

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

CENTRAL SALES TAX APPEAL NO. 86 OF 2016

(Arising order out of in dated 26.04.2016 passed by the Maharashtra Sales Tax Tribunal, Mumbai VAT Appeal No. 48 of 2012)

State of Maharashtra

....Appellant

Through Commissioner of Sales Tax,
5th Floor, Vikrikar Bhawan,
Mazgaon, Mumbai – 400010

VERSUS

M/s. Beardsell Limited

....Respondent

Kanara Engg Compound
Ghatkopar (East)
Mumbai – 400075

APPEARANCE:

Ms. Rama Ahluwalia, Advocate for the Appellant

Shri N.V. Tapare and Shri Sandeep D. Ghaterao, Advocates for the respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 15.12.2023

Date of Decision: 08.04.2024

FINAL ORDER NO. 55488/2024

JUSTICE DILIP GUPTA:

The State of Maharashtra¹ has filed this appeal to assail the order dated 26.04.2016 passed by the Maharashtra Sales Tax Tribunal, at Mumbai², by which the order dated 29.02.2012 passed by the Deputy Commissioner of Sales Tax (Large Taxpayer's Unit-E-605, Mumbai)³ rejecting branch transfer claim of M/s. Beardsell Limited⁴ has been set

-
1. the appellant
 2. MSTT
 3. the Deputy Commissioner
 4. the respondent

aside to the extent of Rs. 1,56,38,695/- and consequently the order levying tax and interest has also been set aside.

2. The respondent is a limited company engaged in the business of manufacture of structural insulated sandwich panel systems. It has a manufacturing unit at Navi Mumbai, and branches at Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad and Visakhapatnam.

3. The assessing officer initiated assessment proceedings against the respondent by issuing a notice in Form VII B for the period from 01.04.2005 to 31.03.2006 under the Central Sales Tax Act, 1956⁵ in respect of the goods that had moved from the manufacturing unit at Navi Mumbai to the branches in other States and an assessment order was passed on 29.02.2012 raising a demand of Rs. 94,25,134/- for the reason that the claim of the respondent that it was a case of branch transfer was not correct. In arriving at a conclusion that the movement of the goods from the factory of the respondent at Navi Mumbai to the branches at Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad and Visakhapatnam was as a result of pre existing orders placed by the customers at the branch offices, the Deputy Commissioner relied upon a decision of the Customs, Excise and Service Tax Appellate Tribunal, Mumbai⁶ dated 05.08.2005 in the case of the respondent itself in **Beardsell Ltd. vs. Commissioner of Central Excise, Belapur**⁷. The relevant portion of the order dated 29.02.2012 passed by the assessing officer is reproduced below:

5. the CST Act

6. CESTAT

7. 2006(193) E.L.T. 325 (TRI.-MUMBAI)

"The dealer has claimed branch transfers to his branch offices outside the state at 20960154/-. **In order to understand the procedure followed by the dealer while effecting the branch transfers and also to ascertain the facts of the case it is necessary to refer to the judgment dtd. 5-8-2005 in the dealer's own case delivered by the Hon'ble Customs, Central Excise & Service Tax Appellate Tribunal, Mumbai.** The process of manufacturing and the facts regarding the purchase orders placed by the customers and the marketing procedure as outlined in the judgment has been accepted by the dealer are cited below:-

As per the facts narrated in the judgment and accepted by the dealer the movement of goods from the factory at Navi Mumbai to the dealer's branches at Chennai, Bangalore, Ahmedabad, Delhi, Hyderabad and Kochi is as a result of pre existing orders placed by the customers at the dealer's branch offices.

The facts as well as the principle involved in the cases discussed above are identical to the dealer's case as these facts which are outlined in the judgment of the Hon'ble Central Excise Tribunal have already been accepted by the dealer. *** The facts of the case cannot be different before the Hon'ble Tribunal while deciding a issue pertaining to the Central Excise and before me while deciding the issue regarding the branch transfers as per provisions of Section 6A of the CST Act 1956.** This point of view has been categorically made clear by the Hon'ble Supreme court of India in their Judgment in the case of M/S Yousuff Radio v. The Board Of Revenue, Commercial Taxes, Chepauk, Madras, 43 STC 525. **It has been held by the Hon'ble Apex court that a person/dealer cannot have different stand on the same issue before different authorities.** As the Hon'ble Tribunal is the last fact finding body, the facts

discussed in details in the judgment cannot be changed or deviated from. It has also been contended that the burden to prove that the movement of goods to various branches were in pursuance of preexisting contract of sale/orders is on the department. **In this regard it is pointed out that the dealer has himself submitted before the Hon’ble Tribunal that, the customers requiring buildings such as shelters, cold storage, portable cabins, warehouse etc. approach the branch offices. The site engineers visit the site and understand the specifications and requirements of the customers. The customer places an order on the dealer specifying the dimensions of the building required by them. Thereafter, the engineers of the dealer prepare detailed specifications for the whole building in terms of length, width and height of the structure (such as the walls, roofs, floors, windows, doors) and number of panels required etc. The engineers thereafter place dispatch instructions to the factory. It is therefore crystal clear from the dealer’s own submission before the Hon’ble Tribunal that the branch transfers are affected as a result of preexisting orders placed by the customers with the branch offices. What has been submitted as well as admitted by the dealer before the Hon’ble Tribunal need not be proved by the department and therefore the burden of proof in this regard does not lie on the department.** During verification of the branch transfer invoices and transport receipts produced by the dealer in support of the branch transfer claim it is observed that certain goods which are shown to have been transferred to the branches have in fact been directly dispatched to the customers in those states.

These transfers are seen as given below:-

Sr. No.	Name of the Party to whom the goods are dispatched	Amount
1.	Micro Labs	1214314/-

2.	UPDIC	967179/-
3.	B.V. Biologicals	3139976/-
		5321459/-

As the above mentioned goods are directly dispatched to the customers, it is evident that the transfers are as a result of preexisting orders. In view of the above facts the dealer's claim of branch transfer at of Rs. 20960154/- are disallowed and subjected to CST @ 12.5%.

As a result of the assessment the dealer is liable to pay tax/interest/penalty at Rs. 9425134/-. Issue Demand notice accordingly."

(emphasis supplied)

4. The details of this amount of Rs. 94,25,134/- is as follows:

Particulars	Amount (Rs.)
CST Payable	53,98,389
Amount paid with returns	22,98,582
Balance CST payable	30,99,807
Interest under section 9(2) read with section 30(2) of the MVAT Act	9,508
Interest under section 9(2) read with section 30(3) of the MVAT Act	32,16,012
Penalty under section 9(2) read with section 29(3) of the MVAT Act	30,99,807
Balance CST payable	94,25,134

5. A final assessment order under the CST Act in Form VIII (B) was issued on 29.02.2012.

6. Feeling aggrieved by the final order, the respondent filed **VAT Appeal No. 48 of 2012 (M/s. Beardsell Ltd. vs. The State of Maharashtra)** before MSTT, which by order dated 26.04.2016 confirmed the order passed by the Deputy Commissioner so far as it rejected the branch transfer of the respondent to the extent of three transactions worth Rs. 53,21,459/-, but set aside the order of the Deputy Commissioner rejecting the remaining branch transfer claim of

Rs. 1,56,38,695/-. The order levying tax and interest was also set aside. The relevant portion of the aforesaid order dated 26.04.2016 passed by MSTT is reproduced below:

"13. **So far as point with regard to 'F-forms are concerned, it was pointed out that the judgment of the assessing officer was based on pre-supposed information, that all the transactions of the branch transfers are decided by the judgment given by the Custom Central Excise and Service Tax Appellate Tribunal in the case of Commissioner of Central Excise and Customs, Guntur vs. P.M.G. Structural Pvt. Ltd. 2010 (250) E.L.T. 113 (Tribunal Bangalore) Counsel for the appellant has pointed out that interstate sales were determined at Rs. 8,05,65,192/-, for which tax was collected and paid. It was pointed out that branch transfers to offices outside the State of Maharashtra was shown at Rs. 2,09,60,154/-. Therefore, the dispute is only with regard to this amount of Rs. 2,09,60,154/-.** Appellant has contended that each and every transactions are required to be looked into as per the Supreme Court judgment in the case of Tata Engineering and Locomotive Ltd. vs. Assistant Commissioner of Commercial Tax reported in (1970) 26 STC 354.

Hence, he contended that assessing authority has to examine each and every transaction. However, assessing authority looked into three transactions worth Rs. 53,21,459/- and applied the ratio to all the other transfers. It was, therefore, contended that the burden of proof was on the State and therefore each transaction was required to be looked into. There is substance in the argument.

14. **As appellant has filed 'F' Form, there is presumption raised. Therefore, the State has to prove that it is not a branch transfer. Just on the basis of Judgment of Central Excise,**

Custom and Services Tribunal and on the basis of these three transactions, so far as Central Excise, Customs and Services Tribunal Judgment it was on different notion regarding classification of Pre-fabricated building cleared in unassembled condition having essential character of building. Therefore, it cannot be said that the judgment of the Tribunal of the Central Excise, Customs and Services Tribunal was directly applicable to decide the issue whether the transaction were the branch transfers or sale directly to the customers. Hence, the question deserves to be looked into.

19. *** As initial burden has been discharged by the appellant by filing 'F'-forms. He has also filed all documents for perusal. Therefore, burden to prove that it was not branch transfer was on the State. Despite documents produced, State except for three transactions were not in a position to show, how they came to conclusion that remaining transactions of Rs. 1,56,38,695/- are not branch transfers. Hence, the order passed by the lower authorities is bad in law to the extent of Rs. 1,56,38,695/-. The same will have to be treated as branch transfer. Hence, levy of tax and corresponding interest levied deserves to be quashed and set-aside."**

(emphasis supplied)

7. Ms. Rama Ahluwalia, learned counsel appearing for the appellant submitted that MSTT committed an error in setting aside the order of the Deputy Commissioner and accepting the branch transfer claim of Rs. 1,56,38,695/-. Learned counsel submitted that the Deputy Commissioner committed no illegality in rejecting the claim of the respondent regarding branch transfer as sale of goods had taken place in the course of inter-State trade of commerce. Learned counsel pointed

out that the sale had occasioned the movement of the goods from the State of Maharashtra to other States. To support this contention, learned counsel placed reliance upon the decision dated 05.08.2005 of CESTAT in the matter of the respondent itself wherein it was held by CESTAT that the movement of the goods from the factory of the respondent at Navi Mumbai to its branches at Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad and Visakhapatnam was occasioned by pre-existing orders placed by the customers at the branch offices of the respondent. Learned counsel submitted that the respondent cannot be permitted to take a different stand on the same issue before different authorities. In this connection, learned counsel placed reliance upon the decision of the Madras High Court in **Yousuff Radio vs. The Board of Revenue, Commercial Taxes, Chempauk, Madras-5**⁸. To support the contention that the movement of the goods from the State of Maharashtra to other State was occasioned because of pre-existing orders, learned counsel placed reliance upon the decisions of the Supreme Court in **Ashok Leyland Ltd. vs. State of T.N. and another**⁹ and **Hyderabad Engineering Industries vs. State of Andhra Pradesh**¹⁰.

8. Shri N.V. Tapare, learned counsel for the respondent, assisted by Sandeep D. Ghaterao, however, supported the impugned order and submitted that it does not call for any interference. Learned counsel submitted that the Deputy Commissioner was not justified in placing reliance upon the decision dated 05.08.2005 of CESTAT to reject the claim of branch transfer of Rs. 2,09,60,154/- and on the other hand

8. (1979) 43 STC 525

9. (2004) 3 SCC

10. (2011) 4 SCC 705

MSTT has given good and cogent reasons for accepting the claim of the respondent regarding branch transfer of Rs. 1,56,38,695/-.

9. The submissions advanced by the learned counsel appearing for the appellant and the learned counsel for the respondent have been considered.

10. The issue that arises for the consideration in this appeal is as to whether the movement of the goods from the manufacturing unit of the respondent at Navi Mumbai in the State of Maharashtra to the branch offices in other States had resulted in a sale taking place during the course of inter-State trade or commerce or whether it was a case of branch transfer by the respondent to its branches at Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad and Visakhapatnam.

11. To appreciate this issue, it would be appropriate to examine sections 3, 6 and 6A of the CST Act and the relevant portions of these sections are reproduced below:

"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.

6. Liability to tax on inter-State sales.–

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, **be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:**

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. –

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

(2) **If the assessing authority is satisfied** after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section(1) are true, **he may**, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, **make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.**

*****"

(emphasis supplied)

12. The provisions of sections 3 and 6A of the CST Act were examined at length by the Supreme Court in **Hyderabad Engineering** and the relevant portions of the judgment are reproduced below:

"20. **For a sale to be in the course of inter-State trade or commerce under Section 3(a), two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another within the meaning of clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State.** With a view to find out whether a particular transaction is an inter-State sale or not, it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase.

21. Section 6-A of the Central Act provides that if any dealer claims that he is not liable to pay tax under the Central Act in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of

his business or to his agent or principal and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. It also provides the mode of discharge of that burden of proof.

22. What follows from a conjoint reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment. Where the department takes advantage of the presumption under Section 3(a) and/or to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase of goods in the course of inter-State trade or commerce, then **the assessee can rebut the presumption by filing declaration in form 'F' under Section 6A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by way of sale. When the department does not take advantage of the presumption under Section 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax under Section 6, the declaration in Form 'F' under section 6A would be of no avail.**

23. It is an accepted position in law that a mere transfer of goods from a head office to a branch office or an inter-branch transfer of goods, which are broadly brought under the phrase 'Branch transfers' cannot be regarded as sales in the course of inter-State trade, for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of these stock transfers.

24. In the instant case, the case of the Revenue is not only based on the agreement of sale but also on the presumption under Section 3(a) of the Central Act.

25. In the instant case, the assessing authority and the Tribunal have recorded a finding of fact that there were prior contracts between Usha Sales Ltd. and the assessee and in pursuance of those contracts, the goods moved from the assessee's factory at Hyderabad to its Branch offices to be delivered to Usha Sales Ltd. or their nominees. In order to appreciate the contention canvassed, it is necessary to set out certain clauses from the sales agreement.

30. **From the above Clauses in the agreement, what can be inferred is that the assessee has undertaken to supply their manufactured products to UIL or to its nominees at the agreed price at any of the assessee's godowns at the option of UIL. A contract of sale of goods would be effective when a seller agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in presenti, it is called a 'sale'; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called "an agreement to sell".** When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred are fulfilled, the "agreement to sell" becomes a 'sale'."

(emphasis supplied)

13. What transpires from the aforesaid decision of the Supreme Court in **Hyderabad Engineering** is that for a sale to be in the course of inter-State trade or commerce under section 3(a), there must be a sale of goods and such sale should occasion the movement of the goods from one State to another. To find out whether a particular transaction is a inter-State sale or not, it is essential to see whether the movement of the goods from one State to another is a result of a prior contract of

sale. Under section 6A, if the dealer claims that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. The mode of discharge of this burden of proof has also been provided in the form of a declaration in form 'F'. However, if the department does not take advantage of the presumption under section 3(a), but shows a positive case of sale in the course of trade or commerce to make it liable to tax under section 6, the declaration in form 'F' under section 6A would be of no avail. Mere transfer of goods from a head office to a branch office or inter-branch transfer of goods which broadly come under the phrase 'branch transfers' cannot be regarded as sale in the course of inter-State trade for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of stock transfers. A contract of sale of goods would be effective when a seller agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in presenti, it is called a 'sale'; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called 'an agreement to sell'. When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred are fulfilled, the 'agreement to sell' becomes a 'sale'. When the 'sale' or 'agreement to sell' causes or has the effect of occasioning the movement of goods from one State to another, irrespective of whether the movement of goods is provided for in the contract of sale or not, or whether the order

is placed with any branch office or any head office which resulted in the movement of goods, if the effect of such a sale is to have the movement of goods from one State to another, an inter-State sale would ensue and would result in exigibility of tax under section 3(a).

14. The provisions of sections 6 and 6A had earlier also come up for interpretation before the Supreme Court in **Ashok Leyland**. The appellant was engaged in the manufacture of commercial vehicles. It had factories at Bhandara in the State of Maharashtra and Alwar in the State of Rajasthan. The appellant also had several regional offices throughout the country. The stock of vehicles was transferred to the regional sales offices under a cover of stock transfer invoices. The appellant, upon transfer of stock vehicles, filled up form 'F'. The assessing authority issued notices to the appellant alleging that the stock of vehicles transferred to regional sales offices relate to inter-State sales. The provisions of section 6A, as amended on 11.05.2002, came up for interpretation before the Supreme Court. The Supreme Court held that under section 6A, it for the dealer to discharge the burden of proof that transfer of goods had taken place otherwise than by way of sale and if the dealer fails to furnish the declaration in form 'F', then by legal fiction the movement of goods would be deemed to have occasioned as a result of sale. The Supreme Court also clarified that in a case where the purchaser places an order on the manufacturer for manufacturing goods which would be as per his specifications, a presumption that agreement to sell was entered into may be raised. The relevant portions of the judgment of the Supreme Court are reproduced below:

"44. ***** **Section 6A provides for exception as regard the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Indisputably, the burden would be on the dealer to show that the movement of goods had occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal. Such declaration would contain the prescribed particulars in the prescribed form obtained from the prescribed authority. Along with such declaration, the dealer is required to furnish the evidence of such dispatch of goods by reason of Act 20 of 2002. In the event, if it fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the said Act to have occasioned as a result of sale. Such declaration indisputably is to be filed in Form F.** *****

45. When the dealer furnishes the original of Form F to its assessing authority, an enquiry is required to be held. Such enquiry is held by the assessing authority himself. He may pass an order on such declaration before the assessment or along with the assessment. **Once an order in terms of Sub-Section 2 of Section 6-A of Central Act is passed, the transactions involved therein would go out of the purview of the Central Act.** In other words, in relation to such transactions, a finding is arrived at that they are not subjected to the provisions of the Central Sales Tax. It is not in dispute thereunder no appeal is provided there against.

47. By reason of Sub-Section (2) of Section 6-A, a legal fiction has been created for the purpose of the said Act to the effect that transaction has occasioned otherwise than as a result of sale.

48. On an analysis of the aforementioned provisions, therefore, the following propositions of law emerge:

- (i) The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed an inquiry is to be made by the assessing authority for the purpose of passing an order on arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale.
- (ii) Whenever such an order is passed, a legal fiction is created.

74. Section 6-A of the Act although provides for a burden of proof, the same has to be read in the context of Section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of 'sale' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in Sub-section (1) of Section 6-A the dealer had an option of filing a declaration in Form-F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale. It is to be noticed that for the aforementioned purpose also, the Parliament advisedly used the expression 'deemed'. If the expression 'deemed' is interpreted differently, an incongruity would ensue.

80. It is also to be borne in mind that no presumption when movement of goods has taken place in the course of inter-State sales may be raised in the case of standard goods but the same is not conclusive. It is only one the factors which is required to be taken into consideration along with others. **In a case, however, where the purchaser places order on the manufacturer for manufacturing goods which would be as per his specifications, a presumption that agreement to sell has been entered into may be raised."**

(emphasis supplied)

15. Having examined the relevant provisions of the CST Act, it would now be appropriate to refer to the facts of the present appeal.

16. The respondent is a manufacturing unit at Navi Mumbai in the State of Maharashtra and has branches at Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad and Visakhapatnam. The issue that arises for consideration is whether the movement of the goods from the factory of the respondent at Navi Mumbai to its branches in other States was as a result of pre-existing orders placed by the customers at the branch offices of the respondent or was merely a branch transfer as claimed by the respondent. The assessing officer, in the order dated 29.02.2012, relied upon the decision dated 05.08.2005 rendered by CESTAT in the case of the respondent wherein a finding was recorded that the movement of goods from the factory at Navi Mumbai to the branches of the respondent in other States was as a result of pre-existing orders placed by the customers at the branch offices. The assessing officer held that it was not open to the respondent to take one plea before CESTAT and a contrary plea before the authority. The assessing officer, therefore,

concluded that the branch transfer had not taken place and it was an inter-State sale.

17. The respondent filed an appeal before MSTT. In its order dated 26.04.2016, MSTT held that since the respondent had filed form 'F', there would be a presumption that it was not an inter-State sale and it was for the State to prove that it was not a branch transfer. The decision of CESTAT was held not to be applicable as it was regarding classification of pre-fabricated building and not whether transaction was a branch transfer or a sale directly to the customers. MSTT further held that the State had relied only on three transactions to the extent of Rs. 53,21,459/- to show that it was inter-State sale and the State had not produced any evidence in respect of the remaining transactions. The claim of the respondent regarding the remaining transactions amounting to Rs. 1,56,38,695/- out of Rs. 2,09,60,154/- was, therefore, accepted to be a case of branch transfer.

18. The contention of the learned counsel appearing for the appellant is that in view of the decision of CESTAT holding that the movement of the goods from the factory of the respondent at Navi Mumbai to the branches of the respondent in other States was occasioned by pre-existing orders placed by the customers at the branch offices of the respondent, the respondent is not justified in asserting that it was a case of branch transfer and not inter-State sale.

19. To appreciate this contention, it would be appropriate at this stage to refer to the decision of CESTAT. It is no doubt true that the dispute that was raised before CESTAT was regarding classification of pre-fabricated buildings cleared in unassembled condition, but CESTAT had in detail examined the process of manufacture admitted by

Beardsell, which was the appellant before CESTAT, as also the purchase order placed by the customers to examine the contention of the appellant that it cleared pre-fabricated buildings in unassembled condition and was not clearing panels in random and uncertain lengths. The contention of the appellant before CESTAT was that the appellant cleared panels in specific and exact dimension along with the accessories, which when assembled at the site, gave rise to the building. Paragraphs 2.2, 2.3 and 2.4 of the order dated 05.08.2005 passed by CESTAT are reproduced below:

"**2.2** Process of manufacture admitted and relevant is recorded as -

(f) All structurals panels :

- (i) Are made with uniform width of 1.18 metres (dimensions of shelters, garages etc. are generally designed with multiples of 1.18 metres as width); and
- (ii) Thickness varies between 50 mm to 300 mm; and
- (iii) Are supplied in exact numbers with predetermined dimensions for assembly of them together into walls, ceiling, floors, etc. with the channels (of the same materials as of the panels) supplied along with the panels; and
- (iv) Not altered to any other size at the site.

2.3 (a) Details of correct dimensions of panels, roofing, flashing etc. required for assembly of buildings at site by the appellants engineers at site determined. Panels are made of the predetermined thickness and length and in numbers in the machine itself. The required roof panels are also made ready in the machine. The doors and windows, wherever required are made ready in the factory workshop. Thereafter panels for roof, walls, doors, and windows along with required

flashing i.e. ancillaries such as channels, corner angles are dispatched in the vehicle for assembly at the site. As the panels are in completely knocked down condition, assembly of the panels at the site is very easy. Panels for floor (wherever required) wall, roof, windows, doors and ancillaries such as channels and corner angles are fixed at the site.

(b) The prefab buildings made by the appellants are, inter alia, as under :

- (i) Telephone booths
- (ii) Mobile phone transmitter cabins
- (iii) Portable cabins
- (iv) Work site accommodation
- (v) Factory building
- (vi) Cold storage building.

2.4 Purchase orders placed by customers and marketing is

- (a) The appellants have their factory at New Mumbai, Maharashtra and branches at Mumbai, Ahmedabad, Delhi, Coimbatore, Bangalore, Chennai, Cochin, Hyderabad & Visakhapatnam.
- (b) **The customers requiring buildings such as shelters, cold storage, portable cabins, warehouse etc. approach the branch offices of the appellants. The site engineers of the appellants visit the site and understand the specifications and requirements of the customers. The customer places an order on the appellants specifying the dimension of the building required by them. Thereafter, the engineers of the appellants prepare detailed specifications for the whole building in terms of length, width and height of the structures (such as the walls, roofs, floors, windows, doors,) and number of panels required therefore etc. The engineers thereafter place dispatch instructions to the factory.**
- (c) **The panels in exact length with predetermined width, thickness & length**

dimensions for walls, ceilings, etc. along with channels and corner angles are dispatched by the appellants. In other words, the appellants clear panels along with channels and corner angles in exact dimension and exact numbers, so that when they are assembled at the site, a building as desired by the customer would emerge at the site.

- (d) No alterations are made to the panels at the site. The engineers of the appellants assemble the panels and channels into required building at the site of the customer."

(emphasis supplied)

20. The appellant stated, which fact has been recorded in the decision of CESTAT, that it had a factory at Navi Mumbai and branches in other States. The customers requiring buildings approach the branch office of the appellant and thereafter the site engineer of the appellant visits the site to understand the specific requirement of the customers. The customers place orders on the appellant specifying the dimension of the building required by them. On the basis of specifications prepared by the engineers of appellant for the whole buildings, dispatch instructions are issued to the factory by the engineers. The appellant then dispatches the materials of exact dimension so that when they are assembled at the site, a building as desired by the customer emerges. The Supreme Court in **Hyderabad Engineering** held that when the sale has the effect of occasioning the movement of goods from one State to another irrespective of whether the movement of goods is provided for in the contract of sale or not or whether the order is placed with any branch office or head office which resulted in movement of goods, it would be a case of inter-State sale resulting in exigibility of tax under section 3A of the CST Act.

21. In **Ashok Leyland**, the Supreme Court held that where the purchaser places an order for manufacture of goods as per his specification, a presumption can be raised that agreement to sell had been entered into.

22. In this connection, it would also be pertinent to refer the decision of the Supreme Court in **English Electric Company of India Ltd. Vs. The Deputy Commercial Tax Officer and others**¹¹ wherein it was held:

"16. **When a branch of a company forward a buyer's, order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between factory and its branch.'** If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move. only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have been taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position.

17. The steps taken from the beginning to the end by the Bombay branch in co-ordination with the Madras factory show that the Bombay branch was merely acting as the intermediary between the

11. (1976) 4 Supreme Court Cases 460

Madras factory and the buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale caused the movement of the goods from Madras to Bombay. **The inter-State movement of the goods was a result of the contract of sale and the fact that the contract emanated from correspondence which passed between the Bombay branch and the company could not make any difference."**

(emphasis supplied)

23. It would also be useful to refer to the decision of the Supreme Court in **Union of India and another vs. M/s. K.G. Khosla & Co. Ltd. and others**¹² wherein it was held:

"14. It is clear from these averments that goods were manufactured by respondent 1 in its factory at Faridabad, Haryana, in pursuance of specific orders received by its head office at Delhi. The contracts of sales were made at Delhi and in pursuance of those contracts, goods were manufactured at Faridabad according to specifications mentioned in the contracts. This, therefore, is not that type of case in which goods are manufactured in the general course of business for being sold as and when offers are received by the manufacturer for their purchase. Contracts of sales were finalised in the instant case at Delhi and specific goods were manufactured at Faridabad in pursuance of those contracts. Those were "future goods" within the meaning of section 2(6) of the Sale of Goods Act, 1930. After the goods were manufactured to agreed specifications, they were despatched to the head office at Delhi for being forwarded to the respective customers at whose instance and pursuant to the contracts with whom the goods were manufactured. The goods could as well have been despatched to the respective customers directly from the factory but they were sent in the first instance to Delhi as a

12. (1979) 2 SCC 242

matter of convenience, since there are better godown and rail facilities at Delhi as compared with Faridabad. The despatch of the goods of Delhi was but a convenient mode of securing the performance of contracts made at Delhi. Goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by respondent 1 only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Thus, the movement of goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi."

(emphasis supplied)

24. It clearly transpires from the admission of the respondent before CESTAT that the movement of the goods had occasioned from the manufacturing unit at Navi Mumbai in the State of Maharashtra to the branches of the respondent in other States because of the orders placed by the customers at the branch offices of the respondent.

25. It is not open to the appellant to now contend that it is a case of branch transfer.

26. In **Yousuff Radio**, the Madras High Court held that an assessee cannot reprobate and approbate merely to get out of the net of taxation. The relevant portion of the judgment is reproduced below:

"5. ***** An assessee cannot reprobate and approbate. If that could be done and if it is possible in law, then every assessee can escape at every possible inconvenient stage from the force of the taxing provisions because he could make suitable statements at opportune moments to help his cause and get out of the net of taxation. Once a voluntary overt act results in a sworn statement, it should be given effect to and an opportunity ought not to be given to the assessee to retract therefrom unless there is some suspicion, proved and circumstantial, available at the time when such a statement was made. No such significant circumstance is present in the instant case. Therefore, we are of the view that

for the simple reason that it suited the assessee to retract from his statement before the income-tax authorities, that situation should not prevail and cause the assessing authorities under the Tamil Nadu General Sales Tax Act also to accept such retraction and the result thereof. *****"

27. It is not the case of the respondent that the process so stated before CESTAT has undergone any change after the decision of CESTAT. Once the respondent had taken a particular stand in the context of the Customs Act before CESTAT, it is not open to the respondent to now take a different stand under the CST Act. The manner in which the customers place orders at the branch offices and the manner in which the goods are supplied by the respondent to the customers cannot change in proceedings before the Customs Act and in proceedings before the CST Act.

28. MSTT was, therefore, not justified in restricting the stand of the respondent to just three transactions for which material had been placed by the State as it is not the case of the respondent that in other transactions, the process had changed. What follows from the aforesaid factual position stated by the respondent before CESTAT is that the movement of the goods had occasioned from the factory of the respondent to the branch offices because of the orders placed by the customers at the branch offices of the respondent.

29. Thus, in view of the aforesaid discussion, it has to be held that the Deputy Commissioner was justified in holding that the transaction in the present case was not a case of branch transfer but of inter-State sale and MSTT committed an error in holding that except for three transactions worth Rs. 53,21,459/-, the remaining transaction would be of branch transfers.

30. In view of the provisions of section 22B(1) of the CST Act, a direction would, therefore, have to be issued to the Deputy Commissioner to ascertain whether any additional amount is required to be deposited by the respondent and if so to recover the same from the respondent. A further direction is issued to the States to transfer the refundable amount to the State of Maharashtra.

31. The appeal is, accordingly, allowed with the aforesaid directions and the order dated 26.04.2016 passed by the MSTT is set aside.

(Order pronounced on **08.04.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya