

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14<sup>TH</sup> DAY OF OCTOBER 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR



AND

THE HON'BLE MRS. JUSTICE M.G. UMA

**WRIT PETITION No.43797 OF 2019 (T-RES)**

**BETWEEN :**

M/S. BASF INDIA LTD  
(FORMERLY KNOWN AS BASF  
COATINGS (INDIA) PVT. LTD.  
BAJPE ROAD, BALA VILLAGE  
VIA KATIPALLA  
MANGALORE-575 030  
REPRESENTED BY  
SRINIVASSA PRASANNA  
MANAGER ACCOUNTS

... PETITIONER

(BY SHRI. V. SRIDHARAN, SENIOR ADVOCATE FOR  
SHRI. RAVI RAGHAVAN  
SHRI. SYED M. PEERAN  
MS. B.M. ANUSHA, ADVOCATES)

**AND :**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001

2. THE COMMISSISONER OF  
COMMERCIAL TAXES  
"VANIJYA THERIGE KARYALA"  
GANDHINAGAR  
BANGALORE-560 009
3. THE DEPUTY COMMISSIONER OF  
COMMERCIAL TAXES  
(AUDIT AND RECOVERY)-5  
VANIJYA TERIGE BHAVAN  
MAIDANA STREET  
MANGALORE-575 001                      ... RESPONDENTS

(BY SHRI. JEEVAN J. NEERALGI, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 27.06.2019 AT ANNEX-A AND HOLD THAT THE OPEN PURCHASE ORDERS ARE NOT IN THE NATURE OF AGREEMENT TO SELL AND ARE MERELY A STANDING OFFER WHICH IS ACCEPTED ON RECEIPT OF DAILY REQUISITION FOR A SPECIFIC QUANTITY AND ETC.,

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.08.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR. J.**, PRONOUNCED THE FOLLOWING:-

**ORDER**

This writ petition is presented with following prayers:

(i) *issue a writ of certiorari or any other writ, order or direction quashing the impugned A.Nos.CST/1-6/2016 and CST/9-50/2016 order dated 27.06.2019 at **Annexure-A**;*

(ii) *hold that the open purchase orders are not in the nature of 'agreement to sell' and are merely a standing offer which is accepted on receipt of daily requisition for a specific quantity;*

(iii) *hold that the impugned inter-state movement of goods does not fall within Section 3(a) of the CST Act and is not an inter-state sale and are mere stock transfers;*

(iv) *any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and allow this petition with cost.*

2. Heard Shri. V.Sridharan, learned Senior Advocate for the petitioner and Shri. Jeevan J.Neeralgi, learned AGA for the State.

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<sup>1</sup>. 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.

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<sup>1</sup> Karnataka Value Added Tax act, 2003 - 'K-VAT Act' for short

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 customers' manufacturing unit and supplies the paint as and when the indent is received.

6. The Deputy Commissioner of Commercial Taxes passed order dated 16.03.2012 for the year 2006-07 and order dated 14.03.2012 for the year 2007-08 under Section 9(2) of CST Act<sup>2</sup> read with Section 39(2) of the K-VAT Act by accepting the statutory declarations made in Form-F in support of exemption for stock transfers.

7. The Enforcement Officers of Commercial Tax Department inspected petitioner's premises at Mangaluru and the branches situated outside Karnataka. On verification of the documents, the

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<sup>2</sup> Central Sales Tax Act, 1956, 'CST Act' for short

Department came to the conclusion that petitioner was manufacturing automotive paints against specific orders given by the customers and therefore, the Company could identify the customer for whom the paint was required. Accordingly, the Enforcement Authorities recommended reassessment under Section 9(2) of the CST Act read with Section 39 of the K-VAT Act for the tax period April 2006 - January 2011, for the purpose of levy of tax under Section 3(a) of the CST Act.

8. Based on the Investigation Report, the Department issued proposition notices for reopening the assessment proceedings and concluded the proceedings by rejecting 'F- forms' on the Stock Transfer turnover on the ground that Inter-state movement of goods from the manufacturing unit at Mangaluru to various depots in other States was against pre-existing Contract

and amounted to Inter-State sale liable to tax under Section 3 of the CST Act.

9. Assessee challenged the reassessment order before the KAT<sup>3</sup> under Section 18A of the CST Act. The KAT allowed the appeals and remanded the matters for fresh assessment vide order dated 24.04.2015. Petitioner challenged the orders dated 24.04.2015 and 30.10.2015 before the Central Sales Tax Appellate Authority. By the impugned order, the CSTAA<sup>4</sup> has confirmed the view taken by the KAT that the sale is an Inter-State sale and dismissed the appeals. The resultant position is, the matter stands remitted to the Assessment Authority.

10. Petitioner has challenged the order passed by CSTAA in this writ petition.

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<sup>3</sup> Karnataka Appellate Tribunal

<sup>4</sup> Central Sales Tax Appellate Authority

11. Shri. V. Sridharan, learned Senior Advocate submitted that:

- there is no statutory appeal provided against an order passed under Section 20 of the CST Act, by CSTAA. The CST Act nor the K-VAT Act do not provide any statutory appeal against CSTAA's order;
- for any sale to be treated as Inter-State sale, three conditions are essential. Firstly, there should be a sale, secondly, there should be Inter-State movement of goods and thirdly, Inter-State movement ought to have occasioned by the sale.

12. Shri. Sridharan has placed reliance on following authorities:



- *M/s. Kelvinator of India Ltd. Vs. The State of Haryana*<sup>5</sup>;
- *Union of India Vs. Maddala Thathiah*<sup>6</sup>;
- *Sales Tax officer, Pilibhit Vs. Budh Prakash Jai Prakash*<sup>7</sup>;
- *State of Andhra Pradesh Vs. Coromandel Paints & Chemicals Ltd.*<sup>8</sup>;

13. Shri. Jeevan J. Neeralgi, learned AGA for the State opposing the petition submitted that specific orders are placed by the purchasers and based on such orders, petitioner manufactures and supplies the paint. Thus, manufacture of paint pursuant to specific orders is customer specific. Goods move from Mangaluru to various destinations to be delivered to the customers. Therefore, sale happens simultaneously with the movement of

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<sup>5</sup> (1973) 2 SCC 551

<sup>6</sup> (1964) 3 SCR 774

<sup>7</sup> (1955) 1 SCR 243

<sup>8</sup> (1995) 98 STC 82 AP

goods from petitioner's factory. Therefore, petitioner is liable to pay Central Sales Tax.

14. He placed reliance on following authorities:

- *IDL Chemicals Limited Vs. State Of Orissa*<sup>9</sup>;
- *Hyderabad Engineering Industries Vs. State Of Andhra Pradesh*<sup>10</sup>;
- *English Electric Company of India Ltd. Vs. The Deputy Commercial Tax Officer And Others*<sup>11</sup>;

15. We have carefully considered rival contentions and perused the records.

16. Undisputed facts of the case are, petitioner, a registered dealer under the K-VAT Act is having a paint manufacturing unit in Mangaluru and depots in states of Maharashtra, Haryana, Tamil Nadu and Uttarkhand. It supplies paint to

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<sup>9</sup> (2007)14 SCC 386 (para 10)

<sup>10</sup> (2011)4 SCC 705 (paras 46, 47, 50 & 52)

<sup>11</sup> (1976)4 SCC 460 (para 15)

original equipment manufacturers and the ancillary units. It's case is, it transfers goods to its depots situated in the town/city where the purchasers' manufacturing unit is situated. It supplies the product based on the purchase order received from the purchaser from time to time.

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?

20. Section 3 of Central Sales Tax Act, reads as follows:

*"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. Explanation 1 - Where goods are delivered to a carrier or other bailee for transmission,*

*the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Explanation 2 - Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."*

21. Shri Sridharan urged that for a transaction to be defined as inter-state sale, two conditions must to be fulfilled. Firstly, movement of inter-state goods and secondly, transfer of title to the goods during their movement from one State to another. He submitted that the original equipment manufacturers and ancillaries who purchase goods from petitioner stipulate the 'quality standards' and other technical specifications in the open purchase orders which do not contain the 'quantity' and date of supply. The purchaser/s issue specific purchase order containing the quantity based on the

requirement from time to time and the same is supplied from petitioner's depots immediately on just in time model.

22. Shri Sridharan placed reliance on the purchase orders given by following companies:

- Mercedes Benz India Pvt.Ltd., Pune
- Mahindra Renault, Pimpri, Pune,
- Mahindra Vehicle Manufacturers Ltd., Pune,
- Motherson Automotive Technologies Engineering, Kanchipuram District, Tamil Nadu.

23. In the purchase order issued by Mercedes Benz dated 10.05.2012, it is stated as follows:

*"c) the supplier shall guarantee supply of goods in the scope referred to below. The supplier shall not be entitled to demand MB India purchases of specific quantities of parts. Quantities notified by MB India*

*are merely non-binding planned quantities. The binding quantities to be supplied by the supplier and the delivery dates are specified in the individual call-off orders of MB India.*

*(Emphasis Supplied)*

24. In page Nos.671 to 673 of the paper book, the details of rate per unit valid between 01.05.2012 to 31.12.2012 in respect of seventeen different kinds of goods have been mentioned.

25. In the purchase order dated 01.09.2006 issued by Mahindra Renault, the 'unit price' of the products has been mentioned. But it does not contain any 'quantity'.

26. In the purchase order issued by Mahindra Vehicle Manufacturers Limited, the quantity is mentioned as 999,999.00. It was submitted by Sri Sridharan that in the facing sheet of the purchase order, unless some number is mentioned, the purchase order cannot be

generated. Therefore, a 'dummy number' has been mentioned. He adverted to para 19 of the terms and conditions, which reads as follows:

*" 19. The ordered quantity is only an approximate indication of our off take. You shall deliver the goods strictly as per schedule released on you from time to time"*

and submitted that in terms of the above clause, petitioner was required to deliver the goods as per the schedule to be released from time to time. He contended that in pursuance of the open purchase order, Mahindra Vehicle Manufacturers Limited would release purchase orders indicating specific quantities.

27. In the purchase order issued by Motherson Automotive Technologies & Engineering the quantity has been kept 'open' and the delivery schedule is mentioned as 'one day'. Similarly there



are other purchase orders of different companies where the quantity has been mentioned as 'zero'.

28. In order to hold that a transaction falls under Section 3(a) of the CST Act, the sale or purchase must cause movement of goods from one State to another or transfer of title to the goods must take place during their movement from one State to another.

29. In the case on hand, goods have been moved to different States under Form-F. Assessee's specific case is, sale is effected based on the indents received from time to time from the purchasers.

30. In *Budh Prakash Jai Prakash*, the Constitution Bench of the Hon'ble Supreme Court of India has held that a liability to be assessed to sales tax can arise only if there is a completed sale under

which, price is paid or is payable and not when there is only an agreement to sell. The distinction between 'sales' and 'agreements to sell' stated in Halsbury's Laws of England (Vol. 29 Page 15 para 13) has been noticed by the Apex Court and it reads as follows:

*" An agreement to sell, or, as it is often stated, an executory contract of sale, is a contract pure and simple, whereas a sale, or, as it is called for distinction, an executed contract of sale, is a contract plus a conveyance. Thus, by an agreement to sell a mere jus in personam is created, by a sale a jus in rem is transferred. Where goods have been sold, and the buyer makes default in payment, the seller may sue for the contract price, but where an agreement to buy is broken, usually the seller's only remedy is an action for unliquidated damages. Similarly, if an agreement to sell be broken by the seller, the buyer has only a personal remedy against the seller. The goods are the property of the seller and he can dispose of them. They may be taken in execution for his debts, and if he becomes bankrupt they pass to his trustee in bankruptcy. But if there has been a sale, and the seller breaks his engagement to deliver the goods, the buyer has not only a personal remedy against the seller, but also*

*the usual proprietary remedies in respect of the goods themselves, such as the actions for conversion and detinue. Again, if there be an agreement for sale and the goods perish, the loss as a rule falls on the seller, while if there has been a sale the loss as a rule falls upon the buyer. "*

31. In *Maddala Thathiah*, Railways had invited tenders for supply of 14,000 imperial maunds of cane jaggery. The tender form contained a note in para 2 which was meant for the quantity required and described dates of delivery. The note read thus:

*'This administration reserves the right to cancel the contract at any stage during the tenure of the Contract without calling up the outstandings on the unexpired portion of the Contract.'*

32. On February 16, 1948, the Deputy General Manager of Railways conveyed the terms of delivery. At the end of the terms and conditions, a note that the Administration had reserved the right to cancel the Contract at any stage during the

tenure of the Contract, without calling up the outstandings on the unexpired portion of the Contract. On March 8, 1948, the Deputy General Manager informed that the balance quantity of jaggery outstanding on date against order dated February 16, 1948 be treated as cancelled. Contractor filed a suit to recover damages. The Trial Court dismissed the suit. The High Court held that the clause reserving the right in Railways to cancel the Contract was void and remanded the suit for disposal, after dealing with that matter. Railways challenged the said order before the Apex Court and the Apex Court held thus:

*" 15. We are therefore of the view that the condition mentioned in the note to para 2 of the tender or in the letter dated February 16, 1948, refers to a right in the appellant to cancel the agreement for such supply of jaggery about which no formal order had been placed by the Deputy General Manager with the respondent and does not apply to such supplies of jaggery about which a formal order had been placed*

*specifying definite amount of jaggery to be supplied and the definite date or definite short period for its actual delivery. Once the order is placed for such supply on such dates, that order amounts to a binding contract making it incumbent on the respondent to supply jaggery in accordance with the terms of the order and also making it incumbent on the Deputy General Manager to accept the jaggery delivered in pursuance of that order. "*

33. In *Kelvinator*, the Company had a Factory in Faridabad. Refrigerators manufactured by them were marketed under trade marks, 'Kelvinator' 'Leonard' and 'Gem'. The company entered into a distribution agreement with Spencer and Co. Ltd. The mode of dealing was that subsequent to distribution agreements, orders were placed by distributors with Kelvinator after the Refrigerators had reached Kelvinator's Sales Office and Godown in New Delhi. The Assessment Authority held that the transaction between the

parties were Inter-State sales. The Hon'ble Supreme Court of India has held as follows:

" 21. We accordingly accept the appeal and set aside the judgment of the High Court. The answer given by the High Court to the question referred to it is discharged. In our opinion, the three agreements between the appellant and the distribution were merely agreements for the distribution of goods and were not agreements of sale between the parties. It cannot, in our opinion, be said that there was any movement of refrigerators from Faridabad to Delhi under a contract of sale. The question in the circumstances is answered against the department. The transactions between the appellant and the distribution did not, in our opinion, constitute sale in the course of inter-state trade or commerce. As such, there was no liability to pay tax under the Act. The appellant shall be entitled to the costs from the respondent of this Court as well as in the High Court."

34. In *Coramandal Paints*, the assessee had undertaken to supply paints to the Shipping Corporation of India against the orders placed by the Corporation at various Ports. After noticing the

authority in *Maddala Thathiah*, the Apex Court has held thus:

" 16. *It is thus clear that where the terms of the agreement enjoin supply of goods against an order already placed, it amounts to a contract if the goods are specified but they are to be delivered at a future date as and when specified. But, where neither the quantity nor the goods have been specified and the supply has to be made at a stated agreement period of the required quantity, it cannot be said that there was a sale or even an agreement to sell, it is merely a standing offer.*

17. *In the instant case, we have already noted above, the terms of the letter of acceptance of the tender contemplate that the assessee would keep the paints of the variety, which was the subject-matter of tender, ready at their sub-offices or branches and that they were bound to supply as and when the order was placed by the S.C.I with the assessee, it can only be a standing offer but not "sale" or an "agreement to sell". "*

*(Emphasis Supplied)*

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.

38. In view of the above discussion, this writ petition merits consideration. Hence the following:

ORDER

(a) Writ petition is **allowed**.

(b) Order dated 27<sup>th</sup> June 2019 Annexure-A is quashed holding that Open Purchase Orders are only standing offers and do not constitute a confirmed 'Agreement to sell' and movement of goods are mere stock transfers.

No costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

SPS