A ASSOCIATED CEMENT COMPANIES LIMITED, KYMORE

v.

COMMISSIONER OF SALES-TAX, INDORE, ETC. ETC.

APRIL 9, 1991

B [RANGANATH MISRA, CJI, M.H. KANIA AND KULDIP SINGH, JJ.]

Constitution of India, 1950: Article 286(1)(a) Explanation—Sale of cement under a contract by manufacturer to marketing company within Madhya Pradesh—Non existence of Central Sales Tax Act—
C *Explanation not applicable.*

The appellant, a manufacturer of cement, entered into an agreement with the Cement Manufacturing Company of India Limited, for sale of cement. Under the agreement, the appellant was to sell its cement only through the marketing company, and certain sums would
D **be paid for the cement supplied by the marketing company, which had the discretion to fix the sale price.**

For the 1950-51, 1951-52 and 1952-53 periods when the appellant was assessed to sales tax for the supply of cement, it maintained at the assessment stage that the transactions were not exigible to sales tax as
E **they were covered under the Explanation to Article 286(1)(a).**

The First Appellate Authority and the Board of Revenue did not accept the stand of the appellant.

The Board of Revenue held that cement being a controlled com-
F **modity, distribution of cement continued to be controlled during the period, notwithstanding the expiry of the Defence of India Rules. Relying on the decision of this Court in the case of *Rohtas Industries Limited* v. *State of Bihar,* 12 STC 621 the Board of Revenue held that the Cement Marketing Company was an independent organisation and was carrying on business as an independent entity and that what had actu-**
G **ally been taxed were the sales effected by the appellant to the Cement Marketing Company and not the sales made to the parties which obtained authorisation from the Cement Controller.**

After analysing the terms of the contract between the manufacturer and the Marketing Company, this Court held in *Rohtas Industries*
H **case that there was sale between the manufacturer and the Marketing Company.**

Following its view taken in *Rohtas Industries'* case as the present case had the same terms, which had been considered in the earlier case, and examining the question whether the sale that took place between the manufacturer and the Marketing Company could be taken to be covered by the Explanation to Article 286(1)(a), this Court, dismissing the appeals,

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HELD: 1. There was preceding local sales complete in every respect within Madhya Pradesh by which title to the cement had passed from the appellant to the Marketing Company. The concept of inter-State sale as brought in by the Sixth Amendment or in the subsequent statute known as the Central Sales Tax Act was not in existence for the relevant period now under consideration. The finding recorded by the authorities was that the delivery of the cement was not the direct result of such sale or purchase of the cement outside the State. In the absence of such privity the Explanation is not attracted to the transactions. [254E-G]

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2. In view of the finding recorded by the authorities that the cement in this case actually had not been delivered as a direct result of such sale or purchase for the purpose of consumption outside the State, the only conclusion that can follow is that the Explanation does not apply and the assessments are justified. [254H-255A]

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Rohtas Industries Limited **v.** *State of Bihar,* **12 STC 621, followed.**

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Mohd. Serajuddin **v.** *State of Orissa,* **[1975] Suppl. SCR 169, distinguished.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 768 (NT) of 1977 etc. etc.

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From the Judgment Order dated 9.10.1975 of the Madhya Pradesh High Court in M.C.C. No. 144 of 1966.

V.A. Bobde, B.R. Aggarwala and U.A. Rana for the Appellant.

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S.V. Deshpande and S.K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, CJ. These are appeals by special leave

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A and are directed against the separate decisions of the Madhya Pradesh High Court in references under the Madhya Pradesh Sales Tax Act. Civil Appeal No. 768/77 relates to the assessment period 1951-52, Civil Appeal 539/78 relates to 1950-51 and Civil Appeal 1038/78 to 1952-53.

The appellant is a manufacturer of cement in the factory located B at Kymore in Madhya Pradesh. Several cement manufacturing companies as also the appellant had entered into arrangement with the Cement Manufacturing Company of India Limited whereunder the Marketing Company was appointed as the sole and exclusive sales manager for the sale of cement manufactured by the manufacturing companies and the manufacturing companies had agreed not to sell directly or indirectly any of their cement to any person save and except C through the Marketing Company. The manufacturing companies were entitled to be paid a certain sum for every ton of cement supplied by them or at such other rate as might be decided upon by the Directors of the Marketing Company. The Marketing Company had the authority to sell cement at such price or prices and upon such terms as it D might in its sole discretion consider appropriate.

For the three periods referred to above the appellant had supplied cement manufactured by it to the Marketing Company and maintained at the assessment stage for the respective periods that these were covered by the Explanation to Article 286(1)(a) as it then E stood and, therefore, the transactions were not exigible to sales tax in Madhya Pradesh. This stand was negatived by the Assessing Officer, the First Appellate Authority and the Board of Revenue. The Board in the statement of the case drawn up by it held that cement became a controlled commodity from 8th of August, 1942, and notwithstanding the expiry of the Defence of India Rules with effect from 30th of F September, 1946, distribution of cement continued to be controlled even during the period. The Marketing Company had its establishment at Nagpur then within Madhya Pradesh which received the orders of authorisations and managed the supply from the factory at Kymore. The Board in its statement further stated:

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> "The entire question in dispute hinges round the fact as to whether the sales in question are inter-State in nature or should be regarded as intra-State. It is seen that the Cement Marketing Company is an independent organisation and is carrying on business as an independent entity. It is also seen that what has actually been taxed are the sales

H effected by the appellant to the Cement Marketing Com-

pany of India and not the sales made to the parties which obtained an authorisation from the Cement Controller. This seems to be the crux of the matter."

On this basis reliance was placed on the decision of this Court in the case of *Rohtas Industries Limited* v. *State of Bihar,* 12 STC 621 where, after analysing the terms of the contract between the manufacturer (appellant before the Supreme Court) and the Marketing Company, this Court held:

"On a review of these terms of the agreement, it is manifest that the manufacturing companies had no control over the terms of the contract of sales by the Marketing Company and that the price at which cement was sold by the Marketing Company could not be controlled by the manufacturing companies; that the manufacturing companies were entitled, for ordinary cement, to be paid at the rate of Rs.24 per ton at works, or at such other rate as might be decided upon by the Directors of the Marketing Company, and in respect of special cement, at such additional rates as the Directors of the Marketing Company might determine; that sale by the Marketing Company was not for and on behalf of the manufacturing companies but for itself and the manufacturing companies had no control over the sales nor had they any concern with the persons to whom cement was sold. In fine, the goods were supplied to the orders of the Marketing Company, which had the right, under the terms of the agreement, to sell on such terms as it thought fit and that the manufacturing companies had the right to receive only the price fixed by the Marketing Company. The relationship in such cases can be regarded only as that of a seller and buyer and not of principal and agent."

This Court in *Rohtas Industries* case on a detailed analysis of the terms of the contract came to hold that there was a sale between the manufacturer and the Marketing Company. It is not in dispute that the agreement between the appellant and the Marketing Company in this case has the same terms as this Court considered in *Rohtas Industries* case. It follows, therefore, that it must be held that there was a sale between the appellant and the Marketing Company.

The Marketing Company had its establishment at Nagpur within the State of Madhya Pradesh at that time. There was, therefore, a

preceding local sale prior to the sales between the Marketing Company and the allottee of cement by the regulating authority. This Court in *Rohtas Industries* further found that the transaction between the manufacturer and the Marketing Company had nothing to do with the Marketing Company's sales to third parties. There was no privity between the manufacturer and the ultimate consumer who was said to have been located outside the State of Madhya Pradesh.

The question for consideration is whether the sale that took place between the manufacturer and the Marketing Company can be taken to be covered by the Explanation. The Explanation which was repealed by the Sixth Amendment of the Constitution in 1956 read thus:

> "For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

Rohtas Industries case was dealing with a period prior to the Constitution; therefore, without the Explanation. The question for consideration thus is: does the presence of the Explanation make any difference?

What has been found as a fact in the statement of the case is that there was preceding local sales complete in every respect within Madhya Pradesh by which title to the cement had passed from the appellant to the Marketing Company. The concept of inter-State sale as brought in by the Sixth Amendment or in the subsequent statute known as the Central Sales Tax Act was not in existence for the relevant period now under consideration. The finding recorded by the authorities is that the delivery of the cement was not the direct result of such sale or purchase of the cement outside the State. In the absence of such privity the Explanation is not attracted to the transactions.

An attempt was made by counsel to rely upon some of the later decisions of this Court where with reference to the provisions contained in the Central Sales Tax Act the law had been laid down. It is unnecessary to refer to them in view of the finding recorded by the authorities that the cement in this case actually had not been delivered

as a direct result of such sale or purchase for the purpose of consumption outside the State. That is a finding clinching enough and once that is taken as binding on this Court, the only conclusion that can follow is that the Explanation does not apply and the assessments are justified. The ratio of *Mohd. Serajuddin* v. *State of Orissa,* [1975] Suppl. SCR 169 is also against the appellant's stand.

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We accordingly dismiss the appeals and uphold the decisions of the High Court. There would be no order for costs.

V.P.R. Appeals dismissed.