

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 21 OF 2014

(Arising order out of dated 24.11.2014 passed by the Rajasthan Tax Board in Appeal No. 1330-1334/2014/Alwar)

M/s Carlsberg India Pvt. Ltd.

S.P. 1-4 & 5-8, MIA Ext., Industrial Area
Alwar (Rajasthan)

.....Appellant

VERSUS

1. The State of Rajasthan

Through Principal Secretary Finance,
Finance Department, Government of Rajasthan
1st Floor, Main Building Government Secretariat
Jaipur – 302 005

2. The Commissioner, Commercial Taxes Department

Kar Bhawan, Bhawani Singh Road
Ambedkar Circle, C-Scheme
Jaipur – 302 005

3. The Commercial Tax Officer

Commissioner of Commercial Taxes, Anti Evasion
Bhiwadi (Rajasthan)

4. The State of Bihar

Through Commissioner-cum-Secretary
Commercial Taxes Department, Government of Bihar
Vikas Bhawan, Bailey Road
Patna – 8 00 001

.....Respondents

WITH

CST/22/2014 CST/23/2014 CST/24/2014 CST/25/2014

AND

CENTRAL SALES TAX APPEAL NO. 16 OF 2014

(Arising order out of dated 24.11.2014 passed by the Rajasthan Tax Board in Appeal No. 1229-1233/2014/Alwar)

M/s United Breweries Ltd.

S.P.-971, Industrial Area, Chopanki, Bhiwadi
Alwar – 301 019 (Rajasthan)

.....Appellant

VERSUS

1. The State of Rajasthan

Through Principal Secretary Finance,
Finance Department, Government of Rajasthan
1st Floor, Main Building Government Secretariat
Jaipur – 302 005

2. The Commissioner, Commercial Taxes Department

Kar Bhawan, Bhawani Singh Road
 Ambedkar Circle, C-Scheme
 Jaipur – 302 005

**3. The Assistant Commissioner
Commercial Tax Department**

Anti Evasion, Rajasthan Circle-III
 Jaipur - (Rajasthan)

4. The State of Bihar

Through Commissioner-cum-Secretary
 Commercial Taxes Department, Government of Bihar
 Vikas Bhawan, Bailey Road
 Patna – 8 00 001

5. The State of Jharkhand

Through Secretary-cum-Commissioner
 3rd Floor, Commercial Tax Department
 Project Bhawan, Dhurwa
 Ranchi – 834 004

.....Respondents**WITH****CST/17/2014 CST/18/2014 CST/19/2014 CST/20/2014****AND****CENTRAL SALES TAX APPEAL NO. 01 OF 2015**

(Arising order out of dated 24.11.2014 passed by the Rajasthan Tax Board in Appeal
 No. 541-544/2014/Alwar)

M/s Mount Shivalik Industries Ltd.

Village Gunti, Behrod,
 District Alwar - (Rajasthan)

.....Appellant**VERSUS****1. The State of Rajasthan**

Through Principal Secretary, Finance Department
 Government of Rajasthan, Secretariat, Janpath Road
 Jaipur – 302 005 (Rajasthan)

2. The Commissioner Commercial Taxes

Rajasthan Kar Bhawan, Janpat Road
 Jaipur

**3. The Assistant Commissioner Commercial
Tax Department**

Anti Evasion, Rajasthan Circle-III
 Kar Bhawan, Janpat Road
 Jaipur - (Rajasthan)

4. The State of Bihar

Through Principal Secretary
 Finance Department, Old Secretariat, Bailey Road
 Patna

5. The State of Jharkhand**.....Respondents**

Through Principal Secretary
Finance Department, Secretariat
Ranch

WITH

CST/02/2015

CST/03/2015

CST/04/2015

APPEARANCE:

Shri B.L. Narasimhan and Shri Dhruv Tiwari, Advocates for the Appellants

Shri Arijit Prasad, Senior Advocate, Shri Shiv Mangal Sharma Additional Advocate General, Shri Saurabh Rajpal, Ms. Ankita Singh and Shri Deepak Kumar, Advocates for the State of Rajasthan

Shri Azmat M Amanullah and Ms. Nitya Sharma, Advocates for the State of Bihar

Shri Jayesh Gaurav and Shri Ishwar Chandra Roy, Advocates for the State of Jharkhand

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

Date of Hearing: 13.09.2024

Date of Decision: 21.10.2024

FINAL ORDER NO's. 58871-58884/2024

JUSTICE DILIP GUPTA:

The order dated 24.11.2014 passed by the Rajasthan Tax Board, by which fourteen appeals have been dismissed and the assessment orders for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 of three companies, namely, (i) Carglsberg India Pvt. Ltd.¹, (ii) United Breweries Limited², and (iii) Mount Shivalik Industries Ltd.³ have been upheld, has been challenged in these fourteen appeals. The said three companies shall collectively be called as "appellants".

2. The issue involved in these appeals relates to demand of central sales tax on movement of goods from the manufacturing units of the

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- 1. **Carglsberg**
 - 2. **United Breweries**
 - 3. **Mount Shivalik**

appellants situated in the State of Rajasthan to their depots in the State of Bihar and the State of Jharkhand. The impugned order has treated the movement to be arising out of inter-state supply of goods instead of inter-state stock transfers as claimed by the appellants.

3. The appellants hold licenses for manufacture and sale of liquor under the Rajasthan Excise Act, 1950⁴ and are also registered dealers under the Rajasthan Value Added Tax Act, 2003⁵ as well as under the Central Sales Tax Act, 1956⁶. The appellants manufacture beer under various brand names at their breweries located in the State of Rajasthan. Various States have created separate entities which are State Beverages Corporations to facilitate and regulate retail sale of liquor, including beer, in their States. The State of Bihar has established The Bihar State Beverages Corporation Limited⁷, while the State of Jharkhand has established The Jharkhand State Beverages Corporation Limited.

4. It needs to be noted that Carlsberg has depots in the State of Bihar, while United Breweries and Mount Shivalik have depots both in the State of Bihar and the State of Jharkhand.

5. The State of Bihar framed a policy known as the Liquor Sourcing Policy⁸ for sourcing of all kinds of liquor, including beer. Clause 6 of the Liquor Policy provides that the supplies to the Corporation shall be based on Order for Supply⁹, to be issued by the Corporation. It further provides that the Corporation shall be under no obligation to procure any specified minimum quantities of liquor and the quantity to be procured shall depend upon the demand of the product. Accordingly,

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- 4. **the Rajasthan Act**
 - 5. **the RVAT Act**
 - 6. **the Act**
 - 7. **the Corporation**
 - 8. **the Liquor Policy**
 - 9. **the OFS**

the Corporation issues OFS on the local depots of the appellants situated in State of Bihar for supply of specified quantity of the beer. The OFS has a validity period within which goods are required to be delivered to the depots of the Corporation. The said period generally varies from 3 to 4 days. Clause 10.1 of the Liquor Policy provides that the supply of liquor to the Corporation against OFS shall be construed as an agreement to sell under section 4(3) of the Sale of Goods Act, 1930¹⁰. It further provides that the stock of liquor lying unsold for a period of over six months shall be drained out by the Corporation.

6. A person desiring to sell liquor in the State of Bihar is also required to enter into a Master Agreement with the Corporation in terms of the Liquor Policy. The Master Agreement provides that the quantity of beer to be procured and distributed shall be determined by the Corporation from time to time keeping in view the demand of beer supplied by the manufacturer and the manufacturer has to bottle, seal, pack, load, transport, unload and stock the beer at the depots of the Corporation at its cost and risk. Delivery has to be in line with the OFS placed by the Corporation and shall be completed within the period specified by the Corporation. The Corporation also has the right to forthwith terminate any or all OFS placed on the manufacturer and forfeit the deposits on certain conditions. The manufacturer has to deliver the beer at a price indicated by the Corporation but payment for the beer delivered shall be made only after the disposal of beer.

7. Carlsberg established depots in the State of Bihar and obtained Wholesale License 19C¹¹. Clause 5A of the License requires Carlsberg to maintain a minimum stock of liquor at its depots in the State of Bihar as

10. the Sale of Goods Act

11. the License

prescribed by the Commissioner from time to time and to recoup the stock within seven days in case the stock goes below the minimum limits.

8. Carlsberg alleges that in order to comply with the requirement of maintaining a minimum stock of beer at the local depots in the State of Bihar and also to ensure delivery of beer to the Corporation within the validity period prescribed in the OFS, it effected inter-state stock transfers of beer from its factory in the State of Rajasthan to its depots in the State of Bihar from time to time through Form-F, depending on an estimated market demand. Thereafter, in pursuance of the OFS placed by the Corporation on the local depots of Carlsberg in the State of Bihar, the goods were sold from the said depots to the Corporation. Accordingly, Carlsberg treated transfer of beer from its factory in the State of Rajasthan to its depots in the State of Bihar as stock-transfer. Carlsberg believed that such movement of goods was not occasioned by reason of any sale agreement. The sale of goods from its depots in the State of Bihar to the Corporation in terms of the OFS issued by the Corporation was treated by Carlsberg as local sale in the State of Bihar, on which local VAT at the rate of 50% was paid.

9. The facts pertaining to the other two companies, namely United Breweries and Mount Shivalik are stated to be similar except that they had depots in the State of Jharkhand also, which State had a liquor policy like the State of Bihar. As such, facts relating to Carlsberg are being considered.

10. In order to understand the issues that have been raised in these appeals, it would be appropriate to refer to the relevant clauses of the

Liquor Policy, the Master Agreement dated 06.07.2009¹² and the License issued to Carlsberg in Form 19-C.

11. The **Liquor Policy** for 2008-09 is as follows:

"Liquor Sourcing Policy for 2008-09

BSBCL is the sole wholesaler for all kinds of liquor in the State of Bihar. This circular pertains to sourcing of all kinds of Foreign Made Foreign Liquor (FMFL), IMFL (Brandy, whisky, rum, gin, vodka etc), BEER & WINE. The Manufacturers are requested to take note of the procedures prescribed in the policy which comes to effect immediately.

1. The Manufacturers / manufacturing companies / suppliers /importers (hence forth called manufacturers) of FMFL, IMFL, BEER & WINE, who are registered in Bihar may offer, firm price for those products/brands which they want to market in Bihar.

3. Submission of Initial Documents

3.1 Manufacturers desirous of supplying liquor to the Corporation (short for BSBCL) for subsequent distribution to buyers shall submit the following documents, before their offer can be considered and action initiated:

- (i) Details of the organization of the manufacturer/supplier to be given in its letterhead in the format in Annexure 1. (page 17).
- (ii) A certified copy of the license granted by the concerned Excise Commissioner/competent authority of the concerned State.
- (iii) Details of executives and/or representatives to deal with the Corporation to be given in its letter head as per the format in Annexure 2 (page 18) and 3 (page 19) respectively.
- (iv) An agreement as in the format in Annexure 4 (page 20-24) duly executed by the authorized signatory of the manufacturer/supplier in a stamp paper of denomination page Rs. 100/-**

12. the Master Agreement

- (v) If the manufacturer is not the owner of the brands proposed to be supplied, then a copy of the agreement between the manufacturer / supplier and the owner of the brand.
- (vi) Certified copy of the latest audited accounts and annual report. If such accounts pertain to a period other than the recently concluded financial year, reasons for not submitting the certified accounts of such year shall be indicated.
- (vii) An attested/notarized copy of the registered partnership deed/Memorandum and Article of Association (latest) of the manufacturer
- (viii) Security Deposit of Rupees Five Lacs in the form of Bank Draft.

6. Order for Supply (OFS)

- 6.1 Manufacturers/Supplies to the Corporation shall be based on the OFS issued by it. The Corporation shall issue OFS based on the stock requirement of depots after duly considering the quantity held, the sales trend and requests of the manufacturer/supplier, if any.** To facilitate the process, the manufacturer/supplier may indicate the requirement of its brands and pack sizes in various depots. **However, the Corporation reserves its right to decide the quantity for which OFS can be issued.** Special requests or difficulties faced by manufacturers/ suppliers regarding issue of OFS, may be addressed to the M.D., BSBCL.
- 6.2 This Corporation will be under no obligation to procure any specified minimum quantities of any brand of FMFL/IMFL/BEER/WINE during the period of currency of the contract.** The Quantity to be procured from time to time shall depend upon the demand for the product. **Further, the Corporation shall not be under any legal compulsion to procure all or any brands produced by a particular manufacturer/supplier, simply because they have signed this Agreement and have made an offer.**

- 6.3 **The Corporation will ordinarily indent based on the actual sales of the previous month. In respect of brands with low volume of sales the Corporation will consider the eligibility depot wise/size wise to meet requirements.**

The supplier/manufacturer should, as requested by the Corporation, shift the stocks from one depot to another at its own cost and risk. The closing stocks of any brand at any depot shall not normally exceed the quantity anticipated to be sold in 15 days.

- 6.4 **Two copies of the OFS will be issued for the exact quantity that the supplier/manufacturer proposes to transport. It is, therefore, imperative that manufacturers/suppliers indicate their dispatch plan for issue of OFS. The OFS shall be signed by either of the authorized signatories of the Corporation, whose specimen signatures may be seen in Annexure 8 (page-33)**

- 6.5 The OFS would indicate the validity date within which the manufacturer/supplier should complete the delivery. If a manufacturer/supplier does not honour the quantity indicated in the OFS within the validity period, then the order for the remaining quantity shall lapse automatically. The Corporation may, at its discretion, extend the validity of the OFS and manufacturer/supplier shall honor the OFS within the extended validity period without fail. However Corporation shall charge a fee for extending validity of each OFS as under:

(1) For first 3 days or part thereof -
Rs 500/- per OFS

(2) For every next 3 days and part thereof -
Rs 1000/- per OFS

However, these rates may be revised by the MD from time to time.

- 6.6 Repeated lapse of supplies against OFS without valid reasons may result in reduction of quantity

sourced and may also attract other penalties that the Corporation may specify from time to time.

- 6.7 In respect of supplies from within State or outside the State, the manufacturer/supplier or their authorized representatives shall, after the issue of OFS., deposit the Import Fee, Excise Duty and other applicable duties/ fees for their respective brands with the Excise Department and obtain required transport permit to ensure delivery.**

Manufacturers/Suppliers may please take note that they are responsible for remitting/ depositing the correct quantum of duties/ fees and that they are liable for any short payment of duties (The Corporation shall be entitled to recover any short payment of duty from them, should such instances occur).

- 6.8** In case the supplies are not effected against any OFS and the same is submitted to Corporation for cancellation, the same shall be cancelled on payment of a fee of Rs.1,000/- per OFS. And if the cancellation request is submitted after the validity date, the fee mentioned in the clause 6.5 shall be charged from the supplier in addition to the cancellation charges.

However, these rates may be revised by the MD, BSBCL from time to time.

7. Delivery

- 7.1 As indicated above, manufacturers/supplier shall effect supplies within the time period mentioned in the OFS. The stocks shall be delivered at the concerned depot of the Corporation at the cost and risk of the manufacturer/supplier and shall confirm to the brand, quantity and pack sizes as indicated in the OFS. Any delivery that deviates from the OFS shall not be acknowledged by the Corporation and shall not be unloaded at the depot.**

10. Stocks held for sale

- 10.1 **Manufacturers may note that supply of liquor to the Corporation against Order for Supplies shall be construed as an agreement to sell under sub-section 3 of Section 4 of State of Goods Act, 1930.** The sale shall be concluded only when the liquor is delivered to buyers by the Corporation. The Corporation would take necessary care of the stored stock as is reasonably possible and expected of it.

*****"

(emphasis supplied)

12. In terms of clause 3.1(iv) of the Liquor Policy, a **Master Agreement** was entered into by Carlsberg with the Corporation at Patna and the relevant clauses of the Master Agreement are reproduced below:

"Now This Agreement witnesseth as follows -

1. Quantity for Distribution

- 1.1 **The quantity of the Liquors to be procured and distributed shall be determined by the Corporation from time to time keeping in view the demand for liquor manufactured/ supplied by the manufacture.**

- 1.2 The Manufacture shall not claim the right for distribution of liquor through the Corporation.

2. DELIVERY

- 2.1 **The Manufacture shall bottle, seal, pack, load, transport, unload and stack the liquor at the depot of the corporation at its cost and risk. The corporation is not liable for any transit risk & other perils for its own interest, the manufacturer may arrange for an insurance coverage for all the risk including transit risk.**

- 2.2 The Manufacturer shall deliver the Liquor in good condition within such time and at such depots as specified by the corporation.

2.3 The Manufacturer shall bear transit losses as defined in clause 8.2 of LSP 2008-09. The Manufacturers shall not claim for shortages, if any, arising from the difference between the quantities as dispatched it and the stocks actually delivered.

2.4 **Delivery shall be in line with the Orders for Supplies placed by the Corporation and shall be completed within the period specified by the Corporation.** Short supplies, if any, shall not be carried forward beyond the validity period of the Order for Supplies.

4. CANCELLATION OF ORDERS

4.1 **The Corporation shall, without prejudice to its legal rights, have the right to forthwith terminate any or all Order for Supplies placed on the Manufacturer and forfeit deposits, if any, if the Manufacturer or any of his representatives, workers, employees etc.**

5. PRICE

5.1 **The Manufacturer shall deliver the Liquor at a price as may be indicated by the Corporation.**

5.2 Any difference due to price reduction on account of revision in price by the Manufacturer or due to a change in duties shall be borne by the Manufacturer.

5.3 The Manufacturer shall communicate to the Corporation any sales promotion scheme/activity including the price structure, validity period, etc., at least two weeks prior to its introduction to the market.

6. PAYMENT

6.1 The Corporation may advance, either in full or in part, the duties paid or to be paid by the Manufacturer to the Government. The Corporation would, from time to time, determine the interest payable on the amount so advanced,

and the Manufacturer shall pay the same. The Corporation shall be entitled to deduct such advance, the interest due or other dues from any amounts due to the Manufacturer.

- 6.2 **Payment for the Liquor delivered (less the amount advanced) shall be made only after the disposal of Liquor, and is subject to any periodicity that may be specified by the Corporation."**

(emphasis supplied)

13. The **License** issued to Carlsberg in Form No. 19-C is reproduced below:

"FROM NO. 19-C

LICENSE NO.11/2012-13

The License of the distributor for sale of the Foreign Liquor /Bear (including the Foreign Liquor/Bear made in India) to only the holders of license of wholesaler (Sale to the Trade) and the Army and the Military Bodies.

It is evident to all the concerned that M/s Carlsberg India Pvt. Limited Karmalichack Patna is authorized to sale the Foreign Liquor/Bear (including the Foreign Liquor/Bear made in India) at Karmalichack Patna from the date of issuance of the license to till 31.03.2013 after making the payment of the tax on the following terms and conditions for the purpose of sale to the holders of license of wholesaler (Sale to the Trade) and the Army and the Military Bodies.

- 5A. In such storage where there is license for the sale foreign liquor/bear under this license, **the minimum stock of the foreign liquor/bear shall always the kept in the capacity of production which commissioner will prescribe from time to time and will inform the license holder in writing if and when the stock will become less than the minimum than license holder will fulfill it within a period of 7 days upto the minimum liable."**

(emphasis supplied)

13. Having examined the provisions of the Liquor Policy, the Master Agreement and the License issued in Form 19C to Carlsberg, it will be appropriate to examine how the impugned order dated 24.11.2014 has addressed the issue relating to the movement of goods.

14. As noticed above, the State of Rajasthan treated the movement as one arising out of inter-state supply of goods, while the appellants treated it as inter-state stock transfers. The relevant portions of the order passed by the Rajasthan Tax Board are reproduced below:

"Amidst rival contentions of the counsel, what transpires is that all essential conditions of section 3(a) of the CST Act are witnessable in the present case. On the authority of M/s TELCO Vs Assistant Commissioner, (supra) they could be deduced from Agreement to sale (supply) of beer between BSBCL and the appellants, necessitating and occasioning movement of beer from appellants manufacturing units in Rajasthan to Bihar on the premise of same transaction.

The interstate movement of beer in instant cases was preceded by Agreement to sale and interstate sale related to it was inextricably interwoven with corresponding beer movement from district Alwar, Rajasthan to Patna, Bihar. The facts here are distinguishable from those of Central Distilleries and Breweries (supra), on the authority of case applicable in present scenario, that is M/s Indian Oil Corpn. Ltd., (supra). It is manifest that interstate movement of beer from Alwar to Patna did not break there but after a brief interval continued to finally terminate at different BSBCL depots in Bihar. It did not rupture the inextricate relationship between the movement of goods and sale, because sale could only be made to BSBCL by the sole seller, appellant manufactures. With no third party involvement in the whole scheme of sales, such a brief stoppage of movement of beer at Patna at appellants depot at Patna for, a while did not impact the nature of interstate sale

because at the most it was a transit halt of the goods in question.

The respondent Assessing Authorities have made out a case that in relation to the movement of beer stocks round the year from the appellant assesses manufacturing units situate in district Alwar of Rajasthan to their branch offices at Patna and Ranchi was not result of bare stock transfers of beer but rather sales thereof to the various retail outlets of the BSBCL (or, JSBCL) spread across the State of Bihar (or, Jharkhand) made in course of the inter-State trade and commerce, between appellants and BSBCL,

The facts of present cases require analysis in the light of the provisions of the section 3 of the CST Act, 1956. It is a simple fact that Inter State sale or purchase is carved out of and separated from inside sales or purchases for the purpose of situs of taxation. **It is to be explored whether the movement of beer from the State of Rajasthan to the State of Bihar (or, Jharkhand) was the result of a covenant or an incident of the contract of sale entered to between the authorized representative of appellant company and Bihar State Beverage Corporation Limited, if it were so, the sale was an inter-State sale.**

We may have a look at the provisions of the LSP which are contextually relevant in the present case and reproduced as under

A. In this regard, it is imperative to go through the agreement entered into between the appellant and the BSBCL under the terms and conditions of the LSP as described in its Circular no. 675/BSBCL, dated 12.03.2008 (extended for the relevant years : 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14).

B. At the background of above, it is apparent that the appellant **manufacturers who were desirous of supplying liquor to the BSBCL for subsequent supply to buyers** in reference to the aforesaid Clause 3.1 of the LSP submitted certain documents, before their offer was considered and action taken by BSBCL. We find that in terms of Clause

3.1 (iv) of the LSP, an Agreement was struck between the two parties to the issue, the BSBCL and the appellant company, the introductory part of which is reproduced as under:

4. This Agreement entered into between the BSBCL and the appellant companies having manufacturing units in Alwar, Rajasthan and the branches at Patna in Bihar and Ranchi in Jharkhan is the cause celebre in the present context, enabling appellants' beer sales in the State of Bihar (or, Jharkhand) through the instrument called 'Order for Supply' issued by the BSBCL to the appellant's branch at Patna in Bihar.

5. The appellant assesses hold that above Agreement not as an Agreement for Sale of beer but an Agreement for distribution of beer in the State of Bihar.

6. Agreement to Sale or contract to sale, or in opinion of the appellants an Agreement to Distribution was implemented when OFS was issued by BSBCL, leading to import of beer from the manufacturing units of the appellant assesses and supply of which was as usual shown as having been stock transferred to Patna (or, Ranchi) branch of the appellants which is turn sold beer to the designated Depots of the BSBCL located in various towns of Bihar. The plea of the appellants that the beer by way of stock transfer, independent of any order, was continually transferred to the Patna branch of the appellants, where it was unloaded and stacked in the godown of the appellant company at Patna. When an OFS was issued by BSBCL for supply of beer to any of its depots located in any of the towns or city of Bihar, they raised the VAT invoice for such a sale and arranged transport for carrying beer to the designated depot of the BSBCL. This way, the sale of beer in Bihar was a local sale, and the bogey of inter-State sale raised by the respondents was a wild goose chase.

At the back drop of aforesaid analysis of facts and legal position, it is decided that impugned transactions were verily interstate sales under Section 3(a) of the CST Act, in which aforesaid

Agreement to sale executed between BSBCL and appellants acted as contract to sale and caused interstate sales that occasioned movement of beer from district Alwar, Rajasthan to Patna, Bihar.

Going by the facts and legal pronouncements as aforesaid hereinabove, we have come to the conclusion that agreement for supply of Beer to the BSBCL by the appellants was an agreement to sale which was duly executed between the BSBCL and the appellant companies having their manufacturing units in district Alwar Rajasthan and branch offices in Patna in year 2008, *****"

(emphasis supplied)

15. Shri B.L. Narasimhan, learned counsel for the appellants assisted by Shri Dhruv Tiwari made the following submissions:

- (i) The terms of the Liquor Policy, the Master Agreement and the License issued to the appellants leave no manner of doubt that the appellants had stock transferred beer from the manufacturing units situated in the State of Rajasthan to their depots in the State of Bihar or the State of Jharkhand;
- (ii) Movement of goods did not occur from the State of Rajasthan to the State of Bihar or the State of Jharkhand in pursuance to the Master Agreement, incidental or otherwise. In this connection, learned counsel placed reliance upon the decision of the Central Sales Tax Appellate Authority, New Delhi in **Northern Coal Fields Ltd. vs. States of Madhya Pradesh and Uttar Pradesh**¹³;
- (iii) The Master Agreement is not an agreement to sell in terms of section 4(3) of the Sale of Goods Act. In this connection, reliance has been placed on the decision of the Tribunal in **M/s. Keltech Energies Ltd. vs. State of Maharashtra**

13. (2010) 29 VST 596 (CSTAA-Del)

and others¹⁴ as also on the decision of the Karnataka High Court in **M/s. BASF India Ltd. vs. State of Karnataka and others**¹⁵;

(iv) The intention of the parties cannot be ignored. The OFS is clearly intended to be the contract of sale in terms of the Sale of Goods Act. In this connection, reliance has been placed by the learned counsel for the appellants on the following decisions:

(a) Tata Engineering & Locomotive Co Limited vs. Assistant Commissioner of Commercial Taxes and another¹⁶;

(b) Kelvinator of India Ltd. vs. The State of Haryana¹⁷;

(c) State of Andhra Pradesh vs. Coromandel Paints & Chemicals Limited¹⁸; and

(d) Central Distillery & Breweries Ltd. vs. Commissioner of Trade Tax, U.P., Lucknow¹⁹.

(v) The judgment of the Supreme Court in **Kelvinator of India** is applicable to the present case.

16. Shri Arijit Prasad, learned senior counsel appearing for the State of Rajasthan assisted by Shri Shiv Mangal Sharma Additional Advocate General, Shri Saurabh Rajpal, Ms. Ankita Singh and Shri Deepak Kumar, however, supported the impugned order and made the following submissions:

(i) Even though the movement of goods seems to have two limbs, namely, movement from the factory of the appellants in the State of Rajasthan to the depots of the appellants in the State of Bihar or the State of Jharkhand and the movement from the said depots of the appellants to the

14. 2024 (7) TMI 540 – CESTAT New Delhi

15. 2022 (11) TMI 434 – Karnataka High Court

16. (1970) 1 SCC 622

17. (1973) 32 STC 629 (SC)

18. (1995) 98 STC 82 (AP)

19. (1999) 115 STC 296 (All)

Corporations in the State of Bihar or the State of Jharkhand, but, in fact, there is only one movement from the factory of the appellants in the State of Rajasthan to the depots of the Corporations in the State of Bihar or the State of Jharkhand. The two limbs are only a mechanism devised to facilitate the transfer. In this connection reliance has been placed by the learned senior counsel on the judgment of the Supreme Court in **Indian Oil Corporation Ltd. and another vs. Union of India and others**²⁰;

- (ii) The said movement of goods from the State of Rajasthan to the two States has been occasioned by the Master Agreement dated 06.07.2009 executed between the Corporation and the appellants read with the provisions of the Liquor Policy, which is part of the said Master Agreement. In this connection, reliance has been placed on the judgment of the Supreme Court in **State Trade Corporation of India Ltd. and another vs. State of Mysore and another**²¹, wherein it has been held that when a contract for supply can only be made under a permit and on terms and conditions contained in it, the said contract of supply has to be read as subject to the said permit;
- (iii) Clause 2 of the Master Agreement deals with "delivery" and clauses 2.1, 2.2, 2.3 and 2.4 expressly complete delivery of liquor by the manufacturer to the depots of the Corporation and other incidental obligations. Under sub-clause (iv) of clause 3.1, one of the listed document is the Master Agreement required to be submitted by the manufacturer if the said manufacturer is desirous of undertaking the said supply. Thus, sub-clause (iv) puts beyond doubt that the

20. 1980 (Supp) SCC 426

21. (1963)14 STC 188

supply from the State of Rajasthan to the two States is incidental to the Master Agreement;

- (iv)** The provisions of the Master Agreement as well as the Liquor Policy also show that the liquor manufactured by the appellants in the State of Rajasthan is earmarked for sale in the two States (as sale of the liquor with the aforesaid hologram/label can only be for the Corporation). In fact, in view of the said requirement, the said liquor cannot be sold to anyone outside the State even during transit;
- (v)** The provisions also demonstrate that the liquor arrived from the State of Rajasthan to the two States not because of own volition of the appellants, but pursuant to and/or incidental to the said Master Agreement read with the Liquor Policy;
- (vi)** The Master Agreement read with the Liquor Policy is clearly an agreement to sell; and
- (vii)** The liquor manufactured by the appellants and sold to the Corporation could only be under the aforesaid Policy and on the terms contained in it. The said Policy indisputably contemplates supply to be made from the factory of the appellants situated in the State of Rajasthan. In such a situation, the contract of supply must be deemed to have contained a covenant that the goods would be supplied in the two States from a place situated outside the State. A sale under such a contract would clearly be an inter-state sale as defined in section 3(a) of the Central Sales Tax Act.

17. Shri Azamt M Amanullah, learned counsel for the State of Bihar assisted by Ms. Nitya Sharma and Shri Jayesh Gaurav, learned counsel for the State of Jharkhand assisted by Shri Ishwar Chandra Roy adopted the submissions made by the learned counsel for the appellants.

18. The submissions advanced by the learned counsel for the appellants, the learned senior counsel appearing for the State of Rajasthan, and the learned counsel appearing for the State of Bihar and the State of Jharkhand have been considered.

19. As noticed above, the issue involved in all these appeals relates to the demand of central sales tax on the movement of goods from the manufacturing unit of the appellants situated in the State of Rajasthan to the depots of the appellants in the State of Bihar and the State of Jharkhand. According to the appellants, the movement of goods is on account of inter-state stock transfers, while according to the State of Rajasthan it is an inter-state supply of goods.

20. To appreciate the issue that has been raised, it would be appropriate to examine section 3 of the Central Sales Tax Act and the relevant portion is 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."

21. The provisions of sections 3 of the Central Sales Tax Act were examined by the Supreme Court in **Hyderabad Engineering Industries vs. State of Andhra Pradesh**²² and the relevant portion of the judgment is reproduced below:

22. (2011) 4 SCC 705

"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.

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."

(emphasis supplied)

22. 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) of the Central Sales Tax Act, 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 as a result of a prior contract of sale.

23. 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 conditions 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, an inter-state sale would ensue and would result in exigibility of tax under section 3(a) of the Central Sales Tax Act.

24. The Rajasthan Tax Board, after considering the terms of the Liquor Policy and the Master Agreement, held that inter-state sale had taken place for the following reasons:

- (i) In view of the decision of the Supreme Court in **Tata Engineering**, it can be deduced from the Master Agreement that it necessitated the movement of beer from the manufacturing unit of the appellant in the State of Rajasthan to the State of Bihar and, therefore, all the essential conditions of section 3(a) of the Central Sales Tax Act are satisfied;

- (ii) The decision of the Allahabad High Court in **Central Distillery and Breweries** is distinguishable because of the decision of the Supreme Court in **Indian Oil Corporation**;
- (iii) The inter-state movement of beer from Alwar in the State of Rajasthan to Patna in the State of Bihar did not break there, since after a brief interval it finally terminated at different depots of the Corporation. This would not impact the nature of inter-state sale because it was merely a transit halt for the goods;
- (iv) The Master Agreement is the "*cause celebre*" enabling the appellants to sell beer in the State of Bihar or the State of Jharkhand through the instrument called "OFS" issued by the Corporation to the branches of the appellants in the State of Bihar and the State of Jharkhand; and
- (v) The analysis of facts and legal position indicate that inter-state sale of beer under section 3(a) of the Central Sales Tax Act had taken place in which the Master Agreement acted as a contract to sell and caused the inter-state sale that occasioned the movement of beer from the State of Rajasthan to the State of Bihar or the State of Jharkhand.

25. The contention of the learned counsel appearing for the appellants is that the movement of the goods from the State of Rajasthan to their depots in the State of Bihar had not occurred under the Master Agreement, incidental or otherwise since the clauses of the Master Agreement do not specify that the liquor manufactured by the appellants in the State of Rajasthan must be supplied to the depots of the Corporation on an inter-state basis. The submission of the learned senior counsel for the State of Rajasthan is that the movement of goods from the State of Rajasthan to the State of Bihar or the State of

Jharkhand was occasioned by the Master Agreement as can be seen from the clauses of the Master Agreement and the Liquor Policy. According to the learned senior counsel, the OFS only implemented the Master Agreement and the Liquor Policy.

26. Learned counsel for the appellants has placed reliance upon the decision of the Allahabad High Court in **Central Distillery and Breweries** to contend that inter-state sale had not taken place and only stock transfer had taken place. The facts of this decision reveal that the revisionist was a manufacturer of liquor and had a distillery at Meerut in the State of Uttar Pradesh. The Head Office of the revisionist was situated at Delhi. The Delhi Administration invited tenders for supply of rum and the tender of the revisionist was accepted. Agreements were executed between the Commissioner of Excise in Delhi and the revisionist in terms of which the Collector of Excise, Delhi had to place fortnightly orders at the Delhi office of the revisionist for supply of liquor specifying the date by which the particular quantities should be supplied to the retail vendors. The import of liquor to Delhi was to be under the import permits issued by the Collector and the revisionist was also required to observe the provisions of the Delhi Liquor License Rules, 1976. The issue that arose for consideration in the revisions was regarding the taxability of the liquor supplied to the Delhi Administration by the revisionist under the Agreements. The contention of the revisionist was that the sale of beer to the Delhi Administration was made at Delhi from the depots of the dealers in Delhi and, therefore, these sales were affected within the territory of Delhi and were not inter-state sales. The contention of the department, however, was that since the manufacturing activity of the revisionist was at Meerut within the State of Uttar Pradesh and as the goods were taken

from the State of Uttar Pradesh to the Union Territory of Delhi pursuant to Agreements, the goods moved to Delhi in pursuance of the Agreements which occasioned the movement of goods from the State of Uttar Pradesh. Thus, according to the department, the transaction amounted to an inter-state sale within the meaning of section 3(a) of the Central Sales Tax Act. Though the contention of the department had been accepted by the authorities, but it was held not be an inter-state sale by the Allahabad High Court and the observations are as follows:

"6. *** The Tribunal has failed to appreciate the nature of the agreement executed between the Delhi Administration and the dealer-revisionist. The agreement, that has been referred to above, was not an agreement of purchase of any quantity of rum. The agreement was merely to grant a licence to the dealer to supply rum to the retail vends in Delhi. The orders for the actual purchase and sale were to be placed subsequently by the Collector at fortnightly intervals and the licensee was required to keep a buffer stock of atleast two truck loads at warehouse within the territory of Delhi. Clause 18 of the agreement required the dealer to have a licensed premises within the State of Delhi for which purpose it could be allowed the user of a bonded warehouse established by the Government on payment of the specified rent and furnishing of a security deposit. Clause 16 specifically stated that by virtue of this agreement, the Government does not guarantee purchase of any specified quantity of 50 degree up rum during the year or during any portion of it and the licensee shall not be entitled to any compensation or relief on the ground that the sufficient orders were not placed. Thus, any transfer of goods from U.P. to the territory of Delhi to maintain the required stock and to be able to supply the goods, that may be ordered by the Delhi Administration, could not be treated as a transaction of sale that occasioned**

the movement of goods from one State to another. The transport of goods from U.P. to Delhi was only in contemplation of the orders that could be placed in pursuance of the licence granted in terms of the agreement."

(emphasis supplied)

27. The Allahabad High Court distinguished the judgment of the Supreme Court in **Sahney Steel and Press Works Ltd. vs. Commercial Tax Officer**²³ and placed reliance upon the judgments of the Supreme Court in **State of Tamil Nadu vs. Cement Distributors (P) Ltd.**²⁴ and **Tata Engineering**. The observations of the Allahabad High Court are as follows:

"6. ***** **The Tribunal has placed reliance on Sahney Steel and Press Works Ltd. v. Commercial Tax Officer** [1985] 60 STC 301 (SC); 1986 UPTC 105 and learned counsel for the Commissioner also placed reliance on the same judgment. In that case the dealer manufactured standard goods according to the specifications of the buyers. The dealer's manufacturing unit was located at Hyderabad while its branch offices were situate at Bombay, Calcutta and Coimbatore. These branch offices received the orders, communicated the same to the factory at Hyderabad, the manufactured goods were then despatched to the dealer's branch offices where they were inspected by the customers and accepted by them. The branches raised the bills and received the sale price. The contention of the dealer was that the sales were effected in the State where the branches were situated while the contention of the Revenue was that the sales were inter-State sales. The Honourable Supreme Court held that the sales were inter-State sales as it were the orders placed by the purchaser that occasioned the movement of the goods. The principle of law as explained by the Honourable Supreme Court is not open to any doubt or explanation. **However, it is**

23. (1985) 60 STC 301 (SC)

24. (1975) 36 STC 389

apparent that the Tribunal has not properly appreciated the facts of the present case while applying the ratio of the judgment of the Honourable Supreme Court. In the case before the Supreme Court, the buyers had placed purchase orders on the dealer and it was in compliance of those orders that the goods were manufactured and despatched. In the present case, however, it has not been so established.

7. The judgment of the Honourable Supreme Court in State of Tamil Nadu v. Cement Distributors (P.) Ltd. [1975] 36 STC 389 seems to be more appropriate to the issue in question. In that case the dealer, i.e., Cement Distributors Pvt. Ltd. was acting as an agent of the State Trading Corporation. Under the cement control order all manufactures were required to sell cement to the State Trading Corporation. On November, 22, 1961 the Regional Cement Officer of the State Trading Corporation in Tamil Nadu authorised the dealer M/s. Cement Distributors Pvt. Ltd. to sell the quantity of cement mentioned in the authorisation note to persons directed by the Regional Cement Officer of the State Trading Corporation, Calcutta. The factory which were to supply the cement was mentioned as the Dalmiapuram Factory. In pursuance of the said authorisation, the cement was despatched from Dalmiapuram to Calcutta. Subsequently, the Regional Cement Officer, Calcutta authorised the dealer to supply the cement to Executive Engineer, Howrah Division, Calcutta. The question was whether the sale of cement to the said Executive Engineer was inter-State sale or an intra-State sale effected at Calcutta. The Honourable Supreme Court held that it was an inter-State sale.

8. Another case that throws light on the matter is Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes [1970] 26 STC 354 (SC). In that case TELCO had dealers in various States to whom the vehicles

were supplied for sale to the buyers. The question was whether the sales effected to the dealers were inter-State sales or intra-State sales. The Honourable Supreme Court has observed that the procedure followed by the appellant together with the proved absence of any firm orders, indicated that the allocation letters and the statements furnished by the dealers did not by themselves bring about transactions of sale within the meaning of section 2(g) of the Act. The completion of the sales to the dealers did not take place at the works at Jamshedpur, appropriation of the vehicles was done at the stock-yards and it was open to the appellant till then to allot any vehicle to any purchaser and to transfer a vehicle from one stock-yard to another. It could not therefore be said that the movement of the vehicles from the works to the stock-yards was occasioned by any covenant or incident of the contract of sale."

(emphasis supplied)

28. The Allahabad High Court ultimately concluded:

"9. As is evident from the terms of the agreement, the intention of the parties was to bring about intra-State sales at Delhi from warehouse of the dealer that it was required to establish within the territory of Delhi where the dealer was required to maintain a buffer stock of atleast two trucks without any guarantee of any purchase being actually made by the Delhi Administration. As and when the Delhi Administration would make the purchases, the dealer who was to be a L1-A licensee would supply the goods and replenish the stocks and the things would go on like that during the currency of the agreement. Therefore, as is indicated by the agreement, the movement of the goods to Delhi was not in pursuance of any transaction of sale but in pursuance of the licence under which the dealer was to maintain a warehouse with a minimum stock within the territory of Delhi. The agreement by itself did not bring about any sale

or purchase and, therefore, the transport of goods from the distillery in U.P. to warehouse in Delhi could not be treated as a movement of goods occasioned by any sale or purchase. **The sale, as stated above, took place only when any order was actually placed by the Collector of Central Excise, Delhi.** As stated above, the assessing officer has not probed further into the matter to find out if there was no buffer stock at Delhi and the goods were transported from the distillery only on receipt of the orders. Therefore, there is no evidence to show that the supply of rum to the Delhi Administration in the three years resulted in any inter-State sales taxable in State of U.P. **The findings of the authorities below are based on a misconception about the nature of the agreements dated 27th of December, 1984 which, as stated above, did not bring about any sale or purchase.** The Tribunal's finding, therefore, that the disputed turnover was taxable as inter-State sales suffers from a legal error and is hereby set aside. I hold that it is not established that the turnover, referred to above, represented inter-State sales and it was, therefore, not taxable as inter-State sales under the Central Sales Tax Act."

(emphasis supplied)

29. The Agreements that were considered by the Allahabad High Court are almost similar to the Agreements under consideration in the present appeals and, therefore, the aforesaid decision of the Allahabad High Court in **Central Distillery and Breweries** would be applicable to the facts of the present case.

30. This decision of the Allahabad High Court has not been followed by the Rajasthan Tax Board in view of the decision of the Supreme Court **Indian Oil Corporation**.

31. In **Indian Oil Corporation**, the Supreme Court observed:

“8. **Clause 3(iii) of the agreement which says that the naphtha shall be supplied against indents in writing addressed to the seller at their installation at Kanpur cannot be read in isolation. Sub-clause (iv) of Clause 3 sets out the details of the buyer’s requirement for the first four years and thereafter.** Under Clause 8 IOC are bound not only to bring the contractual quantity of naphtha from Barauni to the seller’s Kanpur installation but also to provide at their own cost storage facilities at Kanpur of a capacity equivalent to not less than 30 days’ requirement of the buyer. The indents are therefore not outside the agreement but are relatable to the buyer’s requirements under the agreement. **It is obvious that the sales under the agreement are not possible without interstate movement of naphtha. Clause 3 read with Clause 8 also proves that really there are no two movements but only one movement from Barauni to Kanpur pursuant to the contract of sale and the agreement regarding storage facilities provided in Clause 8 is only for operational convenience, it is only a mechanism devised to facilitate the transfer of naphtha through the seller’s pipeline to their depot at Kanpur and from there to the Buyer’s factory at Kanpur through the pipeline constructed at the buyer’s cost.** It is relevant in this connection to note that under Clause 7(ii) the cost of transferring naphtha from Barauni to the buyer’s fence is to be borne by the buyer.

9. **Each case turns on its own facts and the question is whether applying the settled principle which we have mentioned above to the facts of the present case the sales can be said to be inter-State sales.** An attempt to show that some of the factors present in the instant case are present or absent in some case or other in which this Court held the sale to be a local sale or inter-state sale hardly serves any useful purpose. On the facts of the present case the sales are clearly inter-State sales and the State of U.P. had therefore no jurisdiction to assess the petitioners to sales tax

under the State Act. **As the movement of naphtha commences from Barauni in Bihar, the sales tax payable on the sales of naphtha under the agreement dated February 9, 1970 can be assessed and collected only by the authorities in the State of Bihar on behalf of the Government of India in view of section 9 of the Central Sales Tax Act."**

(emphasis supplied)

32. The clauses of the Agreement between the parties in **Indian Oil Corporation** clearly specified the quantity, the place of origin, the place of supply and the manner in which the sale was to be effected. This is unlike the Master Agreement executed between the parties in the present appeals. Thus, the decision of the Supreme Court in **Indian Oil Corporation** would not help the State of Rajasthan. The Rajasthan Tax Board was, therefore, not justified in placing reliance upon the said decision nor was it justified in holding that the decision of the Allahabad High Court in **Central Distillery and Breweries** would not be of any aid to the appellants because of this decision of the Supreme Court. It is clear from the facts of the present appeals that the two movements of goods from the manufacturing unit of the appellants in the State of Rajasthan to the depots of the appellants in the State of Bihar and then from the depots of the appellants to the depots of the Corporation in the State of Bihar or the State of Jharkhand are two distinct movements and cannot be clubbed as one movement from the units of the appellants in the State of Rajasthan to the depots of the Corporation in the State of Bihar and the State of Jharkhand.

33. The judgment of the Karnataka High Court in **BASF India** is a judgment which would apply to the facts of the present case. The Writ Petition that was filed before the Karnataka High Court arose out of a

decision dated 27.06.2019 of the Central Sales Tax Appellate Authority in the matter of BASF India in which the issue was whether a pre-existing rate contract occasioned inter-state movement of goods or it was merely a standing offer. The Central Sales Tax Appellate Authority held that it would amount to inter-state movement of goods, but this finding was specifically set aside by the Karnataka High Court and it was held that the Agreement was merely a "standing offer". The case that BASF India set up in the writ petition was that after the product is approved by the customers, the petitioner receives open purchase orders and thereafter transfers the stock to its godowns situated near the manufacturing unit of the customers and supplies the paint as and when the indent is received. The department believed that this was an inter-state movement of goods from the manufacturing unit of the petitioner at Mangaluru in the State of Karnataka to various depots in other States against pre-existing contract and, therefore, would amount to inter-state sale leviable to tax under section 3(a) of the Central Sales Tax Act. The contention that was advanced on behalf of the writ petitioner was that the open purchase orders do not stipulate any specified quantity and so it cannot be construed as an "agreement to sell". The question, therefore, that fell for consideration before the High Court was whether the transfer of the goods under Form-F to the depots of the petitioner situated in different States would amount to inter-state sale under section 3(a) of the Central Sales Tax Act. After taking note of the fact that the open purchase orders did not mention the quantity of the goods supplied and it was only to ensure prompt delivery of goods as and when called upon that BASF India transferred the goods and stocks to its depots, the Karnataka High Court held that the open purchase order would not constitute any contract for sale and

that only the purchase orders issued from time to time for supply of goods would constitute a contract between the parties. Thus, the sales effected pursuant to such purchase orders would be an intra-state sale and not inter-state sale. The relevant portions of the judgment of the Karnataka High Court in **BASF India** are reproduced below:

"3. **Brief facts of the case are, petitioner is in the business of manufacture and sale of automotive paints.** It is a registered dealer under the provisions of K-VAT Act (Karnataka Value Added Tax Act, 2003 - 'K-VAT Act' for short). **Its manufacturing unit is situated near Mangaluru in Karnataka. It has warehouses (Branch offices) in Maharashtra, Tamilnadu, Haryana and Uttarakhand.**

4. Petitioner manufactures automotive paints for original equipment manufacturers and supplies to Tata Motors, Mahindra and Mahindra, Maruti Udyog Ltd., etc., who procure raw materials on just-in-time (JIT) basis. **To cater to their needs, petitioner has developed a business model to ensure that stock is maintained at warehouses located near the factories of OEM Customers.**

5. **Petitioner's case in substance is, after the product is approved by the customers, petitioner receives open purchase orders. Petitioner transfers the stock to its godowns situated near the customer's manufacturing unit and supplies the paint as and when the indent is received.**

17. **The argument of Shri Sridharan in substance, is open purchase orders do not stipulate any specified quantity. Therefore, it cannot be construed as an 'agreement to sell'.** In order to satisfy the requirement under Section 3(a) of the CST Act, there must be inter-state movement of goods pursuant to an agreement to sell or a contract.

18. **Revenue's case is, the open purchase order given by customers is an agreement to sell. The movement of goods occurs from Mangaluru to petitioner's depots situated at various places pursuant to the said agreement.**

Therefore, the transaction is an inter-state sale within the meaning of Section 3(a) of the CST Act.

19. **Thus, the question that falls for consideration is, whether in the facts of this case, inter-state transfer of goods under Form-F to petitioner's depots situated in different states amounts to inter-state sale under section 3(a) of the CST Act?**

35. **Adverting to the facts of this case, the Open Purchase Orders referred to hereinabove, do not mention the quantity of the goods supplied.**

We may record that in order to avoid inventory, manufacturers have been using the 'JIT' (Just in time) supply model. It was argued on behalf of the assessee that to ensure, prompt delivery of the goods as and when called upon, the assessee transfers the goods and stocks it in its depot. Shri Sridharan also urged that the automobile manufacturing Industries nor the ancilliary units had any obligation to place purchase orders. In case the paint had remained unsold, the option for the assessee is to either destroy it or to take it back to its Manufacturing unit.

36. It is not in dispute that goods were transferred from Mangaluru to various depots situated in different States under Form-F and assessments for the years 2006-07 and 2007-08 were concluded by accepting the Statutory declarations filed in Form-F.

37. **In view of the Authorities in the case of Maddala Thathiah and Kelvinator, we are of the considered view that the Open Purchase Orders do not constitute any Contract. The Purchase Orders issued from time to time for supply of goods constituted Contract between parties. Thus, the sale effected pursuant to such Purchase Orders is an Intra-State sale in that**

State. We say so because, whilst Goods were stored in various States, the ownership and title of goods vested with the assessee. Pursuant to the Purchase Orders received from time to time, assessee has delivered the goods from its depot in that State to the respective purchasers."

(emphasis supplied)

34. It would also be pertinent to refer the decision of the Supreme Court in **Kelvinator of India**. Distribution Agreements had been executed between Kelvinator of India on the one hand and Spencer & Co. Ltd., Leonard Refrigerators, and Gem Refrigerators on the other hand.

35. It was sought to be contended by the learned counsel for the appellant in **Kelvinator of India** that the aforesaid three distribution Agreements did not constitute a contract of sale and even otherwise the movement of goods from Faridabad to Delhi cannot be said to have been occasioned by the distribution Agreements. On behalf of the respondent it was contended that the three distribution Agreements constituted a contract of sale which occasioned the movement of goods from Faridabad to Delhi. The Supreme Court accepted the contention advanced by the appellant and held that the sale of refrigerators by the appellant to the three distributors took place at Delhi and that the distribution Agreements did not constitute agreements of sale. This is for the reason that the number of refrigerators which were to be purchased by each of the distributors was not specified in the distribution Agreements, nor did the Agreements contain the price which was to be charged for each refrigerator. Under the Agreement dated 26.04.1965, the appellant undertook to sell and the distributors undertook to purchase the products of the appellant "as mutually

agreed upon from time to time". It is clear that sales by the appellant to the distributors referred to in the distribution Agreement dated 26.04.1965 depended upon future Agreements between the parties from time to time. The mode of dealings between the parties was that subsequent to the distribution Agreements orders have to be placed by the distributors with the appellant after the refrigerators reached the sale office and godown of the appellant in Delhi. It is in this context that the Supreme Court observed:

***** The liability to pay tax under the Act would, however, arise if the sale of the refrigerators to distributors were to take place at Faridabad and the movement of refrigerators from Faridabad to Delhi were to take place under the contract of sale. The question with which we are concerned is whether the appellant entered into such an arrangement with the distributors that the liability to pay tax would be attracted and not the other arrangement under which no such liability could be fastened on the appellant. **So far as this question is concerned, we find that the parties expressly stated in each of the three distribution agreements that it would be in Delhi that the sale of refrigerators would take place to the distributors and the property therein would pass to them. It was again in Delhi that the refrigerators were delivered to the distributors. The orders for the refrigerators were placed by the distributors in Delhi and it was also here that the price of refrigerators was paid. Looking to all the facts of the case, we have no doubt that the arrangement between the parties was that refrigerators would be sold by the appellant to the distributors after they had been transported to the sales office and godown of the appellant on Alipore Road, Delhi so that no liability to pay tax under the Act would arise. It cannot, in the circumstances, be said that the transport of the refrigerators from Faridabad to Delhi was in pursuance of**

contracts of sale between the appellant and the distributors."

(emphasis supplied)

36. The Supreme Court held that the orders which were placed in Delhi by the distributors and the acceptance by Kelvinator of India resulted in the agreement of sale. It is seen that though the Agreements under consideration before the Supreme Court in **Kelvinator of India** were more specific, but still the Supreme Court held that they would not amount to contract of sale. The decision of the Supreme Court in **Kelvinator of India** would clearly apply to the facts of the present case.

37. The Central Sales Tax Appellate Authority in **Northern Coal Field** also observed as follows:

"17. There is one more aspect to be considered. Though the revisional authority and the Appellate Board have not specifically referred to the agreements with power houses. It is one of the points on which the proposal for revision was sent by the Divisional Deputy Commissioner, Satna. We have perused the basic terms of the agreement by which the holding company, i.e., Coal India Limited provide linkage to certain power houses such as NTPC and Hindalco. **These agreements only provide a broad framework for making supplies of coal from time to time from various sources. They cannot be construed to be agreements to sell particular quantities from particular mines within specified time. The actual agreements of sale emerge when the order placed by the concerned power house is accepted and acted upon by the appellant.** The agreement itself cannot be said to have triggered the inter-State movement of goods from M.P. Dudhichua (West) mine to U.P. Dudhichua (East) or some other destination."

(emphasis supplied)

38. The learned senior counsel for the State of Rajasthan, however, placed reliance upon the decisions of the Supreme Court in **English Electric Company of India Ltd. vs. The Deputy Commercial Tax Officer and others**²⁵, **Commissioner, Delhi Value Added Tax vs. ABB Limited**²⁶ and **Sahney Steel** to contend that inter-state sale had taken place.

39. In **English Electric**, the Supreme Court observed:

"9. **The sale as well as the movement of the goods from Madras to Bhandup at Bombay was a part of the same transaction. The movement of the goods from Madras to Bhandup was integrated with the contract of sale for the following reasons.** The Bombay branch received the Bombay buyer's order and sent the same to the Madras branch factory. When the Bombay buyer asked for quotation of prices the Bombay branch wrote to the Madras branch and gave all the specifications and stated that the goods were for the Bombay buyer. The Madras branch in reply referred to the order of the Bombay buyer and gave particulars mentioning that the price was F.O.R. Madras. The Bombay branch thereafter wrote to the Bombay buyer reproducing all the particulars, conditions of sale and mode of dispatch as stated by the Madras branch and further stated that the goods would be manufactured at the Madras branch factory.

15. The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhandup, Bombay. The railway receipt was in the name of the Bombay branch to secure payment against delivery. There was no question of diverting the goods which were sent to the Bombay buyer. When the movement of goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale.

25. (1976) 4 SCC 460

26. (2016) 6 SCC 791

It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

16. **When a branch of a company forwards 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 the 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 representatives 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 coordination with the Madras factory show that the Bombay**

branch was merely acting as the intermediary between the 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)

40. The aforesaid decision of the Supreme Court in **English Electric** would not come to the aid of the State of Rajasthan. It is seen that the Bombay buyer wrote to the Bombay branch of the appellant asking for lowest quotation. The factory of the appellant was situated in Madras. The buyers order was sent by the Bombay branch to the Madras branch, which quoted the price FOR Madras. The Bombay branch then wrote to the Bombay buyer quoting the FOR Madras price and also informed that the delivery would be ex-works Madras. The Bombay buyer then placed an order with the Bombay branch. The Bombay branch instructed its Madras factory to dispatch the goods directly to the buyers and the goods were then sent to the buyer under these instructions. It is in this context that the Supreme Court held that the movement of the goods from Madras to Bombay was part of the same transaction. The Supreme Court, therefore, held that the Bombay branch merely acted as an intermediary between the Madras factory and the buyer.

41. In **ABB Limited**, the Supreme Court observed:

"10. On facts, therefore, it was rightly held by the High Court that the inter-State movement of goods was within the contemplation of the parties and it can be reasonably presumed that such movement was to fulfil the terms of the

contract and therefore the transaction was covered by Section 3(a) of the CST Act. The law on this issue was also considered by the High Court in correct perspective after noticing the case of TISCO Ltd. v. S.R. Sarkar (AIR 1961 SC 65) that where the goods moved from one State to another as a result of a covenant in the contract of sale it would be clearly a sale in the course of inter-State trade. The conclusion of the High Court on this issue also finds ample support from the following case laws which were noticed by the High Court in (1) Oil India Ltd. v. Supt. of Taxes (1975 SCC (Tax) 167), (2) English Electric Co. of India Ltd. v. CTO (1977 SCC (Tax) 23) and (3) South India Viscose Ltd. v. State of T.N. (1981 SCC (Tax) 245)”

(emphasis supplied)

42. It is seen that in **ABB Limited** it was found as a fact that inter-state movement of goods was within the contemplation of the parties and it could reasonably be presumed that such movement was to fulfill the terms of the contract.

43. The judgment of the Supreme Court in **Sahney Steel** was considered by the Allahabad High Court in **Central Distillery and Breweries** and distinguished.

44. The Rajasthan Tax Board has also found it to be inter-state sale because the goods were labeled with the requisite excise labels.

45. The mere fact that the goods are labeled does not conclusively establish that there is an inter-state movement of the goods under the Master Agreement. Under clause 7.5 of the Liquor Policy, all suppliers are required to fix the excise labels which is a requirement under the State Excise Law. Such a requirement is for all supply of liquor, whether it is on an inter-state basis or local. In this connection, reliance can be

placed on the judgment of the Madras High Court in **Indian Duplicators Ltd. vs. State of Tamil Nadu**²⁷, wherein it was held:

"The mere fact that the mark "Government of Andhra Pradesh 1972-73" was found on the duplicating ink tubes would not necessarily lead to the conclusion that there was a completed transaction of sale by the appellant in Madras by the appropriation of the goods towards any contract. The marking at best would indicate that the goods were intended for a person who had entered into a contract of purchase with the branch office in Andhra Pradesh. That would not either finally or conclusively determine the question as to the nature of the transaction for, the mere marking of the name of the purchaser on the consignment when the lorry receipt under which they were despatched stood in the name of the branch office would not, by itself, be sufficient to prove or establish a contract of sale between the appellant and the Government of Andhra Pradesh."

(emphasis supplied)

46. It would now be appropriate to examine the facts of the present case in the light of the provisions of the Liquor Policy, the Master Agreement, and the License issue to the appellants.

47. As noticed above, the appellants manufacture beer at the breweries in the State of Rajasthan. The State of Bihar and the State of Jharkhand have created Corporations to facilitate and regulate retail sale of beer in their States.

48. Under the **Liquor Policy**, the Corporation is the wholesaler for all kinds of liquor, including beer. A manufacturer desirous of supplying beer to the Corporation for subsequent distribution shall have to submit documents, including the Master Agreement. The Corporation issues

27. 1984 SCC Online Mad 349

OFS on the depots of Carlsberg in the State of Bihar based on the stock requirements of the Corporation, but the Corporation has the right to decide the quantity for which OFS can be issued and the Corporation is also under no obligation to procure any specified minimum quantities of any brand of beer during the currency of the contract. This apart, the Corporation is not under any legal compulsion to procure all or any brand produced by the manufacturer simply because they have signed the Master Agreement. The OFS indicates the validity date within which the manufacturer has to complete the delivery and if the manufacturer does not supply the entire quantity indicated in the OFS within the validity period, the order for the remaining quantity lapses automatically. The stocks have to be delivered at the concerned depots of the Corporation at the cost and risk of the manufacturer. Any delivery that deviates from the OFS is not acknowledged by the Corporation and would not be unloaded at the depots. What is important to note is that the supply to the Corporation against an OFS is considered under clause 10.1 of the Liquor Policy as an agreement to sell under section 4(3) of the Sale of Goods Act. The Corporation has also to take necessary care of the stored stock but any stock of beer lying unsold for a period of over six months from the date of bottling or from the date the stocks are declared unfit for human consumption at the depot, has to be drained out by the Corporation. The Corporation pays the manufacturer only for the stocks sold. The manufacturer has to pay VAT as per the provisions and rates applicable in the Bihar VAT.

49. The **Master Agreement** provides that the quantity of beer to be procured and distributed shall be determined by the Corporation from time to time keeping in view the demand of beer supplied by the manufacturer. The manufacturer has to bottle, seal, pack, load,

transport, unload and stock the beer at the depots of the Corporation at its cost and risk. The manufacturer has also to deliver the liquor in good condition within such time and at such depots as may be specified by the Corporation. Delivery by the manufacturer has to be in line with the OFS placed by the Corporation and shall be completed within the period specified by the Corporation. The Corporation has to specify the quality of beer to be delivered and the manufacturer has to adhere to such quality specification. The Corporation also has the right to forthwith terminate any or all OFS placed on the manufacturer and forfeit the deposits on certain conditions. The manufacturer has to deliver the beer at a price indicated by the Corporation but payment for the beer delivered shall be made only after the disposal of beer.

50. Clause 5A of 19C **License** requires Carlsberg to maintain minimum stock of liquor at its depots as prescribed by the Commissioner from time to time and to recoup within 7 days in case the stock goes below the minimum limits.

51. The decision of the Allahabad High Court in **Central Distillery and Breweries**, notices that though the manufacturing unit of the revisionist was situated at Meerut in the State of Uttar Pradesh but as it was required to maintain a buffer stock of atleast two trucks without any guarantee of any purchase by the Delhi Administration, it established a warehouse at Delhi from where liquor would be supplied as and when the Delhi Administration placed orders. The movement of the goods from Meerut in the State of Uttar Pradesh to Delhi was, therefore, held not to be in pursuance of any transaction of sale. The sale, it was held, took place only at Delhi when an order was actually placed by the Collector of Central Excise, Delhi. The High Court, therefore, concluded that the Agreements did not bring about any sale.

52. The Karnataka High Court in **BASF India** noticed that manufacturing unit of the petitioner was situated in the State of Karnataka but it had warehouses in the States of Maharashtra, Tamil Nadu, Haryana and Uttarakhand. The writ petitioner had contended that after it received purchase orders, it transferred the stock to its godowns near the manufacturing unit of the customers and supplied the paint as and when the indent was received. The Karnataka High Court, in such circumstances, held that the purchase orders issued from time to time for supply of goods actually constituted a contract between the parties and thus the sale effected pursuant to such purchase orders was an inter-state sale in that State. The movement of goods from the State of Karnataka to where the manufacturing units of the buyers was situated was, therefore, held not to be because of the open purchase order.

53. In **Kelvinator of India**, the Supreme Court examined the three distribution Agreements executed between Kelvinator of India and the buyer companies. The Supreme Court accepted the contention advanced by Kelvinator of India that the sale of refrigerators by it to the three distributors took place at Delhi and that the distribution Agreements did not constitute agreements of sale since the number of refrigerators which were to be purchased by each of the distributors was not specified in the distribution Agreements, nor did the Agreements contain the price which was to be charged for each refrigerator. Under the Agreements, Kelvinator of India undertook to sell and the distributors undertook to purchase the products "as mutually agreed upon from time to time". Thus, sales by Kelvinator of India to the distributors depended upon the future Agreements between the parties from time to time. The mode of dealings between the parties was that subsequent to the distribution Agreements, orders would be

placed by the distributors with Kelvinator of India, after the refrigerators reached the sale office and godown of Kelvinator in Delhi.

54. In the present case, in terms of the Liquor Policy of the State of Bihar, the Corporation is under no obligation to procure any specified minimum quantities of beer. The Corporation issues the OFS on the local depots of the appellants situated in the State of Bihar for supply of specified quantity of beer. The OFS have a validity period within which the goods are required to be delivered to the Corporation. Clause 10.1 of the Liquor Policy clearly provides that the supply of beer to the Corporation against OFS shall be construed as an agreement to sell under section 4(3) of the Sale of Goods Act. Clause 5A of the License also requires Carlsberg to maintain a minimum stock of liquor at its depots in the State of Bihar as prescribed by the Corporation from time to time and to recoup the stock within seven days in case it goes below the minimum limits. Carlsberg is, therefore, justified in asserting that in order to comply with the requirement of maintaining a minimum stock at the local depots in the State of Bihar and also to ensure the delivery of beer to the Corporation within the validity period prescribed in the OFS, it has to effect inter-state stock transfer of beer from its factory in the State of Rajasthan to its depots in the State of Rajasthan from time to time through Form-F, depending on estimation of market demand and that it is only when OFS is placed by the Corporation on the depots of the appellants in the State of Bihar that the goods are sold. Thus, it is the OFS that concludes the contract of sale between Carlsberg and the Corporation. The movement of goods from the State of Rajasthan to the depots of Carlsberg in the State of Bihar, therefore, cannot be said to have been occasioned by reason of any sale agreement. The

appellants treated the sale from its depots in the State of Bihar to the Corporation in the State of Bihar as sale and paid local VAT.

55. There can, therefore, be no manner of doubt that the movement of goods from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants in the State of Bihar or the State of Jharkhand was not occasioned by any prior contract of sale or agreement to sell. The appellants had merely stock transferred beer from the manufacturing units of the appellants situated in the State of Rajasthan to the depots of the appellants situated in the State of Bihar or the State of Jharkhand. The movement of goods did not occur from the State of Rajasthan to the State of Bihar or the State of Jharkhand pursuant to the Master Agreement or the Liquor Policy.

56. The learned senior counsel for the State of Rajasthan is, therefore, not justified in placing reliance on clause 2 of the Master Agreement and clause 3.1 of the Liquor Policy to contend that the movement of goods was occasioned as a result of the Master Agreement and so would result in an inter-state sale.

57. As noticed above, clause 2 of the Master Agreement deals with delivery. Clause 2.1 specifies the manner in which the beer is to be stacked and delivered to the depots of the Corporation. It provides that the appellants will be liable to bear the cost and risk towards loading, transporting, unloading and stacking liquor at the depots of the Corporation and the Corporation will not be liable for any transit risk. Clause 2.2 provides that the beer should be delivered in good condition within such time and at such depots of the corporation as specified by the Corporation. Clause 2.3 talks of transit loss, while clause 2.4 provides that the delivery shall be required to be made in terms of the OFS to be placed by the Corporation. It is, therefore, clear that the time

and place of delivery of the stock of beer has been left unspecified. The delivery of beer has also been left open for the parties to determine from time to time. None of the clauses of the Master Agreement contemplate manufacture and delivery of liquor to the depots of the Corporation from outside the State of Bihar. The clauses merely discuss the manner in which the goods are to be delivered at the depots of the Corporation and issues incidental to it. In fact, there is no reference to the manufacturing activity undertaken by the appellants. The Master Agreement merely grants an option to the Corporation to purchase goods at a subsequent date as and when required by the Corporation. The Corporation does not actually purchase or agree to purchase beer from the appellants under the Master Agreement. If the Corporation does not place OFS on the appellants, the latter cannot sue the Corporation for damages because the Master Agreement has not been breached. There is no binding obligation that the Corporation has to purchase the goods under the Master Agreement. The Master Agreement, therefore, cannot be treated to be an agreement to sell. It would, in fact, be in the nature of a standing order or a tender which does not amount to a sale or an agreement to sell. It is, therefore, clear that none of the clauses of the Master Agreement contemplate or refer to any inter-state delivery of the goods from the State of Rajasthan to the State of Bihar or the State of Jharkhand. The movement of goods cannot also be considered incidental to the Master Agreement. Reliance placed by the Rajasthan Tax Board and the learned senior counsel for the State of Rajasthan on clause 2 of the Master Agreement to justify that the movement of goods occurred incidental to the Master Agreement, is not correct.

58. The matters pertaining to United Breweries and Mount Shivalik are similar.

59. It will, therefore, not be possible to sustain the order dated 24.11.2014 passed by the Rajasthan Tax Board. It is, accordingly, set aside and all the fourteen appeals filed by Carlsberg, United Breweries and Mount Shivalik are allowed.

(Order pronounced on **21.10.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Golay, Shreya