

NATIONAL ALUMINIUM CO. LTD.

v.

THE STATE OF A.P. & ORS.
(Civil Appeal No.1416 of 2008)

FEBRUARY 19, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Central Sales Tax Act, 1956; Section 4(2)/Andhra Pradesh General Sales Tax Act, 1956:

Levy of sales Tax on sale of goods – A Government company exporting aluminium/goods through a Port in Andhra Pradesh earning duty entitlement under Duty Entitlement Pass Books (DEPB) Scheme – Auction of entitlement under the Scheme from its corporate office in Orissa – Selling of entitlement to highest bidder treating the sale as inter-State sale paying Central Sales Tax to the State of Orissa – Levy of sales tax by assessing authorities in State of Andhra Pradesh – Correctness of – Held: Issue before the Sales Tax Tribunal was limited to determination of the question as to whether any sale took place within the State of Andhra Pradesh – There was no material placed before the Tribunal to come to a definite finding that the sale could be treated as intra-State Sale within the State of Orissa – Such conclusion by the Tribunal unsustainable though Tribunal was right in holding that there was no intra-State sale which took place within the State of Andhra Pradesh.

Appellant is a Government Company having its corporate office at Bhubaneshwar in Orissa and mercantile office at Visakapatnam, Andhra Pradesh. Appellant alleged that there was no sale or purchase of goods carried out by them in the State of Andhra Pradesh; that they would earn Credit under Duty Entitlement Pass Book (DEPB) licence as contemplated under Exim Policy as a result of their export from its mercantile office at

A Visakhapatnam Port; that since the exports were effected at Visakhapatnam Port, an account of DEPB licenses was maintained by the customs authority at Visakhapatnam. Against such exports, the petitioner got some import duty entitlement under the DEPB scheme. They held open auctions of these entitlements from the Head Quarters at Bhubaneswar. In those auctions the bidders from other States emerged as the highest bidders. Accordingly, the appellants sold the import duty entitlement under the DEPB Licenses to the highest bidders and treating the same as inter-state sale, collected and paid CST to the Government of the exporting State i.e., Orissa. The Assessing Authorities in Andhra Pradesh issued show cause notice proposing to levy tax under the Andhra Pradesh General Sales Tax Act, 1956 on the transactions relating to transfer of the DEPB Licenses on the ground that such licenses were registered with Visakhapatnam Port through which the export took place. By the impugned common judgment, the Tribunal decided the matter in favour of the appellants holding that the sale did not take place within the State of Andhra Pradesh. But held that it took place inside the State of Orissa as per Section 4(2) of the Central Sales Tax Act, 1956. Hence the present appeals.

Appellant contended that the Tribunal could not have recorded a finding that there was an intra-state sale within the State of Orissa; and that there was no sale involved to attract levy of any sale tax. But without any material it held that there was an intra state sale within the State of Orissa, the Tribunal could not have come to such a conclusion.

Respondent-State of Andhra Pradesh submitted that the Tribunal has decided the basic issues that there was no sale within the State of Andhra Pradesh, but on the facts came to a tentative conclusion about this intra-state sale in the State of Orissa.

H

Partly allowing the appeals, the Court

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HELD: 1.1 It is clear that the scope of consideration before the Tribunal was very limited as to whether any sale took place within the State of Andhra Pradesh. Having decided that issue, Tribunal was not required to go into any other question particularly when the relevant factors were not before it. (Para – 7) [60-G; 61-A]

B

1.2 There was no material whatsoever to show that the sales could be treated as intra state sale within the State of Orissa. The assessing authorities proceeded to levy tax on erroneous premises. In the ultimate analysis the Tribunal held that the sales did not take place within the State of Andhra Pradesh. The conclusions to the effect that they are intra-state sales in the State of Orissa are unsustainable. (Para – 7) [61-A, B]

C

D

1.3 It was rightly decided by the Tribunal that there was no intra-State sale within the State of Andhra Pradesh. But for further conclusion that there was an intra state sale within the State of Orissa, materials were required to be examined. That has not been done. There was no material before the Tribunal to come to a definite finding, as done, that the transaction should be treated as intra state sale within the State of Orissa. (Para – 7) [61-B, C, D]

E

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F

From the final Order dated 19/5/2006 of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad in TMP No. 125/2005.

WITH

G

Civil Appeal Nos. 1417, 1418 and 1419 of 2008

Goolam E. Vahanvati, S.G., P.K. Manohar and Ashok Kumar Gupta for the Appellant.

H

A H.S. Gururaja Rao, Manoj Saxena, Rajneesh Kr. Singh, Rahul Shukla, T.V. George, Janaranjan Das and Swetaketu Mishra for the Respondents.

The Judgment of the Court was delivered by

B **Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in these appeals is to certain conclusions recorded in the order passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (in short the 'Tribunal') in TMP Nos.125 of 2005, 259/2005,260/2005 and 261/2005.

C 3. Background facts in a nutshell are as follows:

D National Aluminium Co. Ltd. is a Government of India enterprise under the administrative control of the Ministry of Mines. The registered and corporate office of the appellant is situated at Bhubaneswar in Orissa State, while it has mercantile offices in a few cities including Visakhapatnam. The substantial part of the commercial operations of the appellant are carried out only in the State of Orissa. For the purpose of causing export to foreign countries, Visakhapatnam port is being used by the
E appellant. It is the case of the appellant that there is no sale or purchase of goods carried out by it in the State of Andhra Pradesh.

F It is also the case of the appellant that they would earn Credit Duty Entitlement Pass Book (DEPB) licence as contemplated under Exim Policy as a result of their export. For the period from 1.4.1997 to 31.3.2001, the Duty Entitlement Pass Book scheme was there. The object of the scheme was neutralization of incidence of customs duty on the import content of the export product. Such neutralization was provided by way
G of grant of duty credit against export product. The export unit has also been conferred with the right to utilize the said credit for its own purpose or to transfer of the same to third parties for availment of the benefit of the said credit.

H For the exports made by the appellant from

Visakhapatnam Port, the petitioner submits an application for issue of DEPB to DGF'I', Cuttack, Orissa along with customs endorsed copy of shipping bill. The customs authorities check the details of exports mentioned in the DEPB with their records, register the license and return the original license to the appellant. It is also the case of the appellant that since the exports of the appellant are effected at Visakhapatnam Port, an account of DEPB licenses is maintained by the customs authority at Visakhapatnam.

The appellant either uses DEPB licence for payment of customs duty for their own import or sells the surplus DEPB license by inviting advertisement. As per the terms, the DEPB license entitles the holder of such license to import through any port in the country. Accordingly, the appellant had been exporting aluminium through Visakhapatnam Port in Andhra Pradesh. Against these exports, the petitioner got some import duty entitlement under the DEPB scheme. It held open auctions of these entitlements from the Head Quarters at Bhubaneswar in Orissa State. In those auctions the bidders from West Bengal and Maharashtra emerged as the highest bidders. Accordingly, the appellant sold the import duty entitlement under the DEPB Licenses to the highest bidders and treating the same as inter-state sale, collected and paid CST to the Government of the exporting State i.e., Orissa.

The Assessing Authorities in Andhra Pradesh issued show cause notice proposing to levy tax under the Andhra Pradesh General Sales Tax Act, 1956 on the transactions relating to transfer of the DEPB Licenses on the ground that such licenses were registered with Visakhapatnam Port through which the export took place. The authorities considered it to be local sales within Andhra Pradesh and accordingly levied tax.

The appellant filed appeals before this Court. A three-judge judge Bench by order dated 1st February 2005 in Civil Appeal Nos. 1649-1654 of 2001 directed the matter to be considered by the Tribunal for determining the tax to be levied. The law

A the Tribunal took up the matter for consideration. By the
impugned common judgment, the Tribunal decided the matter
in favour of the appellant holding that the sale did not take place
within the State of Andhra Pradesh. But held that it took place
inside the State of Orissa as per Section 4(2) of the Central
B Sales Tax Act, 1956 (in short the 'CST Act'). The ultimate
conclusion which is the subject matter of challenge in these
appeals reads as follows:

C "In the light of the discussions, we hold that the sales took
place within the State of Orissa and not within the State of
Andhra Pradesh and as such it should be treated as intra-
state sale within the State of Orissa and not intra-state
sale within Andhra Pradesh."

D 4. It is the stand of the appellant in these appeals that the
Tribunal could not have recorded a finding that there was an
intra-state sale within the State of Orissa. That was not the subject
matter of dispute before the Tribunal. Strictly speaking there was
no sale involved to attract levy of any sale tax. But without any
material to hold that there was any sale involved and that too an
E intra state sale within the State of Orissa, the Tribunal could not
have come to the impugned conclusion. It is contended that
Central Sales tax has been deposited in the State of Orissa in
respect of the transaction, though legally no tax was payable.

F 5. Learned counsel for the State of Andhra Pradesh
submitted that the Tribunal has decided the basic issues that
there was no sale within the State of Andhra Pradesh. But on
the facts came to a tentative conclusion about this intra-state
sale in the State of Orissa.

G 6. Learned counsel for the State of Orissa submitted that
the Tribunal's conclusions do not suffer from any infirmity.
According to him, there may be a typographical error i.e. intra-
state sale in place of inter-state sale.

H 7. It is clear that the scope of consideration before the
Tribunal was very limited as to whether any sale took place within

the State of Andhra Pradesh. Having decided that issue, Tribunal was not required to go into any other question particularly when the relevant factors were not before it. As rightly contended by the appellants there was no material whatsoever to show that the sales could be treated as intra state sale within the State of Orissa. The assessing authorities proceeded to levy tax on erroneous premises. In the ultimate analysis the Tribunal held that the sales did not take place within the State of Andhra Pradesh. The conclusions to the effect that they are intra-state sales in Orissa are unsustainable. It was rightly decided that there was no intra- state sale within Andhra Pradesh. But for further conclusion that there was an intra state sale within the State of Orissa, materials were required to be examined. That has not been done. There was no material before the Tribunal to come to a definite finding, as done, that the transaction should be treated as intra state sale within the State of Orissa. The observations, therefore, have no relevance and need to be set aside, which we direct.

8. The appeals are allowed to the aforesaid extent.

S.K.S.

Appeals partly allowed.