

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2421 OF 2006

M/S.MALAYAGIRI SANDALWOOD OIL DISTILLERY

Appellant (s)

VERSUS

SP.COMMNR.& COMMNR.OF COMMERCIAL TAX&ORS

Respondent(s)

WITH SLP(C) NO. 20605 of 2005

(With prayer for interim relief and office report)

SLP(C) NO. 478 of 2007

(With appln. for permission to place addl. documents on record and office report)

Civil Appeal NO. 962 of 2006

(With office report)

Civil Appeal NO. 963 of 2006

(With office report)

Civil Appeal NO. 964 of 2006

(With office report)

Civil Appeal NO. 965 of 2006

(With office report)

Civil Appeal NO. 966 of 2006

(With office report)

Civil Appeal NO. 967 of 2006

(With office report)

Civil Appeal NO. 968 of 2006

(With office report)

Civil Appeal NO. 969 of 2006

(With office report)

Civil Appeal NO. 970 of 2006

(With office report)

Civil Appeal NO. 971 of 2006

(With office report)

Civil Appeal NO. 972 of 2006

(With office report)

Civil Appeal NO. 973 of 2006

(With office report)

Civil Appeal NO. 974 of 2006

(With office report)

Civil Appeal NO. 975 of 2006

(With office report)

Civil Appeal NO. 976 of 2006

(With office report)

Date: 07/08/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

-2-

For Appellant(s) Mr. K.K.Venugopal, Sr. Adv.

In CA 962,963,966, Mr. C.N.Sree Kumar, Adv.

965,964,973,974 Mr. V.K. Sidharthan, Adv.

Mr. Ankur Talwar, Adv.

Mr. P.Kalra, Adv.

Ms. Uttara Babbar, Adv.

In CA 2421,967-969, Mr. Joseph Vellapally, Sr. Adv.

970 Mr. S.Ganesh, Sr. Adv.

Mr. C.N.Sree Kumar, Adv.

Mr. V.K.Sidharthan,Adv.
Mr. P.Kalra,Adv.

In 975&976/06 Mr. D.Mehta,Adv.
Mr. H.Jha,Adv.
Mr. Y.S.Deora,Adv.for
M/S K.L. Mehta & Co.

In 970/06 Mr. K. Rajeev,Adv.
& SLP 20605/05

In CA 976/06 Mr. E.R.Kumar,Adv.
Mr. Sumit Goel,Adv.for
M/S P.H. Parekh & Co.

For Respondent(s) Mr. R.Nedumaran,Adv.
for State of T.N.
Mr. Subramonium Prasad,Adv.

Mr. K.R. Sasiprabhu,Adv.

For State of Kerala Mr. T.L.Vishwanatha Iyer,Sr.Adv.
Mr. P.V. Dinesh,Adv.

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

In CA Nos.966 and 974/2006 and SLP (C)No.478/2007
As service is incomplete in these matters, delink these matters.
In rest of the matters
Leave granted in Special Leave Petition.
For the sake of convenience the facts in Civil Appeal No.962 of 2006 are mentioned.

-3-

The issue involved in the present case is : whether the sale of sandalwood to the appellant, who is an outside-the-State dealer in an auction sale, and the consequent movement of the sale to the appellants manufacturing unit in Uttar Pradesh, was an inter-State sale taxable only under the Central Sales Tax Act, 1956.

Appellant is a partnership firm. It is engaged in the manufacture and sale of sandalwood oil. It has a manufacturing unit in Kanpur in the State of Uttar Pradesh. It is a registered dealer under U.P. Trade Tax Act, 1948 and under Central Sales Tax Act, 1956. It is not registered in Tamil Nadu under any law.

Appellant took part in the auction sale held by the DFO, Tamil Nadu, (seller). Appellant was one of the successful bidders. The sale was confirmed in his favour. The goods were moved from Tamil Nadu to Uttar Pradesh. As stated above, appellant is a registered dealer in the State of Uttar Pradesh. Appellant was under a statutory obligation to move the sandalwood under the rules mentioned hereinafter from Tamil Nadu to Uttar Pradesh so that he could use the same in his manufacturing unit in Kanpur (Uttar Pradesh) and not for trading purpose.

Appellant claims that sale of sandalwood was an inter-State sale under Section 3(a) of the Central Sales Tax Act, 1956 and, therefore, no tax could be levied under the local Act. The High Court held that sale in the present case was by way of auction; that the sale got completed in the State of Tamil Nadu; that the property in goods passed to the appellant in Tamil Nadu and the mere fact of transport of

-4-

sandalwood by the appellant from Tamil Nadu to Kanpur (Uttar Pradesh) made no difference. According to the High Court, the movement of the goods was not a stipulation nor an incident of the contract of sale. Hence, these civil appeals have been filed by the assessee.

On behalf of the appellant, it was contended that in the present case the movement of goods was occasioned by the sale as the sole purpose of bidding in the auction and going ahead with the purchase of sandalwood, was to take the goods to the factory of the appellant in Kanpur (Uttar Pradesh) for manufacturing sandalwood oil which was clear from a certificate issued by the jurisdictional authority under the Income-tax Act vide Section 206C(1) of the Income-tax Act, 1961. It was further contended on behalf of the appellant that the sale of sandalwood and despatch of the sandalwood to the factory of the appellant in Kanpur (Uttar Pradesh) were part of

the same transaction and that the movement of the goods from Tamil Nadu to Uttar Pradesh was occasioned by the sale and, therefore, the said transaction constituted an inter-State sale. It was further contended that in order to decide the question : whether the movement was an incident of the contract of sale or was a separate transaction, would depend upon the nature of the commodity, the nature of transaction and the status of the buyer (whether he is an exporter or a local buyer). It was further contended on behalf of the appellant that in the present case the auction was only a price determination mechanism under the contract of sale as the sale got completed only on confirmation by the competent authority in Tamil Nadu under the Forest Act. It was further contended on behalf of the appellant that the rules enacted under the Forest Act not only

-5-

controlled possession of sandalwood but also regulated transportation of sandalwood, both within the State and for transporting the goods from Tamil Nadu to Kanpur (Uttar Pradesh). In this connection, it was urged that without the transport permit it was not possible for the buyer to transport the goods to Kanpur (Uttar Pradesh). It was urged that even before the registration of the bidder, Forest Department (seller) had full knowledge as to who was the buyer, what was the status, as also the nature of the transaction and, therefore, according to the appellant, movement of the goods was an integral part of the contract of sale. It was urged on behalf of the appellant that even the tender conditions indicated that the appellant was not free to deal with the sandalwood; that the appellant had to consume the said product in the manufacture of sandalwood oil; that the appellant was not free to sell the product in the market; that the appellant was bound to strictly follow the rules framed under the Forest Act which prohibited the appellant from dealing with the said item in any manner he liked and, therefore, in view of the rules regulating possession, transit rules and tender conditions it was clear that the movement of the goods was an integral part of the contract of sale. In this connection, the appellant has placed reliance on the judgment of the Division Bench of this Court in State of Orissa and Anr. v. M/s. K.B. Saha and Sons Industries Pvt. Ltd. & Ors. etc. 2007 (6) Scale 284. In that case the product in question consisted of kendu leaves. Like sandalwood, kendu leaves is also a controlled commodity. As in the present case, in the above case of K.B. Saha (supra), the assessee had their registered office outside the State of Orissa; they carried on the business in tobacco and kendu leaves; they prepared bidi at their

-6-

factories situated in the West Bengal; that after the sale of kendu leaves and payment of the sale price, lifting orders were issued by the Corporation to its respective Divisional Managers permitting the buyers to lift the goods and that the DFO was authorized to issue transport permits in the prescribed form on the basis of which the assessee transported the kendu leaves to West Bengal. In the circumstances, it was held that the movement of kendu leaves from Orissa to West Bengal was an integral part of the sale. This judgment in our opinion helps the appellant (assessee herein). However, with great respect we are not in agreement with the views expressed in the said judgment. In the case of Oil India Ltd. v. The Superintendent of Taxes and others 1975 (1) SCC 733, crude oil was carried from Assam through the pipes constructed by Oil India Ltd. to the refinery in Bihar and the oil was pumped and delivered to Indian Oil Corporation. Clause 12 of the Agreement provided that the assessee (Oil India Ltd.) shall arrange for construction of pipeline or such other related facilities as it shall consider necessary for transport of oil to Bihar, therefore, this Court under the above circumstances held that the construction of pipeline was undertaken by the assessee in pursuance of the agreement between Oil India Ltd. and Indian Oil Corporation and that was for the specific purpose of transporting crude oil from Assam to Bihar which indicated that the parties contemplated movement of goods from one State to another in pursuance of the contract of sale. In our opinion, the case of Oil India Ltd. (supra) is the classic illustration which brings out the test to find out as to whether the movement of goods from one State to another was the result of a stipulation or an incident of the contract. In the present case, the auction takes place in the State of

-7-

Tamil Nadu, the confirmation is issued from the State of Tamil Nadu, the delivery is in the State of Tamil Nadu and the payment of consideration is in the State of Tamil Nadu. In our view, the rules controlling possession, rules concerning transit, the provisions of Section 206C of the Income-tax Act and the authorized permit for export etc. are all facilities given in respect of the movement of goods from the State of Tamil Nadu to Kanpur (Uttar Pradesh). In our view, movement of goods was an independent transaction. In our view, movement of goods was not an integral part of the contract of sale. In our view, Section 206C of the Income-tax Act is only enabling the assessee not to deduct tax at source. In other words but for the certificate under Section 206C of the said Act, tax was deductible at source. As stated above, with respect we are not in agreement with the views expressed in the case of K.B. Saha (supra). Moreover, it is an important question of law which is likely to recur. In our view, movement of

goods under the statutory rules was an independent transaction. The contract of sale got completed in Tamil Nadu.

For the above reasons, we are of the view that the decision of the Division Bench in the case of State of Orissa and Anr. V. M/s. K.B. Saha and Sons Industries Pvt. Ltd. & Ors. etc. 2007 (6) Scale 284 needs reconsideration by a larger Bench. Papers may be placed before the Honble Chief Justice of India for further directions.

(Suman Wadhwa) (Madhu Saxena)
Court Master Court Master