A

OIL INDIA LTD.

v.

THE SUPERINTENDENT OF TAXES & OTHERS

March 3, 1975

[K. K. MATHEW AND P. K. GOSWAMI, JJ.]

B

Central Sales Tax Act—Section 3—*Interstate Sale—Sale in the course of interstate trade—If movement of goods as a result of covenant or an incident of the contract of sale—Must sale precede the movement of goods.*

By an agreement entered into between the petitioner, the Government of India, Burma Oil Company Limited and Assam Oil Company Limited, it was agreed that all crude oil produced by the petitioner (except Assam Oil Company's entitlement) be sold to and purchased by the Government of India. The exact clause reads as under :

C

> "All crude oil produced by Oil India excluding Assam Oil Company's entitlement in respect of Oil India's existing areas under clause 20 of the Promotion Agreement will (subject as hereinafter provided) be sold to and purchased by the Government of India PROVIDED that after meeting as a first call on such oil the joint annual requirements upto 2¼ million tons of Indian Refineries Limited's Barauni and Nunmati Refineries Assam Oil Companys Digboi refinery shall have the next call thereon up to a maximum of 435,000 tons per annum to the extent that it cannot be economically met from Assam Oil Company's leased areas."

D

The petitioner pursuant to the provisions of the said clause 7 supplied crude oil to Barauni Refinery of Indian Oil Corporation situated in Bihar through pipeline constructed and owned by the petitioner Company. At Barauni Refinery the crude oil which flows through the pipes from the oil fields of Assam is pumped into the Indian Oil Corporation's tanks and thereafter it is measured. After the measurement is agreed upon, the Indian Oil Corporation takes delivery on behalf of the Government of India. The petitioner Company has been filing regular sales tax returns under the Bihar Sales Tax Act and was being assessed under that Act for the supply of crude oil to the Refinery at Barauni treating the supply as intra-State sales. Thereafter, the Sales Tax Authority in Assam issued notice to the petitioner on the ground that the Central sales tax was payable under the Central Sales Tax Act on the supply of crude oil to the Refinery at Barauni as the sales were in the course of inter-State trade. The Assessing Authority held that the supply of crude oil to the Refinery at Barauni by the petitioner attracted Central Sales Tax. In the present petition, the petitioner seeks a writ of mandamus directing the Assam Sales Tax Authorities not to levy the sales tax under the Central Sales Tax Act on the supply of crude oil to the refinery at Barauni. In the alternative, the petitioner prayed for a direction to the Bihar Tax Authorities to refund the taxes collected.

E

F

G

HELD : Under Section 3 of the Central Sales Tax Act a sale or purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce if the sale or purchase occasions movement of goods from one State to another. This Court has held in a number of cases that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale. In this case, the crude oil was carried from Assam through pipeline to Barauni in Bihar. Clause 12 of the agreement provides that the petitioner shall arrange for the construction of pipe-line or such other related facilities as the Company shall consider necessary for the transport of crude oil to be produced by it to the refinery at Barauni. This would indicate that the construction of the pipeline was undertaken by the petitioner in pursuance of the agreement

H

and that was for the specific purpose of transporting crude oil to Barauni from Assam. This can only point to the conclusion that the parties contemplated that there should be movement of goods from the State of Assam to the State of Bihar in pursuance to the contract of sale. It is immaterial as to in which state the property in the goods passes. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. The sales were, therefore, in the course of inter-State trade and the Bihar Government had no jurisdiction to tax the sales under the Sales Tax Laws of the State. The Bihar Sales Tax Authorities were directed not to impose sales tax under the provisions of Bihar Sales Tax Act and were directed to refund the sales tax already collected. [800D-G; 801A-C]

ORIGINAL APPELLATE JURISDICTION : Writ Petitions Nos. 641-642 of 1970.

Petition Under Article 32 of the Constitution.

L. N. Sinha, Solicitor General of India, K. K. Jain, Bishamber Lal and *S. K. Gupta,* for the Petitioner.

D. Mukherjee and *S. N. Choudhury,* for the Respondents 1-3.

L. M. Singhvi and *U. P. Singh,* for Respondents No. 4-6.

The Judgment of the Court was delivered by

MATHEW, J. An agreement dated 14-1-1958 was executed by and between the Government of India, the Burmah Oil Company Ltd. and the Assam Oil Company Ltd. for the promotion of a new company *inter alia* with the object of obtaining mining lease for the production of petroleum and crude oil. The promotion agreement was later on modified by a supplemental agreement dated 15-2-1959. The petitioner company was incorporated in accordance with the promotion agreement as modified by the aforesaid supplemental agreement. By an adoption agreement dated 14-3-1959, the petitioner adopted the promotion agreement of 1958 as modified by the said supplemental agreement. The petitioner has its head office in the State of Assam and is engaged in the business of prospecting petroleum and also producing and transporting crude oil from the State of Assam pursuant to the prospecting licence and mining lease granted by the State of Assam. By a second supplemental agreement dated 27-7-1961 executed between the Government of India, Burmah Oil Company Ltd. and Assam Oil Company Ltd. and the petitioner, certain provisions of the promotion agreement dated 14-1-1958 were modified. Clause 7 of the second supplemental agreement reads as follows :

"7. All crude oil produced by Oil India excluding Assam Oil Company's entitlement in respect of Oil India's existing areas under clause 20 of the Promotion Agreement will (subject as hereinafter provided) be sold to and purchased by the Government of India PROVIDED that after meeting as a first call on such oil the joint annual requirements upto 2¼ million tons of Indian Refineries Limited's Barauni and Nunmati Refineries Assam Oil Company's Digboi Refinery shall have the next call thereon up to a maximum of 435,000 tons per

A annum to the extent that it cannot be economicallly met from Assam Oil Company's leased areas."

The petitioner in pursuance to the provisions of clause 7 supplied crude oil to Barauni and Nunmati Refineries of Indian Oil Corporation (previously Indian Oil Refineries Ltd.) and to Digboi Refinery of Assam Oil Company Ltd. through pipe-lines constructed and B owned by the petitioner company. The Barauni Refinery is situated in Bihar while the other two refineries are situated in the State of Assam. At Barauni Refinery the crude oil which flows through the pipes from the oil fields of Assam is pumped into the Indian Oil Corporation's tanks and thereafter it is measured. After the measurements are agreed to by both the parties, namely, the petitioner and the Indian Oil Corporation, the crude oil is taken delivery of by the Indian Oil Corporation C on behalf of the Government of India.

The petitioner company has been filing regular sales tax returns before the Bihar Sales-tax authorities under the Bihar Sales Tax Act and was being assessed under that Act for the supply of crude oil to the refinery at Barauni treating the supply as intra-state sales. For the period ending 31 September 1964, the petitioner company sold crude D oil worth Rs. 49,26,813.06 to the refinery at Barauni and the same was subjected to sales tax under the Bihar Sales Tax Act. In the year 1966, sales tax authorities in Assam issued notice to the petitioner stating that Sales Tax was payable on the supply of crude oil to the refinery at Barauni under the Central Sales Tax Act as according to them the sales were in the course of inter-state trade. The petitioner contended that sales were intra-State and not subject to tax under the Central Sales Tax E Act. By the assessment order dated 31-3-1966, respondent No. 1 negatived the contention raised by the petitioner and held that by supplying crude oil to the refinery at Barauni the petitioner effected sales of oil to the Indian Oil Company and that they were sales in the course of inter-State trade and assessed the petitioner-company to pay a tax of Rs. 4,47,892.10 (Annexure J). By another order dated 31-3-1966, the petitioner was assessed to sales tax under Central Sales Tax Act to F Rs. 12,23,072.90 by respondent No. 1 (Annexure K).

In these writ petitions the petitioner prays for quashing Annexures J and K and for a *mandamus* directing respondents 1 to 3 not to levy sales tax under the Central Sales Tax Act on the sale of crude oil supplied by the petitioner to the refinery at Barauni.

G In the alternative, the petitioner prays for :

1. the issue of a writ, order or direction in the nature of *mandamus* directing respondents 4, 5 and 6 not to levy tax under the Bihar Sales Tax Act on the sales of crude oil made by the petitioner to the refinery at Barauni;

H 2. A writ, order or direction in the nature of *certiorari* quashing the various assessment orders passed by respondent No. 4 on the sales of crude oil made by the petitioner-company to the refinery at Barauni; and

A

3. A writ, order or direction in the nature of a *mandamus* directing the respondents 4 to 6 to refund the various amounts collected as sales tax from the petitioner company.

The question for consideration in these writ petitions is whether the sales made by the petitioner in pursuance to clause 7 of the second supplemental agreement to Government of India through the agency of Indian Oil Corporation were sales in the course of inter-state trade and were therefore liable to sales tax under the Central Sales Tax Act. Section 3 of the Central Sales Tax Act provides : B

"3. 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— C

(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." D

This Court has held in a number of cases that if the movement of goods from one State to another is the result of a covenant or an incident of the Contract of Sale, then the sale is an inter-state sale. See *Tata Iron & Steel Co. Ltd.* v. *S. R. Sarkar*(1) and *The State of Jammu & Kashmir & Ors.* v. *Caltex (India) Ltd.*(2). Here, the crude oil was E carried from Assam through the pipelines specially constructed by the petitioner to the refinery at Barauni in Bihar and there the oil was pumped and delivered to the Indian Oil Corporation. Clause 12 of the agreement dated 14-1-1958 provides that the petitioner shall arrange for the construction of pipeline or such other related facilities as the company shall consider necessary for the transport of crude oil to be produced by it to the refinery at Barauni. This would indicate that the F construction of pipeline was undertaken by the petitioner in pursuance of the agreement and that that was for the specific purpose of transporting crude oil to Barauni from Assam. This can only point to the conclusion that the parties contemplated that there should be movement of goods from the State of Assam to the State of Bihar in pursuance to the contract of sale.

G

Clause 7 of the 1961 agreement must needs be read with its precursory clause 12 of the 1958 agreement since all the contracting parties were well aware of their respective obligations in the transactions arising out of the several agreements—not one of which can be left out of consideration.

Even though clause 7 of the supplemental agreement does not H expressly provide for movement of the goods, it is clear that the parties envisaged the movement of crude oil in pursuance to the contract from

(1) [1961] 1 S.C.R. 379 at 391. (2) 17 S.T.C. 612

A the State of Assam to the State of Bihar. In other words, the movement of crude oil from the State of Assam to the State of Bihar was an incident of the contract of sale. No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the course of inter-state trade". The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not B necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale. See *State Trading Corporation* v. *State of Mysore*(1).

C

Therefore, we think that the sales in question were sales in the course of inter State trade and that the Bihar Government had no jurisdiction to tax the sales under the Sales Tax law of the State. The petitioner is, therefore, entitled to the alternative reliefs prayed for in the writ petitions, namely, that respondents 4 to 6 in each of the petitions should be enjoined not to impose sales tax under the provisions of the Bihar Sales D Tax Act in respect of sales made in pursuance of clause 7 and that they should be directed to refund to the petitioner the sales tax collected from the petitioner by way of sales tax as the various assessment orders made by respondent No. 4 stand quashed. The writ petitions are allowed to the extent indicated and they are dismissed in other respects. In the circumstances, we make no order as to costs.

E

P.H.P. *Petitions allowed in part.*

(1) 14 S.T.C. 188.