

State of A.P. Vs. Computer Graphics Pvt. Ltd.

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Court : Andhra Pradesh

Decided On : Jun-20-2008

Reported in : (2009)21VST42(AP)

Judge : B. Prakash Rao and ;C.Y. Somayajulu, JJ.

Acts : [Central Sales Tax Act, 1956](#); [Sale of Goods Act, 1930](#) - Sections 9, 20 and 32

Appeal No. : Tax Revision Case No. 76 of 2006

Appellant : State of A.P.

Respondent : Computer Graphics Pvt. Ltd.

Advocate for Pet/Ap. : A.V. Krishna Koundinya, Special Standing Counsel for Commercial Taxes

Disposition : Petition dismissed against department

Judgement :

ORDER

C.Y. Somayajulu, J.

1. The respondent, a private limited concern, dealing in photographic paper and film, filed returns of its monthly turnovers under the provisions of the [Central Sales](#)

[Tax Act, 1956](#) (the Act) in form CST-6 disclosing nil turnovers. When the respondent was called upon by the commercial tax authorities to produce its account books for verification of the correctness of the turnovers reported by it, the respondent produced its books of account before the assessing authority. The assessing authority held that the turnover of Rs. 14,225 by stock transfer from one branch of the respondent to its another branch at Bangalore is exempt, but as there was inter-State sale of photographic paper and film worth Rs. 33,50,727 by the respondent, it is liable to tax at 10 per cent on the said turnover. Questioning the same the respondent preferred an appeal to the Appellate Deputy Commissioner, inter alia, contending that inasmuch as it did not effect any inter-State sales but had effected sales within the State only and delivered the goods sold by it to buyers at its shop/godown at Hyderabad itself and as it was not aware of the subsequent movement of the goods from the State of Andhra Pradesh to another State and as it did not render any assistance to the buyers in transporting the goods purchased by them to other State, it is not liable to pay the tax assessed and demanded. The appellate authority dismissed the appeal on the ground that copies of some of the sale invoices though show local deliveries were in fact effected to some parties authorised by the buyers, as those buyers, who purchased the stock from the respondent, issued authorisations to their representatives and transported them to their branch outside the State those sales are but inter-State sales. Questioning the same, the respondents preferred a further appeal to the Sales Tax Appellate Tribunal (STAT), which upheld the contention of the respondent that the sales made by it were only a local sales and the mere fact that the buyers from the respondents dispatched the goods purchased by them to persons outside the State would not make the sales made by the respondent an inter-State sales and set aside the order of the assessing authority which was confirmed by the appellate authority. Hence this revision by the State.

2. The point for consideration is whether the sales effected by the respondent are inter-State sales, liable to tax under the Act?

3. The contention of Sri Krishna Koundinya, Special Standing Counsel for Commercial Taxes, is that inasmuch as authorisations addressing the respondent

were issued by the non-resident dealer it is clear that the 'sales' of photographic paper, etc., made by the respondent are but inter-State sales but not local sales, more so because the terminology used in the column 'order of reference' the invoices raised by the respondent show that the goods sold by the respondent moved outside the State of Andhra Pradesh at the instance of the respondent only. It is his contention that the Tribunal, which did not correctly appreciate the ratio in *Balabhagas Hulaschand v. State of Orissa* : [1976]2SCR939 erred in allowing the appeal filed by the respondent. There is no representation on behalf of the respondent.

4. In *Balabhagas Hulaschand* case : [1976]2SCR939 relied on by the learned Special Standing Counsel, the apex court laid down the following test for determining whether a sale made by a seller is an inter-State sale.

(a) There must be an agreement to sell containing a stipulation, express or implied regarding the movement of the goods from one State to another,

(b) The goods in fact must have moved from one State to another in pursuance of such agreement, and

(c) Concluded sale must have taken place in the State where the goods were sent, i.e., State different from the State from which the goods moved.

5. The apex court in *Commissioner of Sales Tax, U.P., Lucknow v. Suresh Chand Jain* [1988] 70 STC 45 held that for imposing sales tax under the Act, the goods must move out of the State in pursuance of some contract entered into between the seller and the purchaser, and that the onus lies on the Revenue to disprove the contention of the dealer that a sale is a local sale and to show that it is an inter-State sale. Inasmuch as the specific case of the respondent in this case is that the sales made by it are only local sales, and it is the buyer that had dispatched the goods to a place outside the State and as it did not dispatch the goods to a buyer in another State the onus, as per the above decision, is on the Department to establish that the sales made by the respondent are inter-State sales. There seems to be no such evidence on record.

6. One circumstance that seems to have weighed with the assessing authority and the appellate authority to hold that the sales made by the respondent being inter-State sales is the head office of the respondent at Chennai receiving the payment for the goods sold by it at Hyderabad. The place of payment of price, in our opinion, is not much of consequence in deciding the question whether a sale is an inter-State sale or not, because as per Section 20 of the Sale of Goods Act, in cases where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial that time of payment of the price or the time of delivery of the goods or both are postponed. It is also useful to refer to Sections 9 and 32 of the [Sale of Goods Act, 1930](#), which read:

Section 9 : The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Section 32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

7. In view thereof it is clear that in cases where the parties at contract relating to sale of goods agree that the price can be paid at some other place other than where the contract is made and that the goods sold have to be delivered at some other place, the place of payment of price does not become the place where the property in the goods sold stood transferred to the buyer. As the goods sold in this case are photographic paper and film, which are ascertained goods in a deliverable state, the property in those goods, sold by the respondent, passed to the buyer immediately on the delivery of the goods to him at Hyderabad. The person who took delivery of those goods at Hyderabad should be deemed to have become the owner of the goods purchased by him from the respondent immediately after taking delivery of those goods. In view thereof merely because that person who took delivery of the goods from the respondent happened to be

an agent of some other person outside the State, and had consigned the said goods to his principal outside the State, the purchase of the goods made by him from the respondent would not make the transaction of sale made by the respondent transaction of inter-State sales.

8. The assessing authority by relying on some authorisations read.

We hereby authorise Mr. Khailashpathi to purchase konica colour paper and dispatch the same to our own laboratory. This is for our own use and not for resale.

issued by the principals of the person who purchased and took delivery of the goods from the respondent, came to a conclusion that the sales made by the respondent are inter-State sales. If we may say so even the said authorisations of the type also clearly establish that the persons who purchased the goods at Hyderabad had, after taking delivery of the goods purchased by him from the respondent, have dispatched those goods to their principals for their own use and not for resale. This also shows that the sale made by the respondent was complete at Hyderabad itself and the property, which is to be put in transit, in fact, became the property of the buyer at Hyderabad itself. As delivery of the goods sold by the respondent was at Hyderabad the fact that the purchaser who purchased the goods from the respondent happened to be an agent of his principal who is residing in another State, had consigned those goods purchased by him to his principal, would not make the sale made by the respondent an inter-State sale because respondent did not dispatch the goods from its place of business or godown to the laboratory or the shop of another person in another State.

9. The Tribunal, no doubt, was in error in observing that the case Nos. I and II mentioned at page No. 214 of Balabhagas Hulaschand case : [1976]2SCR939 apply to the facts of this case. In fact, it is case No. III referred to in pages 214 and 215 of that decision but not case I and II that apply to the case on hand as it reads:

Case No. III.-B, a purchaser in State Y, comes to State X and purchases the goods and pays the price thereof. After having purchased the goods he then

books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

10. As stated earlier, immediately after the respondent delivered the goods 10 to the persons who came to its shop the property in those goods passed on to the buyer by virtue of Section 20 of the Sale of Goods Act. Therefore, the fact that that person who took delivery of the goods had thereafter consigned the goods taken delivery of by him from the respondent to his head office, which is located in another State, would not make the sale made by the respondent an inter-State sale.

11. In view thereof, we find no grounds to interfere with the order of the 11 STAT and so we dismiss the revision but without costs.

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