

Supreme court laying down the line of distinction between Stock transfer & Inter state sales for Central Sales Tax

Hyderabad Engineering Industries

Civil Appeal No 3781 of 2003

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Presentation by

Parmod K. Bansal, Advocate

M – 9810288440;

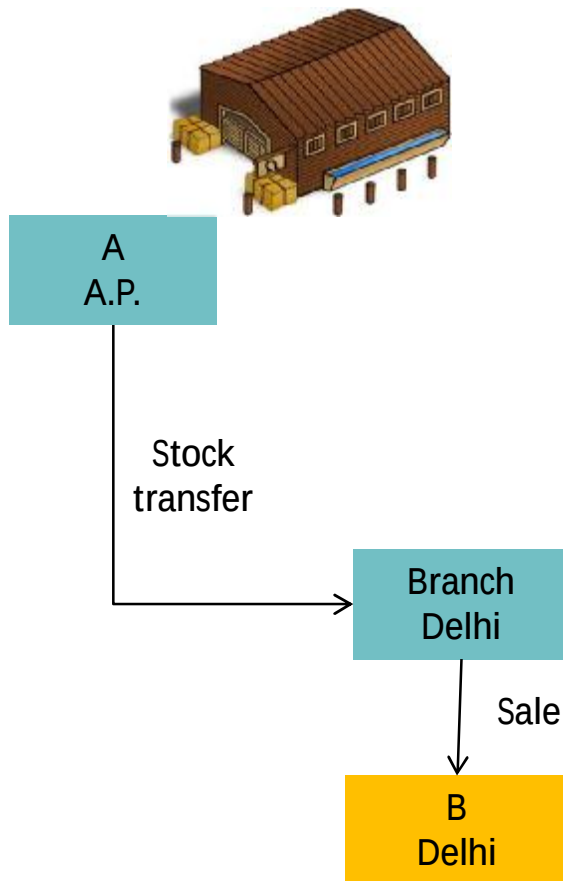
E – balwantraibansal@yahoo.co.in

Background

- Ū While inter-state sales are subject to CST; intra-state sales are governed by respective State VAT legislations.
- Ū Stock transfers to a branch outside the State is not subject to either VAT or CST. However, VAT credit on inputs is required to be reversed (as per the State VAT laws).
- Ū However, dispute lies where some stock transfers are considered by VAT authorities as inter-state sales and proceed to recover tax thereon from the seller.
- Ū High courts have been giving divergent views on the issues which has now been settled by Supreme court in 'Hyderabad Engineering Industries'. Now armed with latest decision from Supreme court, VAT department would be up in arms against the dealers. Brief facts alongwith analysis of decision is discussed in subsequent slides



Supreme court in case of 'A' – Facts of the case



- Ū A has manufacturing facility in Andhra Pradesh and a branch in Delhi.
- Ū A entered into a 'Sales Agreement' with B in Delhi wherein A proposed to sell the goods on wholesale to B while B to further sell in retail. While B was granted the exclusive rights to sell A's products, distribution to other bulk buyers and government was retained by A. B places its monthly intents for supply of goods.
- Ū Based on these, the supplies are made by A to its branch from where sales are made to B in Delhi. No Tax paid on transfer from AP to Delhi considering it as stock transfer
- Ū However, Sales tax department had a different view and considered the same as Inter-state sales, subjecting the same to CST
- Ū A, after not getting relief from lower authorities, filed an appeal before Supreme court

Legal position – Section 3 of Central Sales Tax



Section 3. 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.

Sales Tax officer's contentions

“from a factual description of the mode of transactions, it is evident that the inter-state sales effected by the assessee have been camouflaged as branch transfers with a view to evade tax legitimation due to the state on these transactions”

Basic issue for consideration

With a view to find out whether a particular transaction is inter-state sale or not, it is essential to see whether there was movement of goods from one state to another as a result of prior contract of sale or purchase.

Supreme court – Analysis & Observations

Matter reached Supreme court who observed as follows.

- Ū There are 2 cases of central sales – (1) where sale resulted in movement of goods from one state to another (2) where sale results during movement of goods from one state to another.
- Ū The case needs to be analysed in Situation (1). Supreme court observed that in such a case, there must be an obligation between the parties to transport the goods outside the state. Such obligation could be through written contract or oral contract or inferable from circumstantial evidence.[Para 16]
- Ū Though, Supreme court agreed with the fact that there lies a difference between ‘agreement to sell’ and ‘sale’ wherein the former converts into latter, when there is satisfaction of conditions provided therein, it went ahead with analysing the terms of the original agreement.
- Ū Clause 8 of the agreement was important on which decision was relied. The same obligated A to make delivery of products either to B or in any of its godowns (i.e. A’s) at the option of B
- Ū Supreme court placed its reliance on various of its erstwhile decisions and held in favour of the department

Supreme court - Conclusion

Finally, the Supreme court concluded by observing that following scenarios are covered under “inter-state sales”

- § “Sale” or “agreement to sell” occasions movement of goods from one state to another (irrespective of whether such movement has been provided in the agreement) or
- § Order placed before HO or branch resulted in movement of goods from one state to another (irrespective of state where property in goods passes)

Thus, it is not necessary that sale must precede movement of goods or the fact of movement of goods is mentioned in the agreement [Para 32]

Thus, even an agreement to sell can now result in classification of such transfers as “inter-state sales” and not “branch transfer”





Supreme court – Significant observations

Further Supreme court also provided following important observations with respect to facts of instant case

- Ū Where there is a positive case of inter-state sales, even if the dealer had procured F-Forms, the same would still be of no use and he may need to prove that the facts are otherwise. [Para 18]
- Ū Where the agreement was entered with another unit or movement of goods was at the instance of another unit of same company does not make any material difference [Para 31]
- Ū Branches & head office constitute one single entity. Who bills or collects from the customer does not matter [Para 31]
- Ū Even if no firm orders have been provided, the fact that 'forecasts' have been provided by the buyer in the beginning would take the colour of 'indents' or 'firm orders' [Para 42]
- Ū Even where purchases are made to government departments (who are bulk buyers) would not take it out of the purview of Inter state sales [Para 43]

Though the above decision can be distinguishable from others as in the instant case, buyer of goods was having an agency for the various states wherein it had the sole selling rights. Nevertheless, it can be taken as a big weapon by VAT authorities who may try to caught dealers undertaking such transactions.

A word of caution



A lot of dealers may have been maintaining supply chains by introducing branches, which can be potential exposure

- û Where entire sales are being made by the branch to some particular dealers
- û Where after effecting transfers to branch, the goods are sold to specific parties and stock balance goes to 'Nil'
- û Where no significant staff is being maintained at branch
- û Where indents are being sent by the buyers directly to HO based on which transfers are made to branch

In case you wish to have a complete copy of the Supreme court decision, drop us a mail at balwantraibansal@yahoo.co.in

Thank You

