

**Before the THIRD BENCH of the
Maharashtra Sales Tax Tribunal
at Mumbai**

VAT APPEAL NOS.26 TO 29 OF 2016

M/s.Empire Tobacco Company Pvt. Ltd.

.... Appellant

V/s

The State of Maharashtra

....Respondent

Coram :

Smt. S. D. Tulankar, Member

Shri. G. B. Indurkar, Member

Appearance:

Shri. V. P. Patkar, Advocate for the appellant.

Shri. N. M. Mohite, Deputy Commissioner of Sales Tax (Legal) for the Respondent.

Date : **19/04/2018**

J U D G E M E N T

(Per Smt. S. D. Tulankar, Member)

Present bunch of four appeals under the Maharashtra Value Added Tax Act, 2002 ("MVAT Act" for short) and the Central Sales Tax Act, 1956 ("CST Act" for short) is directed against the orders passed by the Joint Commissioner of Sales Tax (VAT-ADM), Thane Rural Division, Bhayander on 18/10/2016 and 17/10/2016 respectively for the period 2011-12 and 2013-14. The said orders were passed by the Joint Commissioner of Sales Tax exercising review jurisdiction. Being aggrieved by the same, appellant has challenged the review orders in these appeals.

2. The material facts on which the present litigation is based can be narrated as under –

The appellant, M/s.Empire Tobacco Company Pvt. Ltd. is a manufacturer of Cigar and Cigarette and other tobacco products having its factory in Vasai in the State of Maharashtra. Appellant was assessed for the periods 01/04/2011 to 31/03/2012 under the MVAT and CST Act. The said assessments under MVAT Act resulted into net refund which was granted to

the dealer vide Refund Payment Order. The assessment under CST Act resulted into dues. The same were adjusted against the refund under MVAT Act. Similarly, assessment was also done for the period 01/04/2013 to 31/03/2014 and assessment orders were passed. The assessment under MVAT Act resulted into net refund and assessment under CST Act resulted into net demand. The demand was adjusted against the refund under MVAT Act. Subsequently, on 03/05/2016, the Joint Commissioner of Sales Tax (VAT-ADM), Thane Rural Division, Palghar issued a notice in form-309 and proposed to review the assessment order by passing order which could affect the appellant adversely. The notice was issued u/s.25 of the MVAT Act and appellant was asked to produce the detailed record of interstate sales and dispatch proof of interstate sales. After hearing appellant, the review orders were passed in both the periods. In review, the Joint Commissioner of Sales Tax held that sales which were treated as interstate sales by the assessing authority were in fact local sales and levied tax accordingly. Therefore, the review order under MVAT Act for both the periods resulted into reduction in refund. Since the Joint Commissioner of Sales Tax came to the conclusion that sales which were claimed by appellant as interstate sales were in fact local sales in Maharashtra, dues payable under CST for both the periods were held to be Nil dues. Being aggrieved by the review orders, appellant has challenged the same before this forum.

3. Shri. V. P. Patkar, learned advocate represented the appellant and Shri. N. M. S. Mohite, learned Deputy Commissioner of Sales Tax (Legal) represented the Revenue.

4. The arguments were advanced from both the sides in support of their respective stand. Shri. Patkar, learned advocate challenged the order of review on the ground that the reviewing authority had no material before him to review the assessment order. It was submitted that the review order has none of the ingredients of review jurisdiction as laid down u/s.25 of the MVA Act. Further argument of Shri. Patkar was that the Joint Commissioner of Sales Tax exercising review jurisdiction did not consider the documents

placed before him and totally ignored the copies of agreement of appellant and his distributors. It is his contention that the appellant had effected sales of goods with three distributors in Gujarat namely, M/s.Dharini Trade Link Corporation, M/s.Vipul Trading Company and M/s.Avi Trade Link Corporation. It was argued that appellant had placed on record the agreement entered into between appellant and these three distributors from which the terms of contract could have been easily ascertained. However, the learned Joint Commissioner of Sales Tax did not take pains to go through the terms. According to Shri. Patkar, if the Joint Commissioner would have scrutinized the terms of contract, he could have found that it was the term of contract that delivery of goods should be through a carrier as and when directed by the distributor and delivery was to be given on the address of the consignee shown on Excise Invoices which is in Gujarat State. It was vehemently argued by Shri. Patkar that since the delivery was agreed to be taken in Gujarat, there was no possibility of diversion of goods from Maharashtra to any other place other than State of Gujarat. It was argued that movement of goods from Maharashtra to Gujarat was the necessary instance of the contract of sale.

5. Further argument of Shri. Patkar was that the consignee / distributors issued C-forms to the appellant and given confirmation for received goods in Gujarat and these C-forms were placed on record which support the contention of the appellant that it was not a local sale, but it was an interstate sale.

6. Another aspect of the sale transaction was brought before us by Shri. Patkar who drew our attention to the fact that as per terms of contract, the distributor i.e. Party No.2 in each agreement had agreed to pay all taxes as applicable in the State of Gujarat and Party No.1 has not been responsible for the same. It was contended that it is the factual position that the goods were delivered to the consignee through an agent of the consignee, M/s.Mega Logistics, who transported the same to Gujarat for delivery to the distributors. Therefore, according to Shri. Patkar, the goods moved from

Vasai, Maharashtra in accordance with and to comply with the terms of contract between appellant and distributors.

7. Learned advocate, Shri. Patkar criticized the impugned order of review on the ground that the reviewing authority erroneously jumped to the conclusion that appellant did not establish that goods moved from Maharashtra to Gujarat. It was contended that this conclusion was drawn for the sole reason that appellant could not produce the dispatch proof and the goods were taken by the carrier, M/s.Mega Logistics from the factory premises. It was submitted that from these two circumstances, learned Joint Commissioner came to the wrong conclusion that movement of the goods was initiated in Maharashtra and terminated in Maharashtra only. It was further submitted that the Joint Commissioner of Sales Tax observed in his order that in the printed form of Mega Logistics space for signature is left blank. Shri. Patkar all the while maintained that Mega Logistics is the bailee to whom the goods were handed over as an agent of the buyer.

8. Further argument of Shri. Patkar was that the Joint Commissioner of Sales Tax committed an error in concluding that the goods did not move outside the State of Maharashtra for the sole reason that no dispatch proof was produced. Shri. Patkar argued that the product sold by the appellant is Cigars and Cigarettes. It was submitted that transportation of these products require a lot of care during manufacturing, packing till they reach to the final consumer and therefore the dealer has to take precaution that during transit carton should be delivered safely and in a good condition and they should not be exposed to the climatic changes if any. It was emphatically submitted that in view of these peculiarities, procedure for transporting cigars and cigarettes is not the same as is adopted for other goods and therefore it is not possible to produce the invoicewise proof of dispatch. It was, thus, contended that merely because in the invoices of Central Excise and Customs, the mode of transport is stated to be by rail, it cannot be inferred that there was no interstate movement of goods as no rail receipts were produced.

9. During his arguments, Shri. Patkar referred to Section 3 of the Central Sales Tax Act which speaks about the sale or purchase in the course of interstate trade or commerce. It was argued that as per this section, the only requirement for establishing that a sale or purchase is in the course of interstate trade or commerce is to show that the sale or purchase occasioned the movement of goods from one State to another and delivery to carrier is deemed to commence at the time of delivery and terminated at the time when delivery was taken from such carrier. It was submitted that in the present case, the goods were delivered to the carrier engaged by the distributors and from that time the movement of goods started from Maharashtra and it ended in Gujarat. Therefore, it was contended that the essential features of sale in the course of interstate trade or commerce is therefore established.

10. An argument was canvassed by Shri. Patkar that appellant placed on record enough evidence to corroborate his contention that goods moved from appellant's factory in accordance with the terms of contract. It was submitted that appellant placed on record the document of Mega Logistics in which consignor's name is shown as Empire Tobacco Co. Pvt. Ltd. and consignee's name is shown as M/s.Avi Trade Link Corporation, M/s.Dharini Trade Link Corporation and M/s.Vipul Trading Company. It was pointed out that appellant has also filed invoices for removal of excisable goods from the factory of appellant, in which the names of the distributors are shown as that of three distributors and address is shown as Vadodara, Gujarat. In addition to this, appellant has also filed the agreement of appellant with three parties at Gujarat about sole distributorship. Learned advocate, Shri. Patkar further canvassed the point that all these three distributors have given certificates to appellant confirming the fact about receiving the goods and having sold the same from the State of Gujarat. It was the grievance of Shri. Patkar that all these arguments were very much before the reviewing authority, but reviewing authority ignored the same and passed the review order.

11. A point was also raised by Shri. Patkar that distributors in Gujarat had agreed to pay local tax and accordingly they had paid the same in Gujarat. According to Shri. Patkar, this is another circumstance which clearly shows that sale of Cigar and Cigarette to these three distributors was in the course of interstate trade. It was pointed out that appellant has also placed on record annual return of all these three distributors for the relevant period in which tax in Gujarat is separately shown.

12. It is the argument of Shri. Patkar that by submitting all the above documents, appellant discharged the burden cast upon it to prove his claim of interstate sale and now it was for the Department to show that sales by appellant to distributors were local sales.

13. Following authorities were cited by the appellant to establish the nature of transactions as interstate sales –

- (i) Commissioner of Sales Tax, Maharashtra State Vs. Nivea Time [1997] 108 STC 6 (BH).
- (ii) K.C. Metal Industries Vs. Commissioner of Sales Tax, Mumbai [2010] 35 VST 403 (BH)
- (iii) Surajmal Gouty Vs. State of Maharashtra [2014] 75 VST 478 (BH)
- (iv) Swastik Plastics Vs. The State of Maharashtra (Second Appeal No.257 to 258 of 2005 decided on 29/03/2006).

14. In the course of his arguments, Shri. Patkar also referred to the affidavit of the proprietor of Mega Logistics explaining the system in which Mega Logistics operate. It was submitted that transportation of cigar is a delicate job and it requires a chain of persons and agencies till goods reach the ultimate consumers. Shri. Patkar stated that Mega Logistics is from Gujarat and therefore it has engaged one person by name Guddu, who take delivery of carton from appellant and loads them in railway cargo or send them by any other mode of transport and when the train reaches Vadodara, the proprietor of logistic by name Sitaram Rajani takes delivery of those

carton and deliver them to different distributors as per agreement between appellant and distributors. It was argued by Shri. Patkar that from the agreement it is very clear that the parties intended that the goods should move from Maharashtra and should be delivered in the State of Gujarat and this is evident from the agreement so also from other documents filed by appellant. It was vehemently stated that on the face of this material, there was no reason for the reviewing authority to infer that the assessment order was erroneous and all sales claimed by appellant as interstate sales were local sales and were leviable with VAT.

15. In reply to the arguments advanced by Shri. Patkar, Shri. Mohite, learned Deputy Commissioner of Sales Tax (Legal) supported and justified the order passed by the reviewing authority. It was argued that mere production of C-forms are not sufficient to infer the nature of the transaction as interstate sales. Shri. Mohite submitted that the reviewing authority correctly found that there was no dispatch proof and appellant had not filed any rail receipts to show that goods were sent by rail from Maharashtra to Gujarat. He referred to his written submissions and stated that in the written submission he has elaborately explained the facts of the case. It was stated that appellant's place of business was visited by Investigation Branch on 26/02/2016 and during investigation and search no evidence of interstate sales was found. It was further stated that investigation team recorded the statements of Director of the company Shri.Pawaskar, who stated that delivery of the consignments was given to the persons of the buyers in the State of Maharashtra itself and this was further confirmed by Shri. Dilip Patil, Manager in his statement, who further stated that they did not have any receipts / railway receipts or any other evidence except declarations in Form-C. It was contended by Shri. Mohite that in the absence of dispatch proof, there was no evidence showing interstate movement of goods and therefore appellant's claim for interstate sales prima facie seems to be incorrect. Moreover, it was submitted that the invoices of M/s. Mega Logistics did not acknowledge the receipt of the goods by bailee or agent and therefore the claim of interstate movement of goods

is further negatived by these documents. Hence, according to Shri. Mohite the reviewing authority was justified in reviewing the order.

16. It was further submitted by Shri. Mohite that the Sales Tax Department visited the office of Mega Logistics, but the proprietor of Mega Logistics could not show the counterfoils of the invoices issued to appellant. It was argued that Mega Logistics should have preserved the counterfoils for a period of five years, but this was not done.

17. Another circumstance relied upon by Shri. Mohite was that for a subsequent periods, appellant filed revised returns in which he showed local sales and reversed his claim of interstate sales.

18. As regards the authorities cited by appellant, it is the argument of Shri. Mohite that these authorities can be distinguished from the present case. Referring to the authority of **Swastick Plastics**, it was submitted that in that case, there was no proof to show that goods were local sales, but in our case, there is evidence to show that goods were delivered in Maharashtra only and not in Gujarat and therefore two cases cannot be treated on par.

19. In respect of the authority of **Commissioner of Sales Tax Vs. Nevea Time (108 STC 6)** relied upon by appellant, Shri. Mohite submitted that in that case there was a link between movement of goods from Maharashtra to Dahanu, but this is not so in our case and in the absence of dispatch proof, the movement cannot be established. Thus, according to Shri. Mohite, the authorities cited by appellant are distinguishable from the present case as facts are different. Therefore, according to Shri. Mohite, appellant is able to establish that there was intrinsic link between the movement of goods from Maharashtra and the contract between appellant and the three distributors. Therefore, he argued that the goods were delivered in Maharashtra only and therefore the claim of appellant that goods moved in the course of interstate trade or commerce is incorrect.

20. We have considered these rival submissions. We have also perused the case laws submitted by both the parties so also the documents through which the present appeals arises. The orders which are the subject matter of these appeals are the orders in exercise of review jurisdiction u/s.25 of the MVAT Act. It appears that the review authority came to the conclusion that appellant's claim of interstate sale was incorrectly granted and therefore he invoked the powers of review. Therefore, we have to see as to whether there was material to draw such inference that the claim was incorrectly granted or the order of assessment was erroneous.

21. The statutory provisions which need to be scrutinized must be examined to understand the nature of transactions between appellant and his distributors. The appellant has to put forward his claim on the basis of section 3 of the Central Sales Tax Act, 1956, which reads as under –

“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.”

22. The words in the section on which emphasis should be laid are “occasions the movement of goods from one State to another”. Therefore, the crucial question which should be contested is as to whether the movement of goods from appellant's factory premises to its final destination

was as a result of the agreement of sale between appellant and distributors in Gujarat. It is the contention of appellant that his agent or bailee by name M/s.Mega Logistics engaged by him took delivery from factory premises for its onward transmission to distributors places in Gujarat. Whereas it is contended on behalf of the Department that the persons engaged by appellant had taken delivery at the factory premises and therefore the goods were delivered in Maharashtra only and it is a local sale as against interstate sale claimed by appellant. To understand this submission, we have to throw glance to the documents placed on record by the appellant.

23. Since there was written agreements between appellant and three distributors in Gujarat, it is proper to first examine the silent features of the agreement which is filed before us. Appellant has submitted three agreements entered into by appellant with M/s.Avi Trade Link Corporation, M/s.Dharini Trade Link Corporation and M/s.Vipul Trading Company. From these agreements, it is disclosed that appellant has appointed the said distributor as sole distributor for appellant's product and has agreed that various branch as and when required and communicated orally or in writing to appellant, the goods will be supplied. It is material to note that it was agreed that the goods should be delivered to the carrier as and when directed from time to time. Therefore, it was a condition of the agreement itself that the goods will be taken by carrier appointed by the distributor. This supports the contention of the appellant that goods were delivered at the factory premises to Mega Logistics which is a carrier or bailee of the distributor. Further agreement mentions that all taxes as applicable to the State of Gujarat will be paid by Party No.2 i.e. distributor and in no case Party No.1 i.e. appellant shall be held responsible for any default. This further indicates that the goods were to be sold at Gujarat. This is another factor which lends support to appellant's case that the goods moved to Gujarat from Maharashtra in pursuance of the agreement between appellant and distributor.

24. Besides these agreements, appellant has produced other evidence on record. The most important is the certificate granted by the distributor confirming that Empire Tobacco Company Pvt. Ltd has sold cigars and cigarettes and the goods were received in the State of Gujarat. In the certificate, details of dispatch for the period under reference are also given. This is another circumstance which allows us to infer that movement of the goods from Maharashtra was an instance of the contract of sale between appellant and three distributors.

25. It was argued on behalf of appellant that the distributors sold the goods locally in Gujarat and they also paid the tax on the same in Gujarat. In support of this contention, appellant has placed on record the annual returns filed by three distributors in which the tax payable locally in Gujarat is shown. Not only this, appellant has also placed on record the assessment orders of three distributors.

26. In addition to this, appellant has also filed the ledger accounts maintained by him in which all transactions to Vipul Trading Company, Dharini Trade Link Corporation and Avi Trade Link Corporation relating to these periods are shown. The addresses of these distributors are shown as Baroda, Gujarat. Then there are the statement of proprietor of Mega Logistics on affidavit by name, Sitaram Rajne recorded by Investigation Branch. In this statement, a query was made to him as to what is the procedure of his business. He stated that his office is at Baroda in Gujarat and he conducts the business of courier services. According to him, there are several such persons who are involved in such train cargo service and they know each other and work in association. He explained this and stated that if he is engaged by customer from Baroda to get the cargo located in Vasai area from Dadar of Mumbai, he engaged such service provider who operates in that area and that person collects the goods from the desired location and dispatches the same from their or bring the same by train to Baroda and at Vada he collects those goods and delivers the same to the customer who has ordered the goods. He stated that he was engaged by Avi

Trade Link Corporation, Dharini Trade Link Corporation and Vipul Trading Company on regular basis. He also stated that Shri. Bhanupratap Singh @Guddu is associated with him in providing train cargo service and he collects their cigarettes from M/s. Empire Tobacco Company Pvt. Ltd. duly packed in plastic packets and brings the same by rail to Baroda and thereafter the same are delivered to the respective customers. Thus, it seems that Mega Logistics is carrier engaged by the three distributors for carrying goods from Maharashtra to Vadodara (Baroda). As seen from the Explanation-I to section 3, if the goods are delivered to a carrier or other bailee or transmission, the movement of the goods is deemed to commence at the time of delivery and terminated at the time when delivery is taken from such carrier or bailee. In the present case, there was an express term in the contract that goods will be delivered to a carrier as and when directed by the distributors from time to time. Therefore, as per Explanation-I, movement of goods clearly commence from the time they were delivered to Mega Logistics and it was terminated at the time when delivery was taken from carrier by the distributors who are the ultimate customers. As explained by the appellant, this is routine procedure followed in trading community. It is further pertinent to note that the agreement with distributors contains categorical term that the risk and ownership of the goods supplied by Party No.1 shall remain with Party No.1 till the goods are received by Party No.2 in the State of Gujarat. This clearly shows that it was contemplated by the parties that the goods will move from Maharashtra for reaching to Gujarat in pursuance of agreement and between appellant and distributors.

27. From the arguments advanced orally by the Deputy Commissioner of Sales Tax (Legal) so also from the written submission filed by the Revenue, it can be seen that the Revenue is harping upon certain circumstances in support of its contention that there is no convincing evidence to conclude that Mega Logistics has confirmed the activities of taking delivery of the goods from appellant's factory premises in Mumbai to Gujarat. According to Revenue, there are some discrepancies in the

documents produced by appellant in respect of Mega Logistics to the effect that the receipt is signed by consigner only and the space for acknowledgement of receipt of goods by Mega Logistics is entirely blank. It was also contended that the agency taking consignment had charged only basic charge of Rs.100/- and for all these circumstances, it was concluded by the Revenue that the movement of goods from appellant's factory premises to Gujarat is not proved by appellant. In the light of this, we have to consider the statement of Shri. Sitaram Rajne, Proprietor of Mega Logistics, who has explained the procedure, how goods are lifted from appellant's factory at Mumbai by one Guddu engaged by Mega Logistics and they are brought to the office of Mega Logistics, which is at Vadodara, Gujarat and then they are delivered to the distributors. From this, it appears that it is the regular practice that goods are taken from appellant's premises by a person engaged by Mega Logistics. It must be stated that the statement of Shri.Sitaram Rajne is on affidavit sworn by him and there is nothing suspicious in his statement. Therefore, we can accept his statement which shows that the goods are taken by Guddu from factory and their final destination is Gujarat. Coupled with this is the clause in the agreement between appellant and distributors, which clearly lays down that, the goods which is taken by the carrier is appointed by the distributors. Therefore, it appears to be an understanding between appellant and distributors that goods will not be delivered to the distributors in Maharashtra, but they will be taken through the agency of carrier and delivery will be in Gujarat.

28. As regards argument of Shri. Mohite that when officers of the Sales Tax Department visited the office of Mega Logistics, the proprietor of Mega Logistics could not show the counterfoils of invoices issued to the appellant. The proprietor, Shri. Sitaram Rajne has explained this that his place of business is small one and therefore unless told him in advance he cannot preserve the railway receipts and any other documents for more than three months. Therefore, from a single circumstance that counterfoils were not found in the office of Mega Logistics, we cannot hastily draw the inference that Mega Logistics did not act as carrier for the appellant. It is

also to be noted that Shri. Sitaram Rajne stated that he works for several customers and their goods are collectively transported under single railway receipt and therefore he cannot issue the receipt of Mega Logistics solely of appellant's goods. Hence, the contention of the Revenue that absence of railway receipt is the proof of fact that there was no movement of goods from Maharashtra and goods were not transported from Maharashtra to Gujarat cannot be accepted.

29. On the background of these facts, we have examined the case laws cited by both the sides. The first authority relied upon by appellant is the judgment of the Tribunal in **Second Appeal No.257 to 258 of 2005 decided on 29/08/2006 in M/s. Swastik Plastics Vs. State of Maharashtra**. In the said matter, it was the contention of appellant that assessing authority erred in holding that certain sales effected to the upcountry dealers were local sales and liable to tax and in fact they were interstate sales against C-Forms. Appellant had produced copies of purchase orders, delivery challans, sale bills etc. and in the purchase orders, there were clear instructions to deliver the goods to the buyer's destinations in other State and all those sales were supported by C-Forms issued by the upcountry buyers. In the said matter also, it was the argument of learned advocate that in the absence of dispatch proof, prima facie assumption was that the buyers had taken the delivery in Maharashtra and therefore they were local sales. Discarding this contention, the Tribunal held that the documents produced were sufficient proof of interstate movement of goods and mere fact that there were no dispatch proof produced by appellant does not make sales as local sales. The Tribunal also considered the contention of appellant that the onus to establish the movement of goods from the State of Maharashtra to the State of Rajasthan is on the assessee. The Tribunal observed that it is an established position that the burden of proof would be on the person making such averment and in the present case, the Revenue is averring that there is no movement of goods and hence Revenue will have to discharge the onus since the assessee has produced number of documents coupled with Form-C from the purchasing dealers. In our opinion, the said

judgment clearly applies to the present case. In the present case also, there is an express terms of contract that goods will be delivered in Gujarat and appellant has produced invoices from the distributors. Therefore, appellant has sufficiently discharged the burden cast upon it to establish that the sales were interstate sales. In case, the Department wanted to contend that there are local sales, it is for the Department to establish the fact, but this is not done.

30. The second authority cited by the appellant is in case of **Commissioner of Sales Tax Vs. Nivea Time (108 STC 6)**. For understanding whether this authority is attracted to our case, it is necessary to state the facts in brief in that case. In the said matter, the respondent was a manufacturer and seller of wrist watches having its factory in the Union Territory of Daman. It purchased from the Customs Collectorate at an auction held in Bombay by the latter for actual users, watch movements, which it used in the manufacture of watches at Daman. It claimed that the purchases of watch movements from the Customs Collectorate at Bombay were interstate sales within the meaning of section 3(a) of the Central Sales Tax Act, 1956. Hon'ble Bombay High Court held that it is not necessary for a sale to be an interstate sale that the covenant regarding interstate movement must be specified in the contract itself. It would be enough if the movement was "in pursuance of" or "incidental to" the contract of sale. It was further held that the transaction will remain an interstate one no matter in which State the delivery of goods is taken by the purchaser. We cannot agree with the argument of Shri. Mohite, learned Deputy Commissioner of Sales Tax (Legal) that this authority is not applicable here, as in our case no link between the movements of goods from Maharashtra to Gujarat is established as there is no dispatch proof. It must be stated that as discussed above, it is an impressed terms of agreement between the appellant and distributors that the goods will be taken from appellants factory by carrier appointed by the distributors and the invoices filed on record show that the consigner is the appellant and consignee is the distributors at Vadodara, Gujarat. Therefore, it is very clear that goods were

intended to be reached to Vadodara through carrier. This is sufficient evidence to establish that the movement of goods is the result of contract or is an incident to the agreement between appellant and distributors. If this is so, a link is established between movements of goods from Maharashtra to distributors in place of Gujarat.

31. Revenue stressed the point that goods were taken from appellant's factory by a person of Mega Logistics and therefore the movement of goods started and ended in Maharashtra only. In this regard, we have already stated that from the contract, it is contemplated that the goods will be sold in Gujarat. Therefore, actual delivery of the goods so taken by the buyer is in Gujarat. Moreover, it must also be kept in mind that the State of delivery of goods is not the deciding factor as to whether the sale transaction is an interstate sale. If section 3(a) of CST Act is carefully seen, it only requires that the sale or purchase being an interstate sale, it occasioned the movement of goods from one State to another. In the present case, such movement is duly proved by appellant and the fact whether the agent took delivery in Maharashtra is not relevant.

32. At this stage, it is necessary to refer to the judgment of the Tribunal in **Surajmull Gouty Vs. State of Maharashtra [2014] 75 VST 478 (Bom)** on which the Department is relying to justify their argument that this is not an interstate sale, but it is a local sale. We have gone through the said judgment. In the said case, the assessing authority considered the transactions as an interstate sale transaction whereas according to appellant it was a local sale and there was no conceivable link between sale and movement of goods. However, there is a major difference between this case and our case. In the case of Surajmull Gouti, the assessing officer had issued crosschecked memos in respect of the buyers to confirm the fact whether the delivery of the gold bars was given by the appellant to buyers located outside Maharashtra. In the present case, this is not done. Department has not done any exercise to crosscheck, whether the buyers in Gujarat have taken delivery of goods from Maharashtra. Appellant

have filed C-forms from three distributors. They have also filed agreement with three distributors, receipts of Mega Logistics, the carrier. This is sufficient evidence to show that goods moved from Maharashtra as an incidence of contract between appellant and these three distributors. Therefore, appellant has discharged the burden cast upon it. Now, if Department wants to prove that these are not interstate sales, but local sales only, it was for the Department to adduce evidence in this regard. Department has referred to and recorded the statement of the proprietor of Mega Logistics. However, appellant was not given opportunity to cross examine the appellant. Department could have cross-checked the information given by appellant that the goods moved to Gujarat from Maharashtra in accordance with the contract and the buyers in whose connection C-forms were filed by appellant, received the goods, but no such cross check was done by the Department though it is within its powers to do so. Therefore, in our opinion, the material brought on record prima facie shows that the goods i.e. cigar and cigarettes moved from Maharashtra in compliance with the agreement of sale between appellant and distributors located in Gujarat and it is an interstate sale.

33. We are well aware that u/s.25 of the MVAT Act, the Commissioner has every power to call for the record of any order passed by the subordinate and to examine it under the circumstances mentioned in section 25 (1)(a)(b). However, on the facts and circumstances of this case, it does not appear that the order passed by the assessing authority is erroneous and there is no material to show that the claim of interstate sale granted by assessing authority is incorrectly granted. Therefore, there was no occasion to invoke the powers of review u/s.25 of the MVAT Act. On the background of these facts, the review order cannot be sustained and has to be said set aside.

We, therefore, proceed to pass the following order –

ORDER

VAT Appeal No.26 to 29 of 2016 are allowed.

The orders of reviewing authority are hereby set aside. The assessment orders are confirmed.

VAT Appeals are disposed of accordingly.

(G. B. Indurkar)
Member

SDT / LV

(S. D. Tulankar)
Member