

M/s. Mehta Group of Industries, Bahadurgarh v. The State of Haryana (S. S. Kang, J.)

to accept the construction placed by the counsel for the appellant on sub-section 4(a)(i) would be really rendering sub-section (2) of section 39 otiose, for if in an appeal preferred by the assessee against the Appellate Assistant Commissioner's order the Tribunal would have the power to enhance the assessment, a provision for cross-objections by the department was really unnecessary. Having regard to the entire scheme of section 39, therefore, it is clear that on a true and proper construction of sub-section 4(a)(i) of section 39 the Tribunal has no jurisdiction or power to enhance the assessment in the absence of an appeal or cross-objections by the department."

(8) The language of Section 39 of The 1963 Act is almost *pari materia* with the provision of Section 39 of the Act. If on an appeal filed by the assessee, the Tribunal could not enhance the tax in accordance with the provisions of Section 39 of 1963 Act, the Deputy Excise and Taxation Commissioner also could not, on the appeal of the assessee-appellant, and in the absence of any appeal or revision by the department, set aside the orders of the assessing authority relating to exemptions granted and remand the case for fresh decision thereof.

(9) In the result, we hold that the appellate authority was not competent to go into the matters which were not raised in appeal and direct the examination of fresh issues by the assessing authority on the appeal filed by the assessee. It is not necessary for us to construe the provisions of Section 40 of the Act and to define the scope of the revisional jurisdiction of the Commissioner in these proceedings. The answer to the question referred is in the negative. No costs.

R.N.R.

Before : Sukhdev Singh Kang & Jai Singh Sekhon, JJ.

M/S. MEHTA GROUP OF INDUSTRIES BAHADURGARH,
—Applicant.

versus

THE STATE OF HARYANA,—Respondent.
General Sales Tax Reference No. 6 of 1983.

22nd August, 1989.

Central Sales Tax Act, 1956—Ss. 3-A, 9—Haryana General Sales Tax Act, 1973—S. 42—Reference of question of law—Movement of

goods from factory in Haryana to the Head Office at Delhi—Despatch of goods to far-flung States—Quantity of goods received from Haryana despatched from Delhi on the same day—On facts found that buyers aware of exact quantities and date of arrival of goods—Movement of goods in the circumstances constitute sale in the course of interstate trade and commerce—Tax leviable on sales under the Central Act—Rate of tax—Absence of 'C' forms—No evidence that sales made to registered dealers—Sales liable to be taxed at 10 per cent and not at concessional rate.

Held, that the goods were despatched on the same day when they were received though the buyers happened to be from Allahabad Kanpur and Madras. One fails to understand how the buyers in distant places situated in various States of the country became aware about the exact quantity and the date of arrival of the goods from the factory of the applicant/dealer to its Head Office at Delhi. Whatever quantity of the goods was received was despatched on the same day. The applicant/dealer stated that there was no record of any orders placed by the buyers. It is difficult to believe that without any order in writing a prudent businessman will despatch the goods to un-known buyers in far-flung places. The explanation of the applicant/dealer that some friend or agent of these buyers may have placed the order at Delhi has rightly been rejected by the authorities.

(Para 5).

Held, that where Saccharin was received in the Head Office at Delhi from factory in Haryana in two consignments of 40 kgs. and 17 kgs. and was sold in the same quantities on the same day, these facts clearly establish that the goods were despatched from the factory not as and when they were manufactured but in compliance with specific orders in which the quantities sought to be purchased had been mentioned. The goods were sent in the same bulks as were required by the buyers. The goods have not moved in the ordinary course from the factory to the Head Office at Delhi. The applicant/dealer had also admitted that apart from the goods which have been sold in the above transactions, they had no stock. So these circumstances clearly establish that the movement of the goods had taken place from the factory at Bahadurgarh in Haryana to the Head Office at Delhi as an incidence of contract of sale already entered into by the dealer at the Head Office. It is the contract of sale which had occasioned the movement of the goods.

(Para 7).

Held, that in the absence of 'C' forms, the Haryana Sales-tax authorities were justified in not levying tax at the concessional rate. In the absence of any evidence in the form of 'C' forms that the sales had been made to registered dealers, we hold that the sales effected by the applicant/dealer were liable to be taxed at the rate of 10 per cent and not 3 per cent.

(Para 10).

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Reference made by the Sales Tax Tribunal Haryana for opinion of the following question of law arising out of the order dated 22nd October, 1973 of the Sales Tax Tribunal, Haryana passed in S.T.A. No. 217 of 1972-73:

1. Whether in the facts and circumstances of the case the movements of goods constitute sale in the course of inter-state trade and commerce warranting imposition of tax under section 3(a) read with section 9 of the Central Sales Tax Act, 1956 ?
2. Whether in the facts and circumstances of the case sales effected by the firm at Delhi in the course of inter-state trade and commerce and tax paid there at the rate of 3 per cent against 'C' form could be assessed at the rate of 3 per cent or 10 per cent ?

S. P. Jain, Advocate, for the Applicant.

S. K. Sood, D.A. (Hy.), for the Respondent.

JUDGMENT

Sukhdev Singh Kang, J.

(1) M/s Mehta Group of Industries, Bahadurgarh, the applicant herein, is engaged in the manufacture and sale of Saccharine (a substitute for sugar), colours-which are mixed in eatables and drinks, and straws. It got itself registered as a dealer with liability to pay tax with effect from November 4, 1970. For the Assessment Year 1970-71, it filed two quarterly returns for the 3rd and 4th quarters. It claimed that goods worth Rs. 99,641.65 had been transferred to its Head Office at Delhi and as such they were not exigible to tax. The Assessing Authority classified these goods, which had been avowedly transferred to the Delhi office, in two categories. In the first category were put those sales which were made to buyers outside the Union Territory of Delhi. In all these cases, the goods received from the factory at Bahadurgarh were despatched to the purchasers in various States on the very day they were received at Delhi. In one or two cases they were despatched a day or two later. The Assessing Authority concluded that the movement of the goods from Bahadurgarh in Haryana had been occasioned by prior orders. The Assessing Authority included the goods sold to the customers at Delhi in the second category. He observed that there was a numerical similarity between the goods despatched from Bahadurgarh and those sold at Delhi on a particular day. Generally, the goods had been sold in bulk on the same day. Sales were in favour of three customers. He concluded that these goods had also been moved in pursuance of pre-existing orders. The applicant/dealer had also claimed that sales amounting to Rs. 6,687 were made

against 'C' forms and were liable to tax at the rate of 3 per cent and not 10 per cent. This contention was accepted. However, regarding the remaining sales an additional demand was created. Aggrieved, the applicant/dealer went up in appeal and contended that the goods had been only transferred from the factory at Bahadurgarh in Haryana to its Head Office at Delhi, and these were not inter-State sales. The goods were manufactured in the ordinary course and not to the specifications of the buyers. The Deputy Excise and Taxation Commissioner was informed by the applicant/dealer that it had no documentary evidence to show as to how the goods had moved from Delhi to various places in other States. He was also not satisfied with the plea of the applicant/dealer that the various sales at Delhi had not been resulted from any specific orders. The appeal was declined.

(2) In the second appeal before the learned Tribunal, the applicant/dealer raised the same very pleas, i.e., that the goods had been transferred from its factory at Bahadurgarh (Haryana) to its Head Office at Delhi and sold to various customers. There was no previous order. It was further pleaded that though before the Assessing Authority the orders of the Sales-tax authorities of Union Territory, Delhi levying tax at the rate of 3 per cent on Inter-State sales were produced, yet he had levied tax on those Sales at the rate of 10 per cent. It was contended that onus of proving that the sales in question were exigible to tax lay heavily on the Department and they had miserably failed to discharge that onus.

(3) These submissions did not find favour with the learned Tribunal. Taking into account the facts and circumstances of the case, the learned Tribunal recorded a finding of fact that there were prior contracts between the buyers and the dealer and in pursuance of those contracts, the goods moved from Bahadurgarh in the State of Haryana to its Head Office at Delhi. He was particularly impressed by the numerical similarity between the goods transferred from Bahadurgarh to the parties in Delhi and the fact that the goods had been sold either on the very same day when they arrived at Delhi or within a day or two thereof and that too in most cases in the same quantities which were received from the factory.

(4) On the application of the applicant/dealer under Section 42 of the Haryana General Sales Tax Act, 1973, the learned Tribunal has stated the case and referred the following two questions for our opinion :—

“(1) Whether, in the facts and circumstances of the case, the movement of goods constitutes sale in the course of Inter-State trade and commerce warranting imposition of tax

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under Section 3(a) read with Section 9 of the Central Sales Tax Act, 1956 ?

- (2) Whether, in the facts and circumstances of the case, sales affected by the firm at Delhi in the course of inter-State trade and commerce and tax paid thereon at the rate of 3 per cent against 'C' form could be assessed at the rate of 3 per cent or 10 per cent ?”

(5) The learned Tribunal, while deciding the appeal, has referred to the order of the Assessing Authority. He has not culled out the various transactions noted by the Assessing Authority but has relied on them. He deemed the details of those transactions available in the order of the Assessing Authority to be part of the order, on appeal, by the learned Tribunal. The learned counsel for the applicant/dealer, has not challenged the correctness of the details of the transactions either before the authorities or before us. The particulars of the goods alleged to have been sold by the applicant/dealer to the parties outside Union Territory of Delhi are as follows :—

Date of sale	Nature and quantity of goods sold	Amount	Purchaser's name	Remarks
21-1-1971	Colour 20 Kgs.	715.00	M/s Uttam & Co., Allahabad	Goods were transferred from Bahadurgarh to Delhi on 21-1-1971
5-2-1971	Colour 25 Kgs.	215.60	M/s Krishna Trading Co., Kanpur	Goods were transferred from Bahadurgarh to Delhi on 5-2-1971
20-2-1971	Colour 15 Kgs.	472.50	M/s Charanji Lal & Co., Ludhiana	Goods were transferred from Bahadurgarh to Delhi on 17-2-1971
24-2-1971	Straws 250 Kgs.	262.50	Ditto	Ditto
3-3-1971	Saccharine preparations 800 dibbi	1943.20	M/s P. Singh Vahu, Madras	Goods were transferred on 3-3-1971 from Bahadurgarh to Delhi
9-3-1971	Ditto	1943.20	Ditto	Goods were transferred on 8-3-1971 from Bahadurgarh to Delhi
20-3-1971	Ditto	1943.70	Ditto	Goods were transferred on 19-3-1971 from Bahadurgarh to Delhi

It is manifest from a perusal of the above data that the goods were transferred to the buyers in other States in the same quantities in which they were received from the factory at Bahadurgarh. In 3 out of these 7 cases, the goods were despatched on the same day when they were received though the buyers happened to be from Allahabad, Kanpur and Madras. One fails to understand how the buyers in distant places situated in various States of the country became aware about the exact quantity and the date of arrival of the goods from the factory of the applicant/dealer to its Head Office at Delhi. Whatever quantity of the goods was received was despatched on the same day. The applicant/dealer stated that there was no record of any orders placed by the buyers. It is difficult to believe that without any order in writing a prudent businessman will despatch the goods to unknown buyers in far-flung places. The explanation of the applicant/dealer that some friend or agent of these buyers may have placed the order at Delhi has rightly been rejected by the authorities.

(6) The particulars of the sales to buyers at Delhi also deserve reproductions:—

Date of transfer	Challan number	Goods	Disposal of Delhi Office
12-12-1970	1/24,400 Kgs.	Saccharin	Sold on 13-12-1978 to M/s Pappi Chemicals, Gandhi Nagar, Delhi : 24,400 Kgs.
14-12-1970	2/28,400 Kgs.	—do—	Sold 28,400 Kgs. Saccharin on 14-12-70, 10,000 Kgs. to M/s Mehta Bros. and 18,400 Kgs. to M/s Pappi Chemicals
15-12-1970	3/5,000 Kgs.	Colour	Sold 5 Kgs. colour on 16-12-1970 to M/s Mehta Brothers
16-12-1970	4/40,000 Kgs.	Saccharin	Sold 40 Kgs. on 17-12-70 to M/s Mehta Bros
21-12-1970	5/37,000 Kgs.	Colour	Sold 37,000 Kgs. on 21-12-70 to M/s Mehta Brothers
22-12-1970	6/35,000 Kgs.	Colour	Sold on 21-12-1970 to M/s Mehta Brothers
22-12-1970	7/16,000 Kgs.	Colour	Sold on 22-12-1970 to M/s Mehta Brothers
24-12-1970	8/40,000 Kgs.	Saccharin	Sold 40 Kgs. on 24-12-1970.

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Date of transfer	Challan number	Goods	Disposal of Delhi Office
24-12-1970	9/17.000 Kgs.	Saccharin	Sold 17.000 Kgs. on 24-12-1970 to M/s Mehta Brothers
25-12-1970	10/16.000 Kgs.	Colour	Sold 16.000 Kgs. on 25-12-1970 to M/s Mehta Brothers
28-12-1970	11/30.000 Kgs.	Saccharin	Sold 30 Kgs. Saccharin to M/s Mehta Brothers
30-12-1970	12/40.000 Kgs.	Saccharin	Sold 40 Kgs. on 30-12-1970 to M/s Pappi Chemicals, Delhi
1-1-1971	13/10 Kgs.	Saccharin	Sold 10 Kgs. on 1-1-1971 to M/s Pappi Chemicals, Delhi

(7) There are only three buyers. On December 12, 1970, 24.400 Kgs. Saccharin was received from the factory and this Saccharin was to M/s Pappi Chemicals on December 13, 1970. On December 14, 1970, 28.400 Kgs. of Saccharin was received and sold to M/s Mehta Brothers (10 Kgs.) and Pappi Chemicals (18.400 Kgs.). 5 Kgs. of colour was received on 15th December, 1970 and sold on 16th December to M/s Mehta Brothers. In the same manner have taken place the other transactions. Every manufacturer has a certain capacity for manufacturing particular items. Despatch of goods from the factory to Head Office at Delhi does not conform to any set pattern. On 15th December, 1970, only 5 Kgs. of Colour is despatched, whereas on 21st December, 1970, 37 Kgs. of colour is despatched. On 22nd December, 1970, the Head Office, Delhi receives 35 Kgs. of colour, and on that very day another consignment of 16 Kgs. of colour is received by the Head Office. Same is the case with Saccharin. Furthermore, one fails to understand as to why colour was received in two consignments on 22nd December, 1970 and the same were sold in those two consignments. Similarly, on 24th December, 1970, Saccharin was received in the Head Office at Delhi in two consignments of 40 Kgs. and 17 Kgs. and they were sold in the same quantities. These facts clearly establish that the goods were despatched from the factory not as and when they were manufactured but in compliance with specific orders in which the quantities sought to be purchased had been mentioned. The goods were sent in the same bulks as were required by the buyers. The

goods have not moved in the ordinary course from the factory to the Head Office at Delhi. The applicant/dealer had also admitted that apart from the goods which have been sold in the above transactions, they had no stock. So, these circumstances clearly establish that the movement of the goods had taken place from the factory at Bahadurgarh in Haryana to the Head Office at Delhi as an incidence of contract of sale already entered into by the dealer at the Head Office. It is the contract of sale which had occasioned the movement of the goods.

(8) In fairness to Mr. S. P. Jain, learned counsel for the applicant/dealer, it may be mentioned that he had brought to our notice two decisions of the final Court in *Kelvinator of India Ltd. v. State of Haryana*, (1) and *Union of India v. K. G. Khosla and Co. Ltd.* (2), these decisions do not help the learned counsel, because in both cases there were contracts of sale which fell for interpretation and on the construction of those documents were based the two decisions. However, in the present case, there is no document which falls for construction.

(9) In the result, we answer the first question in the affirmative and in favour of the Department.

(10) Regarding the second question, it is apparent from the record that no 'C' forms were produced before the Sales-tax authorities in Haryana. Only orders of the Sales-tax authorities of Union Territory of Delhi were produced. In the absence of 'C' forms, the Haryana Sales-tax authorities were justified in not levying tax at the concessional rate. In the absence of any evidence in the form of 'C' forms that the sales had been made to registered dealers, we hold that the sales effected by the applicant/dealer were liable to be taxed at the rate of 10 per cent and not 3 per cent. Thus, our answer to question No. 2 also goes against the applicant and in favour of the Department.

R.N.R.

Before : G. C. Mital & S. S. Sodhi, JJ.
AMARJIT KAUR,—Appellant.
versus

THE STATE OF PUNJAB,—Respondent.
Criminal Appeal No. 518-DB of 1987.
7th September, 1989

Indian Penal Code, Ss. 302, 34—Dead Bodies found lying buried in field—No eye witness—Conviction based on Circumstantial evidence—Recovery of bodies on the basis of Extra Judicial Statement—Extra Judicial confession must meet the test of creditability.

- (1) (1973) 32 STC 629.
(2) (1979) 43 STC 457.