises in the facts and circumstances of the case, as indicated hereinabove, the High Court shall also consider whether such sales were exempt in any event under the second limb of Section 5(2) of the 1956 Act.

For the aforesaid reasons, the Department's Appeal stands allowed. The matter stands remitted to the High Court for its decision in accordance with law and in accordance with the directions given hereinabove.

No order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
September 16, 2008.