

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 01 OF 2017

(Arising order out of dated 22.09.2016 passed by the Maharashtra Sales Tax Tribunal, Mumbai in VAT Appeal Nos. 1074-1076/2014, VAT Appeal No. 657/2015, VAT Appeal No. 332/2014 and VAT Appeal No. 76/2013)

State of Maharashtra

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

....Appellant

VERSUS

M/s. CMS Computers Ltd.

CMS Lake Road Centre 70,
Lake Road,
Kaycee Industries Compound,
Bhandup (W), Mumbai - 400078

....Respondent

WITH

CST/02/2017 CST/03/2017 CST/04/2017 CST/05/2017

AND

CST/06/2017

APPEARANCE:

Ms. Rama Ahluwalia, Advocate for the Appellant

Shri Rahul S. Thakkar, Advocate for the Respondent

CORAM:

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

Date of Hearing: 26.07.2024

Date of Decision: 03.01.2025

FINAL ORDER NO's. 50003-50008/2025

JUSTICE DILIP GUPTA:

The State of Maharashtra has filed these six appeals to assail the order dated 22.09.2016 passed by the Maharashtra Sales Tax Tribunal¹

1. the State Tribunal

by which the six appeals filed by M/s. CMS Computers Ltd., Mumbai² under section 18A of the Central Sales Tax Act, 1956³ have been partly allowed. The appeals had been filed before the State Tribunal against the orders of assessment passed by the Deputy Commissioner of Sales Tax⁴ disallowing the claims of branch transfers by CMS Computers under section 6A of the CST Act and holding that inter-state sale had taken place, which would be leviable to tax under the CST Act with interest and penalty.

2. It needs to be noted that the State Tribunal set aside the order of the Assessing Officer in regard to two categories of transactions and allowed the branch transfer claim of CMS Computers. However, in regard to the third category of transaction, the State Tribunal remanded the matter to the Assessing Officer to examine the issue afresh in the light of the observations made in the order.

3. CMS Computers claims to be a dealer in computer systems and peripherals and also carries out manufacturing, trading, leasing and works contract activity across India. The case set up by CMS Computers is as follows:

- (i) It had filed regular returns under the provisions of the Maharashtra VAT Act, 2002⁵ and the CST Act in the State of Maharashtra. In the returns filed under the CST Act, it claimed stock transfer of goods, other than by way of sale under section 6A of the CST Act which would not be leviable to central sales tax in the State of Maharashtra;
- (ii) The said CST returns were taken up for assessment by the Assessing Officer in the State of Maharashtra. During the

2. **CMS Computers**
 3. **the CST Act**
 4. **the Deputy Commissioner**
 5. **the MVAT Act**

assessment proceedings, CMS Computers produced Form-F and dispatch proofs to support its claim of stock transfer under section 6A of the CST Act;

- (iii)** Despite producing Form-F and dispatch proof in support of the claims of branch transfer, the Assessing Officer passed the assessment orders under the CST Act for the period from 2005-2006 to 2010-2011 allowing only partial claim of branch transfers and levying central sales tax on the disallowed turnover of the branch transfers;
- (iv)** The assessment orders disallowed the stock transfer claims mainly on the following:
 - (a)** Maintenance material for consumption in Annual Maintenance Contract;
 - (b)** Consumables for printing and card personalization;
 - (c)** Trading/resale of servers and computers; and
 - (d)** Trading/resale of printers and networking items.
- (v)** Thus, CMS Computers was assessed for the period from 2005-2006 to 2010-2011 under the CST Act;

4. Against the above disallowance of branch transfers, CMS Computers filed appeals before the State Tribunal under section 18A of the CST Act. The State Tribunal, by a common order dated 22.09.2016, allowed the appeals in respect of two categories of transaction and in respect of the third category of transaction remanded the matter to the Assessing Officer for re-determination of stock transfer in the light of the directions given in the order.

5. The stock transfer claims of CMS Computers which were allowed and which were remanded by the State Tribunal are as follows:

S. No.	Disallowance of stock transfer by the Deputy Commissioner under following heads	Turnover of six years (in Rs.)	Decision of the State Tribunal	Reason for allowing/remanding claim of stock transfer
1.	Maintenance material for consumption in the Annual Maintenance Contract	12,23,23,096/-	Allowed as stock transfer under section 6A of the CST Act	The movement is not pursuant to Annual Maintenance Contract. Even if the branch requisitions a part not in its inventory from CMS Computers, the movement is without any covenant in the agreement and will be an internal transfer between CMS Computers and its branch
2.	Consumables for printing and card personalization	23,57,64,125/-	Allowed as stock transfer under section 6A of the CST Act	If standard goods are merely transferred inter-state without there being any covenant for such inter-state movement in the contract and used in execution of works contract, it will be a local sale in the State of execution of works contract.
3.	Trading/resale of servers, computers	8,31,52,930/-	Remanded to the Assessing Officer	The Assessing Officer to verify documents such as lorry receipts/ dispatch proof to determine whether the movement is against any pre-existing order and re-determine the allowability of stock transfer.
4.	Trading/resale of printers and networking items	5,60,00,672/-	Remanded to the Assessing Officer	The Assessing Officer to verify documents such as lorry receipts/ dispatch proof to determine whether the movement is against any pre-existing order and re-determine the allowability of stock transfer.

6. It is against the aforesaid order of the State Tribunal that the present appeals have been filed by the State of Maharashtra.

7. It is seen that the decision of the State Tribunal relates to three matters, namely, maintenance material for consumption in the Annual

Maintenance Contract; consumables for printing and card personalization; and trading/resale of servers, computers, printers and networking items. The State Tribunal has treated the first two as stock transfers and has granted relief to CMS Computers, while the third category has been remanded to the assessing officer for a fresh decision in the light of the observations made in the order.

8. It would, therefore, be necessary to examine these three heads separately.

A

Annual Maintenance Contract

9. The State Tribunal has examined the Annual Maintenance Contract for hardware items executed between the Life Insurance Corporation of India and CMS Computers. The relevant portions of the Annual Maintenance Contract are reproduced below:

**"Annual Maintenance Contract for Hardware items
for the year 2008-09**

This agreement is made for Annual Maintenance Contract for all LIC offices throughout India between the Life Insurance Corporation of India, Central Office, IT Department, JEEVAN SEVA ANNEXE, S.V. ROAD SANTACRUZ (W), MUMBAI – 400 054, hereinafter referred to as LIC, the customer of one Part and CMS COMPUTERS LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered office at 201, Arcadia, Nariman Point, Mumbai – 400 021, hereinafter referred to as "Vendor" which expression shall include its assigns and successors of the second Part.

TERMS AND CONDITIONS OF THE AMC 2008-2009

I. Nature of AMC

(1) *****

(2) *****

(3) *****

(4) The vendor has to carry out on-site comprehensive maintenance of the Computer Systems excluding LCD Projectors (Systems include Servers PC's, Thin Clients, all printers including Line Printers and Laserjet Printers, Inkjet Printers, MFPs & DMPs, Scanners, Laptops, Switches and all other peripherals)

(5) All the tools, test equipments and fixtures etc. (if any) required for the on-site comprehensive maintenance of equipments, shall be provided by the AMC Vendor.

(6) During the AMC period, the Vendor will be required to keep the system in 100% working condition. The vendor will attend to all breakdown calls reported for the Equipment/Systems and rectify problems thereof and replace the faulty components of the systems with serviceable components.

(7) The Vendor will have to hand over the system in 100% working condition on the termination or end of the Contract. Any Breakdown call that has been reported before the termination of the Contract will have to be rectified by the Vendor before handing over the systems to LIC.

(8) *****

(9) *****

II. Repair outside the Office Premises

III. Technical Support:

IV. Preventive Maintenance (PM):

V. Support for Upgradations/Feasibility Support:

VI. Third Party Maintenance:

IX. Exclusion of certain parts from AMC

(a) The AMC is on comprehensive basis and ALL PARTS will be covered under AMC except the following:

- (1) Print head & print cartridges for Dot Matrix Printers
- (2) Toner cartridges and drum for laser printers
- (3) Ink Ribbons, Print Bands and spools for Line Printers.
- (4) Laptop Battery.

XII. List of items under AMC

- The Manager (IT)/RM (IT)/Secretary (IT) CO, as the case may be, will communicate to the Vendors, details about the systems to be covered under AMC at the respective offices
- The Vendors should maintain proper Inventory of various systems provided and/or maintained by them at various locations. A copy of such Inventory under AMC reflecting the hardware cost and the Quarterly Maintenance charges payable to the Vendor shall be submitted by the Vendor along with the Invoice. This will be subject to verification by Central Office/Zonal Office/Divisional Office as the case may be.
- On demand from the Vendor, LIC's Zones/Divisions would supply the list of Hardware that would get replaced, and hence will go out of the purview of the AMC, after release of Pos for replacement of Hardware. However, Zones/Divisions will not give the exact time-frame for removal as that will depend on the Hardware supply by the current year's hardware Vendor.

XIII. Terms of Payment

1. In case original hardware vendors are awarded the AMC, for all Systems (excluding ICD Projectors) coming out of warranty, or already under AMC, the Annual Maintenance Charges will be payable @ 8% of hardware cost of the systems. The hardware cost will be taken at the basic price approved by Central Office. Systems include Servers, PCs, Thin Clients, all printers including Line Printers, Laserjet Printers, Inkjet Printers, MFPs & DMPs, Scanners, Laptops, Switches and other peripherals and other peripherals. Software Cost if mentioned separately, Taxes, Octroi etc are not to be included in the cost while calculating the AMC.
2. If LIC opts for a third party vendor, the AMC will be payable @ 8% of hardware cost of the systems. The hardware cost will be taken at the basic price approved by Central Office subject to all the other conditions stated in this Contract.
3. Quarterly Maintenance Charges (QMC) will be paid by the respective Zones/Divisions after the expiry of each quarter.
4. The Vendors are required to submit Invoices along with the PM reports to the respective Divisional, Zonal, Central Office for claiming the QMC payable.
5. The maintenance charges for equipment coming out of warranty during the validity of the AMC will be on pro-rata basis.
6. For claiming the quarterly maintenance charges (QMC) the vendor should submit Preventive Maintenance (PM) reports for individual machines (as per "Annexure-A"). It is mandatory that both the service engineer as well as the user should complete and sign the PM report. Reports received incomplete in any respect shall be treated as PM not done.

12. Penalties in addition to the Breakdown charges are summarized as under:

Condition not satisfied	Penalty
If PM is not done for a particular quarter	20% of the QMC for those machines will be deducted
If minimum number of resident engineers, as envisaged in point VIII- 'Density of Service engineers' above, are not available during the quarter and or contact details of one or more engineers not provided at the beginning of the quarter. The availability of the number of service engineers would be reckoned on the 'basis of the daily login to the hardware complaint tracking module by the Vendor's service engineers.	Penalty of 10% of quarterly AMC will be deducted
Vendor not making the spares available as envisaged in VII- 'Stocking of Spares/Immediate replacement of faulty parts/equipment'.	5% of total breakdown penalty in addition to the regular breakdown charges will be deducted.
If Vendor's Zonal Account Manager for LIC does not plan/attend Monthly meetings with RM (IT)	A penalty of Rs. 1000/- for every monthly meeting not attended will be deducted from the QMC payable by ZO for Hardware in respect of Zonal Office subject to a maximum of 5% of QMC payable for that quarter.
If Contract details changes in service engineers and escalation matrix upto 3 levels is not provided by the Vendor as per clause X(i)	0.5% of QMC payable by ZO for Hardware in respect of Zonal Officer or Rs. 2000/- whichever is more
If Stand-by equipment not provided	Penalty as per the Breakdown charges defined in the AMC Contract will be applicable."

(emphasis supplied)

10. The State Tribunal examined the aforesaid Annual Maintenance Contract and after considering the submission advanced held as follows:

“16. **From this agreement, it will be seen that though the agreement is between Appellant at H.O. and H.Q. of LIC at Mumbai, the Appellant is required to maintain inventory at branch level and the norms of such inventory are specified i.e. the quantum of that part which is consumed in the corresponding quarter in the previous year.** The Appellant may maintain such inventory by making local purchases at branch level or by dispatches from H.O. or from any other branch offices. **There is no clause in the agreement that spare parts replaced will be invoiced separately and they are covered by the AMC agreement itself.** Hence the remark of the Assessing Officer in the assessment order regarding AMC “the details of purchase order placed by the customer is also submitted by the dealer and appears on most of the stock transfer notes” is not understood as there is no separate agreement for purchase of parts, it will be outside AMC which should be decided as normal sale and purchases. **Apart from AMC agreement, no such purchase order and corresponding dispatches have been pointed out by the department. The condition of maintaining adequate inventory and such inventory being notified to the customer is contrary to the premise that movement of goods as a result of agreement moves from the Appellant H.O.**

17. In English Electrical, South India Viscose, Hyderabad Engineering cases relied on the Assessing Officer, there was an agreement to sell. Here there is no agreement to sell and it is not certain if the sale will take place in future and if so, of what part. The goods are standard components, much less tailor made as in case of Sahaney Steel and K.G. Khosala cited above. **Even if some goods are supplied as a result of AMC agreement, there is no covenant that goods will move from other State and even if they move from Appellant in this State, the movement is not as a result of sale or purchase as AMC contract itself does not envisage separate purchase but only maintenance by replacement.** Even if the branch requisitions a part not in its inventory from the Appellant, yet this movement is without any covenant

in the agreement and will be internal between Appellant and his branch.

18. We do not therefore agree with the view that there is interstate sale in the AMC agreement entered into by Appellant with the customer."

(emphasis supplied)

11. Ms. Rama Ahluwalia, learned counsel for the State of Maharashtra, submitted that when the name of the customer in whose favour the consumables will be used at the branch office is given in the stock transfer note, it clearly implies that the transfer of the consumables to be used in the Annual Maintenance Contract is as a result of a pre-existing order and thus central sales tax has been correctly levied by the Assessing Officer. In support of this contention, learned counsel placed reliance upon the following decisions:

- (a) Hyderabad Engineering Industries vs. State of Andhra Pradesh⁶;**
- (b) English Electric Company of India Ltd. vs. The Deputy Commercial Tax Officer and others⁷;**
- (c) Oil India Ltd. vs. The Superintendent of Taxes and others⁸;**
- (d) Commissioner of Commercial Taxes, Hyderabad vs. Desai Beedi Company, Andhra Pradesh⁹;**
- (e) The State of Tamil Nadu vs. M/s. Sun Paper Mill Ltd., Cheranmahadevi¹⁰; and**
- (f) Electric Construction and Equipment Co. Ltd. vs. State of Haryana¹¹**

12. Shri Rahul S. Thakkar, learned counsel appearing for the respondent CMS Computers, however, defended the order passed by the State Tribunal and made the following submissions:

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- 6. (2011) 4 SCC 705**
 - 7. (1976) 4 SCC 460**
 - 8. (1975) 1 SCC 733**
 - 9. (2015) 17 SCC 13**
 - 10. 2009 SCC Online Mad 433**
 - 11. 1989 SCC Online P&H 1448**

- (i) CMS Computers stock transfers parts to its branches on the basis of its own assessment of requirement in order to keep a minimum stock of the consumables in the respective branches. The material so stock transferred is always 100% in the nature of consumables and the material that is transferred to the branch is to replenish the buffer stock. The parts that are sent can be used by the branch office for maintenance of the machines of the customers. Thus, the Annual Maintenance Contract does not envisage movement of goods from one State to another;
- (ii) Some of the stock transfer notes may have the names of the customers, but this is for the internal purpose only. In support of this contention learned counsel placed reliance upon the decision of the Supreme Court in **Tata Engineering & Locomotive Co Limited vs. Assistant Commissioner of Commercial Taxes and another**¹²; and
- (iii) The findings recorded by the State Tribunal are based on a correct reading of the Annual Maintenance Contract and the stock transfer notes and do not suffer from any infirmity.

13. The submissions advanced by the learned counsel for the State of Maharashtra and the learned counsel for CMS Computers on this issue have been considered.

14. The issue involved in all these appeals relates to the demand of central sales tax on the movement of goods i.e. consumables from the head office of CMS Computers situated in the State of Maharashtra to

12. (1970) 1 SCC 622

the branches in other States. According to the State of Maharashtra, the movement of goods is on account of inter-state supply of goods, while according to CMS Computers, the movement of goods is on account of inter-state stock transfer.

15. 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."

16. The provisions of section 3 of the Central Sales Tax Act were examined by the Supreme Court in **Hyderabad Engineering** and the relevant portion of the judgment is 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.

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)

17. 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.

18. 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).

19. It is seen that CMS Computers has clients at various places in the country. It undertakes an Annual Maintenance Contract for the maintenance of computers, scanner and printers. To appreciate the contentions that have been advanced, it would be appropriate to examine the relevant clauses of the Annual Maintenance Contract. It reveals that though the contract has been executed by the head office of CMS Computers and the Life Insurance Corporation of India, but CMS Computers is required to carry out onsite comprehensive maintenance of the computer systems and all the tools, test equipment and fixtures required for the onsite comprehensive maintenance of equipments have to be provided by CMS Computers. During the period of Annual Maintenance Contract, CMS Computers has to keep the systems in 100% working condition by rectifying the problems and replacing the faulty components. In order to ensure that the systems are kept 100% working during the period of the Annual Maintenance Contract, it is

necessary for CMS Computers to ensure that all the parts are kept in store at the branch level from where the calls are attended. It cannot be said from a perusal of the Annual Maintenance Contract that after a fault has been identified, the spare parts are purchased from the head office. CMS Computers is obliged under the said contract to maintain adequate inventory for this purpose. The contract does provide for maintaining sufficient stock of hardware based on data of past years so that there is no down time. The contract also does not provide that this stock has to be procured on inter-state basis only, for the stock can be procured locally also. According to CMS Computers, it ordinarily keeps that much of "minimum order level" buffer stock at its branches as is sufficient to last for a period of thirty to forty-five days and the materials to the branch are transferred to replenish the buffer stock. The buffer stock is used by the branch offices for the annual maintenance requirements. The parts so sent can be used by the branch offices for maintenance of the machines of the customers. Thus, the movement of spares from the State of Maharashtra to other States is not pursuant to the Annual Maintenance Contract, nor is the movement of goods an incidence of the Annual Maintenance Contract. Some of the stock transfer notes may have the names of the customers, but that is only for internal purposes. If standard goods are continuously and in a routine manner transferred to a branch situated in other States, irrespective of any particular order received by the branch, then such transactions have to be treated as branch transfer transactions.

20. In this connection, reference can be made to the decision of the Supreme Court in **Tata Engineering Locomotive**. The appellant was

carrying out business of manufacturing trucks at Jamshedpur in the State of Bihar. The appellant maintained stockyard in different States for the purpose of more effective distribution of the vehicles to the dealers. The sale of the vehicles to the dealers was affected as well as to other users in different States from the stockyards. An issue arose as to whether sale took place in different States where the stockyards were situated. The Supreme Court noticed that the sales office of the appellant in Bombay instructed the Jamshedpur factory to transfer vehicles to the stockyard in various States after taking into consideration the requirement of customers in various States. The stocks at the stockyards were distributed to the dealers from time to time. The Supreme Court found that the transfer of vehicles from the factory to various stockyards was a continuous process and was not related to the requirement of any particular customer. The stockyard appropriated the vehicles to the contract of sale out of the stocks available with it. Until such appropriation was made, the vehicles could be sold to any customers and, therefore, it was concluded that the transaction of sales of vehicles cannot be treated as inter-state sale from Jamshedpur factory but they were local sale in the State where the stock yards were located.

21. It needs to be noted that the Annual Maintenance Contract in the present case, does not speak about specific goods that are to be replaced or sold. Some of the spares may be replaced depending on the inspection report, while some parts may not be replaced at all and only repairing or servicing may have to be carried out under the contract.

22. Learned counsel for the State of Maharashtra has, however, placed reliance upon the decision of the Supreme Court in **English**

Electric and the portions on which reliance has been placed are reproduced below:

"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)

23. The aforesaid decision of the Supreme Court in **English Electric** would not come to the aid of the State of Maharashtra. 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.

24. Learned counsel for the State of Maharashtra also placed reliance upon the following paragraphs of the judgment of the Supreme Court in

Hyderabad Engineering:

"13. It is further submitted that the assessing authority was not justified in relying on the letters of allocation issued by UIL as a contract of firm commitment for purchase of goods manufactured by the assessee. According to Shri Bagaria, the letters of allocation issued by UIL cannot be construed to be a contract of firm commitment to purchase the goods manufactured by the assessee and those letters of allocation were mere forecast of UIL's estimate of their requirements. It is further contended that there was no firm commitment on the part of UIL to purchase specific number of specified varieties of fans and for that matter the assessee had not allotted any specific

number of specified varieties of fans in favour of UIL at the time the goods manufactured by the assessee were being transferred from their factory to their godowns.*****

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.**

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'.

47. We have already noticed the relevant clauses in the 'sales agreement'. A close reading of the clauses would clearly indicate that the parties have agreed to discharge certain obligations cast on them under the agreement. The agreement provides for the products to be supplied, sales zone, to organize sales and service for UIL to make purchases and sell products as an independent principal, selling prices to be informed from time to time, payments against purchases to be made within a particular time and the goods to be delivered to UIL either at the assessee's factory or at its regional godowns. **Clause 8 of the agreement, if it is read with other clauses, makes it clear that there**

is stipulation for the movement of the goods from the factory to the godowns situated in different places to be delivered to UIL. It is because of these covenants, the assessee is obliged to move the goods from its factory to the godown situated in other States to fulfill its part of the contract.

49. Shri Bagaria contends that the assessee has received only 'allocations' in the nature of market or distribution forecasts and such allocations are neither in the nature of indents nor orders and the assessee never accepted such allocations letter sent by UIL. It is further submitted that except in few instances, the actual dispatches of the goods to its godowns never tallied with the allocations letter sent by UIL. Therefore, such allocations letter cannot be construed as "firm orders". Therefore, the transactions cannot be brought within the purview of inter-State trade or commerce to attract charging provisions under the Central Act.

50. In our view, though the ultimate purchaser UIL placed orders for a particular quantity of goods to be supplied, the assessee did not supply the actual quantity indented for. We do not, however, think that this makes any difference to the application of Section 3(a) of the Central Act. In our view, it does not matter how much goods were delivered to the branch office which just acted as a conduit pipe before it ultimately reached the purchaser's hands. All that matters is that movement of the goods is in pursuance of the contract of sale or as necessary incident to the sale itself. Further, the sales agreement is for a period of five years. If there is short supply of the goods than what was indented for, then the same could be adjusted in the subsequent dispatch. Therefore, to contend that there was no firm order placed by UIL with the assessee and accordingly, it would not come within the purport of Section 3(a) of the Central Act and they are mere branch transfers, cannot be accepted."

(emphasis supplied)

25. Paragraph 47 of the aforesaid judgment of the Supreme court in **Hyderabad Engineering** interprets clause 8 of the Agreement and provides that if this clause is read with other clauses of the Agreement then it would mean that there is a stipulation for the movement of goods from the factory to the godowns in different States to be delivered and it is because of these covenants that the assessee is obliged to move the goods from its factory to the godowns situated in other States to fulfill its parts of the contract. This judgment would, therefore, not come to the aid of the State of Maharashtra for the simple reason that the clauses of the present Annual Maintenance Contract which are stated to be the reason for movement of the goods from the State of Maharashtra to other States does not envisage such a situation.

26. Learned counsel for the State of Maharashtra has also placed reliance upon **Oil India, Desai Beedi Company, Sun Paper Mill,** and **Electric Construction.**

27. In **Oil India**, it was found as a fact that the movement of goods was in pursuance of and incidental to the contract of sale.

28. In **Desai Beedi Company**, it was found that the movement of goods from the godown took place at the instance of the purchaser.

29. In **Sun Paper Mill**, it was found that the seller and buyer had contemplated movement of goods from the State of Tamil Nadu to the State of Kerala and the goods were dispatched at the instance of the buyer.

30. In **Electric Construction**, it was found by the Punjab & Haryana High Court that the movement of the goods took place in pursuance of the contract of sale.

31. All these aforesaid judgments are based on the terms of the Agreement. In the present case, as noticed above, it has been found as a fact that the movement of the goods from the State of Maharashtra to the branch offices situated in other States was by way of stock transfer and not by way of sale under the Annual Maintenance Contract.

32. The State Tribunal, after a careful consideration of the terms of the Annual Maintenance Contract and the factual position, recorded a categorical finding of fact that the movement of goods from the State of Maharashtra to other States was not in pursuance of the Annual Maintenance Contract. The State Tribunal found that CMS Computers was required to maintain inventory at branch level on the basis of the consumption in the corresponding quarter of the previous year and there is no clause in the contract that spare parts that are replaced have to be invoiced separately and they are covered by the Annual Maintenance Contract. The State Tribunal also found that the goods were standard components and were not tailor made for the customers.

33. There is, in view of the aforesaid discussion, no infirmity in the findings recorded by the State Tribunal on this issue.

B

Printing and Card Personalization

34. The State Tribunal examined the Agreement executed between Development Credit Bank Ltd., and CMS Computers and the relevant portions of the Agreement are reproduced below:

"THIS AGREEMENT is made and entered into at Mumbai this 1st day of June, 2005, **BETWEEN DEVELOPMENT CREDIT BANK LTD.,** a Joint Stock Corporate Office at 154, S.V.P. Road, Dongri, Mumbai - 400 009 and having its Central Administrative Office at

204, Raheja Centre, Nariman Point, Mumbai - 400 021 (hereinafter referred to as 'the Bank') (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) **of the First Part:** and M/s. **CMS COMPUTERS LIMITED**, having their registered office at 201, Arcadia, Nariman Point, Mumbai 400 021 and its office at CMS House, Plot # 91, Street No. 7, MIDC Marol, Andheri (E), Mumbai 400 093, (hereinafter referred to as 'the Company', which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) **of the Other Part:**

WHEREAS:

- (A) The Bank is carrying on the business of Banking in its various branches, extension counters and other offices in India.
- (B) The Bank is catering to various banking needs and is providing banking services to its various customers.
- (C) **The Bank is now interested in arranging for the printing of Statements of Customers' Accounts, Certificates of tax-deducted at source, certificates of interest paid etc., among other items** (herein after referred to as "deliverables") **for the purposes of periodical, timely deliveries to its respective customers at their residences, shops and/or offices, without requiring them to visit the Bank's premises, for the said purpose.**
- (D) *****
- (E) *****
- (F) *****

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. Subject to the compliance of the terms and conditions contained herein more particularly as provided in this agreement with regard to termination of the same in accordance with the clause (8) hereinafter stated, **the Bank is**

appointing the said Company for the printing of Statements of Accounts of Customers, for a period of 12 (twelve) months from the date hereof. It is agreed that the Bank may renew the Agreement at its sole discretion by issue of a letter to that effect.

2. The company shall as per instruction from the officials of the Bank, (as per Annexure I attached hereto) at present from its offices at Information Technology Department, or from any other office which may be designated from time to time and intimated to the company, carry out the following duties.
 - a. Approach the concerned office or department of the bank, presently this information is being made available from our Information Technology Department, situated at Killedar Estate, S.V. Road, Jogeshwari (West) Mumbai 400 102, who will provide to them soft copies in the form of floppies, CDs or any electronic media, containing the specifications, numbers and full details of the Statements / Certificates to be printed in a set format.
 - b. Run the said CD / CDs on set pre-processing programs in place on Systems at The Company's Office, view the images and match the lists generated against the total number of customers made available.
 - c. **Generate the Print-outs of the respective Statements of Accounts / Certificates, latest by the end of the 3rd day from the date on which the Company has been provided the information in floppy / CD / electronic media, from The Bank's ITD and keep ready all deliverables as may be required to be handed over to the stuffing / courier agency specifically designated by the Bank for the purpose.**

3. The Bank shall pay to the Company, appropriate charges for services rendered as per **Annexure - 'II'** attached hereto. The Bank shall pay the said amount to the Company within ten days of submission of the bill to the bank of the services rendered in the previous month along with proper proof of the quantum of the Statements of Accounts generated. It is hereby agreed that the Bank will pay no additional charges in the event of the company being required to take up any additional work for completion of the task enumerated above.
4. **The company shall perform the services in a competent and professional manner and shall deploy its Technology and Systems to ensure that uniform quality of printing is generated; the Company shall employ for such purpose such personnel who may be relied upon for not committing a breach of the terms of this agreement.**
5. This agreement is entirely an arrangement between the Bank and the company for the smooth functioning of the Bank's job of periodically printing the Statements of Accounts for its various customers and therefore, it shall be the entire discretion of the Company as to the salary, other perks to be paid, or any other terms of employment, inter-se, between the company and its employees who shall work for the Bank as per this Agreement.
6. It is agreed by the parties that this Agreement does not create any right of employment in favour of the Company and the Company shall not be entitled to claim any amount other than what is specified in Cl. 3 above or any other benefit from the Bank that may generally arise in favour of the employee of the Bank by operation of any law governing the Employer-Employee relations.

ANNEXURE - I

ANNEXURE - II

I. The Bank to pay for such services as follows:

	Rate
a) For each Sheet of standard specified format, complete with Bank’s pre-specified printing material (as directed by the Bank from time to time – presently being done in 4 colours pre-printing)	Rs 0.50
b) Variable Data Printing charge of Statement of Account per page	Rs 0.50
Total	 Rs 1.00

II. Cost of envelope in which Statement of Account is to be stuffed (3 colour) (1 colour)”	 Rs 0.57
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(emphasis supplied)

35. The Agreement executed between M/s. You Telecoms India (P) Ltd. and CMS Computers was also examined by the State Tribunal and the relevant portions of the Agreement are reproduced below:

“WHEREAS

You Telecom is in the business of providing Broadband Services.

CMS is in the business of providing outsourcing of printing amongst other activities and has represented to You Telecom, that they have the requisite expertise, the resources and the skilled personnel for providing the Services and its desirous of providing the same to You Telecom.

You Telecom hereby appoints CMS to provide the Services of Printing of monthly bills and CMS

agrees to provide the Services to You Telecom and the parties have agreed to enter into this Agreement for the purpose of recording the mutual agreements are reached between them concerning the provision of the Services.

NOW IN CONSIDERATION OF THE PREMISES AND THE RESPECTIVE AGREEMENTS THE PARTIES HERETO AGREE AS FOLLOWS

DUTIES AND OBLIGATIONS OF YOU TELECOM

1. You Telecom will deliver the data in CD to CMS print shop at Mhape, Navi Mumbai.
2. You Telecom will collect the printed material from CMS print shop at Mhape, Navi Mumbai.
3. You Telecom will provide the data in the text or any other format on mutual consent.
4. You Telecom will make the payment within 15 days from the date Invoice submitted.
5. You Telecom will give advance notice of 15 days for any changes in the print format.
6. You Telecom will give prior notice of 60 days for any change in Pre-printed stationery.

DUTIES AND OBLIGATIONS OF CMS COMPUTERS LTD.

1. CMS shall print the monthly Bills and other print jobs in a manner and fashion as set or as per instructions given to them by You Telecom from time to time.
2. CMS shall upon receipt of the Data from You Telecom proceed to deal with the Data as set and complete the printing work.
3. CMS shall ensure that there are no discrepancies in the process of printing the Data as received from You Telecom and shall maintain the highest amount of consistency, confidentiality and Diligence in the discharge of their duties and obligations under this Agreement.

4. CMS shall ensure that in the course of usage, all errors by CMS related to print work should be rectified immediately at the cost of CMS, so as to facilitate minimal interruption of the printing process. You Telecom shall permit 2% wastage of stationery and additional wastage shall be at the cost of CMS.
5. CMS shall ensure that for the purpose of providing cost-effective services to You Telecom it shall maintain the highest standard of quality, which is to be evaluated and approved by You Telecom from time to time.
6. CMS shall carry out all printing and post-printing operation (optional) in a manner as set.
7. CMS commits that during the course of printing operation, the confidential and proprietary information that is obtained will not be taken out of CMS print shop and will ensure that this does not reach the possession of any other public agency/entity.
8. The Agreement unless terminated earlier as per the terms of this agreement shall be valid for a period of two years w.e.f. 1st October 2006. Both the parties will review the pricing every 12 months on mutual consent.
9. Current quote is based on current Euro Value (INR 60). Any appreciable change in Paper, Petroleum, Customs Duty etc value beyond 5% year by year will have impact on the per copy cost. Revised prices will be worked out mutually based on the Dollar/Euro value and customs duty variation (consumables and Expendables which are imported) once in a Year to reflect the change in Dollar Value as aforesaid.
10. The prices shall be exclusive of any service tax or other taxes and levies that may be imposed on the services rendered from time to time as applicable.
12. CMS will do the printing and post printing (Optional) in CMS Print shop at Mahape, Navi

Mumbai and in case of emergency the same job will be carried out in our Chennai or any other CMS Print shop. Any extra expenses like transportation will be borne by CMS.

13. CMS will provide support window for 10 hours per day for 6 days.
14. CMS will print the (we need to check the services which we will be providing) of You Telecom in Pre printed & Plain A4 stationery 80 gsm.
15. CMS will print 25,000 A4 Impressions in 24 Hours (Excluding the Data processing time).
16. CMS will complete the entire job end to end within 36 hrs, as stapling is a manual process.

CONSIDERATION

As consideration for the services rendered by CMS under this agreement, You Telecom shall pay to CMS as follows:

For every A4 image that is printed by CMS ("0.44 Paise), Cost of pre-printed stationery ("0.05 Paise per colour), Cost of plain stationery 80gsm ("0.45 paise / A4) and manual Stuffing 1 @ 0.25 paise per envelope, Cost of envelope in one colour C-6 @0.58 paise All taxes extra as applicable of the said financial year.

A sum stated in the Cost Structure."

(emphasis supplied)

36. The relevant portions of the finding of the State Tribunal in respect of printing and card personalization are as follows:

"23. Printing of account statement or personalization of cards as per data provided by the customer in this case would be a works contract and fits into the observations made by Hon'ble Apex Court in Anandan Vishwanathan 73 STC 1 (SC) *****

Here printing is done for the data supplied by the client. Once the printed, the property does not remain that of Appellant. There are confidentiality

clauses in the agreement about data so provided by the client and once printed, the printed material is only for client and is not a marketable commodity.

25. The agreement that the paper ink and toner specify the size, quality and colour make them specific goods for the execution of works contract is not correct. What is specific goods or non-standard goods is brought out in Tata Motors v/s. State of Jharkhand and others (2009) 24 VST 167 (CSTAA) –

“The specification of model and description of vehicle for the sake of clarity did not lead to the inference that the goods ordered were to be specifically manufactured to suit the requirement of the particular customer, it did not mean that they were custom built or tailor made. By placing an order for a specific model, the customer could only be buying one of the models that was in the normal course manufactured by the Appellant.”

26. Appellant is not a manufacturer of paper, ink or toner. A4 and particular gsm of paper is among other sizes and quality of paper that are standard in the market. They are not custom built or tailor made to the specific requirement of customers as envisaged in case of BHEL – where the parts and components were made as per design and specification of the customer or in Sahaney Steel or K.G. Khosala case (supra) where they were non-standard goods and goods made to specification of customer.

27. This being so, it is only necessary to see if the movement of goods, in interstate is a necessary covenant of works contract. The agreement cited above do not make any reference to where the goods will be procured from and the Appellant is under no obligation to move the same from his place in Maharashtra to the place where printing is done. Being standard goods, they can be procured from market. *****

30. Thus the position that emerges from various case laws cited by the Appellant and the department regarding interstate works contract is that if the movement of goods for execution of work contract is as a result of covenant in the contract, whether express, implied or by necessary implication, such a movement will be as a result of interstate sale. In case specific or non-standard goods or goods that are tailor made to the requirement of customer, if they manufactured outside the State, intervention of branch within State would still render it an interstate sale. Outside this, if the goods are merely brought from interstate, without there being any covenant, and used in execution of works contract, it will be local sale in the State of execution of works contract.

31. Viewed in this light, if we see the printing agreement produced before us, it is seen that the customer is not concerned about how or from where the goods are procured so long as he gets the printed material as on required sized and quality of paper. Even if the dispatches from Appellant are marked for use in contract for a particular customer, it is an internal matter between the Appellant and the branch, as mere paper or ink is not sold to the customer.

32. We are therefore unable to uphold the conclusion of the Assessing Authority that there is interstate sale of paper, ink and toner in printing contract executed by the Appellant outside the State."

(emphasis supplied)

37. Learned counsel for the State of Maharashtra submitted that CMS Computers has its own printing machines and data card personalization machines at different places. It undertakes the job of bill printing and preparing debit cards and credit cards and for this purpose it is centrally purchasing all consumable items from the State of Maharashtra and

sending them to the depots or at the client offices in other States. The consumables are transferred as and when required and these are then used by the branches for printing of bills and prepaid cards. The inter-state works contract are very comprehensive and all the terms and conditions are laid down. Such movement of the consumables is in pursuance of the works contract agreement and, therefore, are inter-state works contract liable to tax in the State of Maharashtra on the transfer of goods. In this connection, learned counsel placed reliance upon the judgment of the Supreme Court in **State of Karnataka and anr. vs. M/s. Durga Projects Inc**¹³.

38. Learned counsel for CMS Computers, however, supported the findings recorded by the State Tribunal and submitted that the consumables are first stock transferred to the branches. These consumables are then used by the branches for printing of bills and preparation of cards by transferring them to the printing machines at the site of CMS Computers or at the clients place. The Agreement does not require any inter-state movement of goods. The Agreement could be satisfied even if CMS Computers makes local purchases in the respective States. For a works contract to be an inter-state works contract, the contract itself should specify or require inter-state movement of goods.

39. The submissions advanced by the learned counsel for the State of Maharashtra and the learned counsel for CMS Computers have been considered.

40. The State Tribunal, after a careful consideration of the two Agreements executed between Development Credit Bank Ltd., and CMS

13. Civil Appeal No. 811 of 2018 decided on 06.03.2018

Computers and that between M/s. You Telecoms India (P) Ltd. and CMS Computers, held that no doubt the printing of account statement or personalization of cards as per the data provided to CMS Computers would be a works contract, but it would not be correct to infer that the requirement of paper ink and toner of a particular size, quality and colour would make them specific goods for execution of the works contract. The State Tribunal recorded a categorical finding of fact that neither the appellant is a manufacturer of paper, ink or toner and that the size and quality of paper are standard products in the market and have not been customs built or tailor made to the specific requirements of the customer. The State Tribunal also recorded a categorical finding of fact that the Agreement does not make any reference to from where the consumables will have to be procured by the appellant and the appellant is under no obligation to move the goods from the State of Maharashtra to the place where printing is done. In fact, being standard goods, they can be procured from any place.

41. The findings recorded by the State Tribunal are in conformity with the two Agreements referred to above. The two Agreements do not place an obligation upon CMS Computers for transfer of the consumables only from the State of Maharashtra to the branches offices of CMS Computers in other States and it is open to CMS Computers to purchase these standard items from any place, whether it be in the State of Maharashtra or in a State where the branch offices are situated.

42. Learned counsel for the State of Maharashtra has placed reliance upon the judgment of the Supreme Court in **Durga Projects**. This judgment lays down that it is open to the State legislature to provide

uniform rates of tax on goods involved in the execution of works contract.

43. What has to be seen in the present case is whether the movement of consumables from the State of Maharashtra to the branch offices of CMS Computers in other States is as a result of the two Agreements. This can only determine whether it would be a inter-state works contract or not. In the present case, it has been found as a fact that movement of consumables from the State of Maharashtra to the branch offices of CMS Computers in other States was not pursuant to the works contract. It is a clear case of stock transfer of consumables. The judgment of the Supreme Court in **Durga Projects** would, therefore, not come to the aid of the State of Maharashtra.

44. There is, therefore, no error in the findings recorded by the State Tribunal on this issue.

C

Trading or Resale

45. The State Tribunal examined the trading or resale of servers, computers, printers and networking items and the relevant portions of the order are reproduced below:

"46. Thus what emerges from this is that in case of tailor made goods to the requirement of buyer, the intervention of branch or even order placed on branch would not matter to decide interstate sale. In case of standard goods, there is a conceivable link between and manufacturer / procurer causing movement of goods interstate.

47. In light of this, we have examined some of the documents submitted by the department. These consist of various branch transfer memo from H.O. and invoices raised by the branches. We have examined box

file No. 13 out of many such documents filed. No doubt that there are supplies of standard computer products and its peripherals like monitors, mouse, cards, drivers, etc., yet it is seen that some of the orders which are made to institutional buyers stand out – for example –

1. Box file No. 13 –

- a) Pg 7 to 9 – Transfer note No. TT5000694 dated 4.7.2005 to Chennai. This contains nine items which consists of IBM Computer model 510 (1 unit) and IBM model 550 (two units) and its IBM compatible peripherals like storage, external memory, tack mounted hardware with transfer cost Rs. 49,43,183.07/-.

Pg 11 to 33 – Invoice No. VE/5000293 dated 7.7.2005 raised by Chennai branch on Centre for Railway Information Southern Railway for Rs. 58,49,924.65/- which consists of 11 items with details under each item. This consists of all the IBM machines and parts stock transferred as per stock transfer memo.

- b) Pg 75 to 335 – These contain stock transfer memo and invoices raised by Chennai branch of Appellant. The supplies running into large amount are to State Bank of India at various branches in Tamilnadu against two purchase orders namely ITS: 307/2005-2006 and ITC 28/2005-2006
- c) Pg 575 to 587 – Stock transfer invoice TT5001062 dated 20.8.2005 to New Delhi branch for Rs. 78,47,935.90 and Rs. 5,46,217/-.

Pg. 589 to 605 – Invoices raised by Delhi branch on National Information Centre, invoice No. VD/5000559/24.8.2005 for Rs. 61,28,143.81/- which contain mostly the items transferred above.

48. These are sample documents that have been cited. From (a) and (c), it is seen that the goods supplied are not merely standard goods but is a whole configuration of a system with specialized requirement of computer and its compatible parts and peripherals and the amount is considerable. These sample documents belie the averment of the Appellant that goods transferred to branches are merely standard goods namely computers and peripherals. A high end computer or a whole system with compatible parts to meet the

requirement of an institutional purchaser will not be standard goods – particularly when these machines are imported and not available off the shelf.

49. In (b) large amount of supplies are made to institutional buyer like State Bank of India mainly against two purchase orders.

50. Where specific items such as entire configured system as per requirement of large institutional buyer is involved, it would not matter if the orders were placed with branch office – following Sahaney Steel.

51. For supplies made against one or two purchase orders from time to time to various branches of State Bank of India, it is necessary to see if firm purchase order has been placed with Appellant H.O. in Maharashtra and to see whether the circumstances as in IDL case are applicable i.e. supplies being against firm order on H.O. and from branch supplies made as per individual indent of branch. **In short, whether there is firm purchase order placed on Appellant and subsequent dispatches to branches is only to handover the goods to the customer. It is also noticed from documents in box files No. 12 from Page 1 to 133 that dispatches are shown to branch office at Ahmedabad. The tax invoice by Ahmedabad prepared on very next date (page 1 & 3). Surprisingly, the supply is to State Bank of India in South (Virudhnagar, Sivakasi, Tuticorin) which is logistically improbable, particularly when the Appellant has branches in Chennai and Securandabad. Looking closely, it appears that CST is exempted in Gujarat. Appellant has paid 4% tax on sales in Chennai.** Further it is seen that the supply is against the same order No. 28/2005-2006 referred to above in para 47(b) against supplies are from Chennai branch. **It is improbable that same order is placed on two branches.**

52. **It was therefore necessary to verify the lorry receipts / dispatch proofs in respect of such transactions.**

53. These aspects have not been look into by the Assessing Officer. We therefore remand the matter to Assessing Authority to examine the issue regarding trading sales on the lines of observations made above."

(emphasis supplied)

46. It is seen that the Assessing Officer had disallowed branch transfer of consumables under the following three categories:

- (i)** When purchase order date is the same as branch transfer date;
- (ii)** Purchase order date is one day earlier to branch transfer date; and
- (iii)** Purchase order date is not available but there is a gap of only three or four days between the date of stock transfer and the date of sale invoice raised by the branch.

47. The State Tribunal, in the matter of trading of servers and computers and in the matter of trading of printers in networking items, remanded the matter to the Assessing Officer to verify the documents such as lorry receipts/dispatch proof to determine whether the movement was against any pre-existing order and then to re-determine the allowability of stock transfer.

48. Learned counsel for the State of Maharashtra submitted that the Assessing Officer had rightly held the transaction to be inter-state sale where orders were placed on the dealer in the State of Maharashtra and subsequent dispatches to branches in other States was only to handover the goods to the customer. Learned counsel also submitted that the goods were sent as per specifications and, therefore, they are on the basis of pre-determined orders.

49. Learned counsel appearing for CMS Computers, however, contended that the State Tribunal committed no error in remanding the matter to the Assessing Officer to examine this issue in the light of the observations made in the order.

50. The submissions advanced by the learned counsel for the State of Maharashtra and the learned counsel appearing for CMS Computers on this issue have been considered.

51. It is seen that the Assessing Officer has not provided any specific finding and had given a general finding that there were pre-existing orders for movement of goods. Mere existences of pre-existing purchase orders, prior to movement of goods, does not automatically imply that the entire movement constitutes an inter-state sale, particularly when the goods are stock transferred in the regular course of business. CMS Computers had to maintain ample stock at the branch office to fulfill the orders placed by the different customers. The Assessing Officer was obliged to evaluate each transaction involving the transfer of goods before deciding whether to allow or disallow the branch transfer. .

52. In this connection reference can be made to the judgment of the Supreme Court in **Tata Engineering Locomotive**, wherein it was held:

"12. Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's

representative had himself submitted that a specimen transaction alone need be examined. **In our judgment this was a wholly wrong procedure to follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter-state sale exigible to tax under the provisions of the Act."**

(emphasis supplied)

53. The State Tribunal, as noticed above, had meticulously examined the decisions and the factual position and has, therefore, considered it appropriate to remand the matter to the Assessing Officer to verify the lorry receipts/dispatch proof in respect of each of the transactions. There is, therefore, no infirmity in order passed by the State Tribunal.

54. Thus, for all the reasons stated above, there is no merit in these six appeals. They are, accordingly, dismissed.

(Order pronounced on **03.01.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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