

Case Laws

VAT / SALES TAX JUDGEMENTS

① Southern Petro Chemical Corporation

Vs.

Addl. CCT (2009) 21 VST 274 (MP)

Qus:- Whether inter-state sale or Local sale ?

⇒ The petitioner, a company owned by the Govt. of Tamilnadu having its head office at Chennai and branch at Bhopal, was engaged in the manufacture and sale of medicines. Orders were directly made to the head office of the company at Chennai and the medicines were sold from the head office and bulk-transferred to the purchaser in various parts of the state of M.P. for the purpose of facilitating smooth transfer of the sold items, & form-75 (Entry form) was issued by the Bhopal branch to the head office at Chennai.

It was held that merely because form-75 was issued from the Bhopal office that, by itself, did not cast a liability on the petitioner to pay tax

as if it is local sale. A further finding had to be recorded by the authorities to the effect that the sales transaction had taken place within the state of M.P. and, therefore, liable to be taxed.

(2)

DCM Limited

Vs.

CST (2009) 21 VST 417 (SC)

Ques—Whether inter-state sale or Local sale.

⇒ The assessee sold ex-works in Delhi (i.e. goods delivered in Delhi) chemicals to registered dealers who were under a contractual obligations to sell them in their assigned territory outside Delhi. Under the contract with the registered dealers, each dealer was assigned an exclusive territory and was obliged to take the chemicals outside Delhi where they were to be sold. The dealers were required to submit monthly stock of sales and a market report to the assessee. The question was whether the sale to the dealers were inter-state sale.

It was held that the obligation of purchasing dealers under the contract with the assessee, to take the chemicals to their respective territories outside Delhi, to sell them in those territories only at the price fixed by the assessee, and to submit monthly reports to the assessee, indicated the control of assessee over the movement of the goods. The sales were inter-state sale.

③ Central Bank of India

Vs.

State of Kerala (2009) 21 VST 505 (SC)

Qus:- First Charge on Recovery proceedings - Validity of Provisions :-

⇒ Since the parliament has not made any provisions in Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 and Recovery of Debts due to Bank and financial Institutions Act, ~~2002~~ 1993 creating the first charge in favour of Bank and financial Institutions, there is no inconsistency in the provisions under the state sales tax Act, creating the first charge, subject to any Central Act. The state legislations giving first charge in favour of state operate in respect of charges that are in force on the date of introduction of the provisions creating the Charge.

④ R.P. Kakoti

Vs.

Oil and Natural Gas Comm. (2009)

Issue:- Hiring of Cranes - whether taxable as transfer of right to use goods.

⇒ The assessee gave the cranes on hire. Custody and control of cranes remained with the assessee and the entire expenses, namely, diesel charges, salary of driver, repair etc. were born by him. It was held that the assessee never transferred the effective control of the cranes. Therefore, the activity was not subject to sales tax.

(5)

CCT

vs.

Tiger Steel Tubes (P) Ltd. (2009) 22 VST 224

Issue:- Misuse of Form C - Penalty.

⇒ Purchasing dealer issued Form C for such items which are not listed in his central registration certificates. It was held that the dealer was liable for penalty u/s 10A of C.S.T. Act.

(6)

Freedom Info Systems

vs.

Bharat Sanchar Nigam Ltd. [2009]

Issue:- T.D.S. in Works contract

⇒ No tax can be deducted on the job contracts, involving no material, even if the contract between the parties requires for deduction of tax at source.

(7)

CTT

vs.

New Holland Traders India (P) Ltd. [2009]

Issue:- T.D.S. in works contracts on advance payments.

⇒ Tax cannot be deducted by the contractee on the advance payments made to the contractor.

(8)

Ravi Gupta vs. CST [2009]

Issue:- Appeal not to be entertained unless there is proof of tax payment.

⇒ Where denial of Interim relief may lead to public mischief, great irreparable private injury or shake a citizen's faith in the impartiality of the public administrative, interim relief can be given.