

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1767 OF 2015
(Arising out of SLP (C) No.14514/2013)

STATE OF M.P. & ORS. ...APPELLANTS

VERSUS

M/S. S.K. INDUSTRIES ...RESPONDENT

WITH

CIVIL APPEAL NO.1768 OF 2015
(Arising out of SLP (C) No.14613/2013)

WITH

CIVIL APPEAL NO.1769 OF 2015
(Arising out of SLP (C) No.14614/2013)

O R D E R

Leave granted.

These appeals have been preferred by the appellants- State of Madhya Pradesh and others against the judgment and orders dated 19th July, 2012 passed by the High Court of Madhya Pradesh in Writ Petition No. 5175 of 2008, etc. preferred by the respondent-assessee. By the impugned similar judgment & orders, the High Court set aside the order(s) passed by the Authority, allowed the writ petition(s) and held that the Dalhan (pulses & cereals) sold by assessee-dealer outside the State through agents/brokers, in the course of inter-State trade or commerce entitles the assessee-dealer for tax exemption.

The respondent is a registered dealer in the business of manufacturing and sale of pulses & cereals by purchasing the raw material of pulses and cereals. During the period from

01.04.1999 to 31.03.2000, 01.04.2000 to 31.03.2001 and 01.04.2001 to 31.03.2002, the assessee has done its business of sale of Dalhan (pulses and cereals) of Rs.11,72,09,507/-, Rs.2,90,40,430/- and Rs.2,04,03,619/- respectively, which include sale of Dalhan (pulses and cereals) outside the State through agents/brokers.

For all the years, the authority imposed tax on sale price through agents/brokers @ 2%.

As per the respondent, pursuant to the Notification dated 10th July, 1999 issued by the State Government in exercise of its powers conferred under Section 17(1) of the Madhya Pradesh Vaniyik Kar Adhiniyam, 1994 (hereinafter referred to as 'Adhiniyam, 1994'), the assessee-dealer is not liable to pay tax. Against the orders dated 09.02.2004, 03.09.2004, 15.12.2004, the assessee preferred appeal(s) which were dismissed and thereafter, second appeal(s) were filed, which were also dismissed.

The only question raised for determination before the High Court was whether the assessee-dealer is liable to pay tax on the sale price of the Dalhan (pulses and cereals) sold through agents/brokers outside the State or whether the exemption granted vide Notification issued by the State Government is available to the assessee-dealer for the period in question.

The High Court by the impugned order(s) dated 19th July, 2012 observed that admittedly the assessee-dealer sold Dalhan (pulses & cereals) outside the State through agents/brokers, which is covered in the course of inter-State trade or commerce and thus is entitled for the benefit of Notification dated 10th July, 1999 and set aside the orders passed by the Assessing Authority, Appellate Authority and Second Appellate Authority.

The only plea taken on behalf of the appellant is that the sale in question is not inter-state sale and therefore, the assessee-dealer is not entitled for benefit pursuant to Notification dated 10th July, 1999.

Per contra, according to learned counsel for the assessee-dealer, the authorities during re-assessment ought to have gone through the factual aspect to find out whether it was a case of sale by assessee to his agent and not through the agent.

We have heard the learned counsel for the parties and perused the record.

From the record it is clear that the assessee-dealer never raised the plea that he made the inter-state sale to the agent and paid the commission to the State agent.

The learned counsel for assessee-dealer referred certain documents to suggest that the sale was made to the agent, who in turn sold the pulses and cereals to others. However, in absence of any plea taken before the Authorities and High Court, we are not inclined to decide the said question in this appeal.

The High Court allowed the writ petitions on the ground that the assessee-dealer sold Dalhan (pulses & cereals) outside the State through agents/brokers and the sale is covered in the course of inter-State trade or commerce.

Therefore, the only question arises as to whether sale of any goods outside the State through agents/brokers can be covered in the course of inter-State trade or commerce.

Section 3 of the Central Sales Tax Act, 1956 provides that the 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 occasions the movement of goods from one State to another; the said provision reads as follows:

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce. 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.

Explanation 1.—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2.—Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State. "

In the present case, except for the movement of goods from one State to another, no other condition mentioned in the Section 3 satisfies that there is anything on the record to suggest that the occasion of movement of goods from one State to another as made by the assessee through the agent/broker is covered in the course of inter-State trade or commerce. As one of the conditions of sale is not satisfied which is the movement of goods from one State to another State by transferring of the goods from dealer to the agent, the assessee dealer is not entitled to derive any advantage under Notification dated 10th July, 1999 issued by the State Government. The High Court has failed to appreciate the same and on wrong presumption allowed the writ petitions.

For the reason aforesaid, we set aside all the impugned judgment & orders dated 19th July, 2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Writ Petition No.5175 of 2008 etc. and allow the appeals.

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

.....J.
[N.V.RAMANA]

NEW DELHI;
FEBRUARY 11, 2015

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14514/2013

(Arising out of impugned final judgment and order dated 19/07/2012 in WP No. 5175/2008 passed by the High Court of M.P at Gwalior)

STATE OF M.P. & ORS.

Petitioner(s)

VERSUS

M/S. S.K. INDUSTRIES

Respondent(s)

(with appln. (s) for exemption from filing O.T.)

WITH

SLP(C) No. 14613/2013

(With appln.(s) for exemption from filing O.T. and Interim Relief)

SLP(C) No. 14614/2013

(With appln.(s) for exemption from filing O.T. and Interim Relief)

Date : 11/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Ms. Deepika Shori, adv.
Mr. C. D. Singh, Adv.

For Respondent(s) Mr. Puneet Jain, Adv.
Mr. Abhinav Gupta, Adv.
Ms. Pratibha Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the Signed
Order.

(Rajni Mukhi)
Sr. P.A.

(Suman Jain)
Court Master

(Signed Order is placed on the file)