

राजस्थान कर बोर्ड, अजमेर

1. अपील संख्या — 1240 / 2017 / अलवर.
2. अपील संख्या — 1241 / 2017 / अलवर.
3. अपील संख्या — 1242 / 2017 / अलवर.
4. अपील संख्या — 1243 / 2017 / अलवर.

मैसर्स युनाईटेड ब्रेवरीज लिमिटेड,
एस.पी.—971, इण्डस्ट्रियल एरिया चौपांकी, भिवाड़ी, अलवर.

.....अपीलार्थी.

बनाम

1. वाणिज्यिक कर अधिकारी,
प्रतिकरापवंचन, वाणिज्यिक कर विभाग, भिवाड़ी
2. स्टेट ऑफ बिहार जरिये सचिव कम आयुक्त,
वाणिज्यिक कर विभाग, बिहार
3. स्टेट ऑफ झारखण्ड जरिये सचिव कम आयुक्त,
वाणिज्यिक कर विभाग, झारखण्ड.

.....प्रत्यर्थी.

खण्डपीठ

श्री वी. श्रीनिवास, अध्यक्ष
श्री के. एल. जैन, सदस्य

उपस्थित ::

श्री विवेक सिंघल, अभिभाषक

.....अपीलार्थी की ओर से.

श्री अनिल पोखरणा, उप-राजकीय अभिभाषक

.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 07 / 09 / 2018

निर्णय

1. अपीलार्थी द्वारा ये चार अपीलें वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भिवाड़ी (जिसे आगे 'कर निर्धारण अधिकारी' कहा जायेगा) द्वारा अपीलार्थी कम्पनी के कर निर्धारण वर्ष 2013-14, 2014-15, 2015-16 व 2016-17 (21.12.2016 तक) के लिये केन्द्रीय बिक्री कर अधिनियम, 1956 (जिसे आगे 'केन्द्रीय अधिनियम' कहा जायेगा) की धारा 9 सपठित राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 की धारा 25, 55 व 61 के तहत पारित किये गये पृथक-पृथक कर निर्धारण आदेश दिनांक 30.08.2017 के विरुद्ध प्रस्तुत की गयी हैं।
2. इन चारों अपीलों में पक्षकार एवं विवादित बिन्दु समान निहित होने से दोनों प्रकरणों का निस्तारण एक ही आदेश से किया जाकर निर्णय की प्रति प्रत्येक पत्रावली पर पृथक-पृथक रखी जा रही है।
3. प्रकरणों के तथ्य संक्षेप में इस प्रकार हैं कि अपीलार्थी कम्पनी द्वारा एक अनुबंध के जरिये अपने उत्पाद बियर का विक्रय मैसर्स बिहार स्टेट ब्रेवरीज कॉर्पोरेशन लिमिटेड, पटना (बिहार) एवं मैसर्स झारखण्ड स्टेट ब्रेवरीज कॉर्पोरेशन लिमिटेड, रांची (झारखण्ड) को किया गया था परन्तु उस माल का विक्रय

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अपीलार्थी कम्पनी की बिहार/झारखण्ड स्थित ब्रांच को जरिये स्टॉक ट्रांसफर किया जाने के आधार पर अपीलार्थी कम्पनी द्वारा राजस्थान से माल का स्टॉक ट्रांसफर उनकी झारखण्ड स्थित शाखा पर किया जाना एवं झारखण्ड स्थित शाखा से अन्तिम खरीदार बिहार/झारखण्ड स्टेट ब्रेवरीज को विक्रय किया जाना बताया, परन्तु कर निर्धारण अधिकारी द्वारा अपीलार्थी एवं क्रेता कम्पनी के बीच किये गये अनुबंध के आधार पर अपीलार्थी द्वारा माल का सीधा विक्रय बिहार/झारखण्ड के क्रेता को किया जाना माना गया तथा अपीलार्थी द्वारा केन्द्रीय अधिनियम की धारा 6ए के तहत किये गये क्लेम को अस्वीकार कर उसे अन्तर्राज्यीय विक्रय मानकर उस पर कर, ब्याज एवं शास्ति आरोपित की गयी। चूंकि अपीलार्थी द्वारा अपने विक्रय संव्यवहार केन्द्रीय अधिनियम की धारा 6ए के तहत होना क्लेम किया था परन्तु कर निर्धारण अधिकारी द्वारा इसे अस्वीकार किया गया है, फलतः अपीलार्थी द्वारा यह प्रथम अपीलें केन्द्रीय अधिनियम की धारा 18ए के तहत कर बोर्ड के समक्ष प्रस्तुत की गयी है।

4. दोनों पक्षों की बहस सुनी गयी।

5. बहस के दौरान अपीलार्थी व्यवहारी के विद्वान अभिभाषक ने कथन किया कि अपीलार्थी कम्पनी राजस्थान, झारखण्ड व बिहार राज्य के वाणिज्यिक कर विभाग एवं आबकारी विभाग में पंजीकृत फर्म है, जिनके द्वारा समस्त संव्यवहार नियमित घोषणा पत्रों एवं विभागीय अनुमति के आधार पर किये गये हैं। अपीलार्थी कम्पनी द्वारा बियर का निर्माण किया जाकर विभिन्न राज्यों में विक्रय किया जाता है, जिसकी समस्त मॉनिटरिंग आबकारी विभाग द्वारा की जाती है एवं समस्त संव्यवहार वाणिज्यिक कर विभाग द्वारा जारी 'एफ' फॉर्म से समर्थित हैं। अपीलार्थी कम्पनी द्वारा किसी भी मिथ्या घोषणा से माल का विक्रय नहीं किया जा सकता। अपीलार्थी द्वारा निर्मित माल का नियमित प्रक्रिया के तहत राज्य के बाहर स्थित डिपो में स्टॉक ट्रांसफर किया गया है, जिसे कर निर्धारण अधिकारी द्वारा अन्तर्राज्यीय विक्रय मानते हुए कर, ब्याज एवं शास्ति का आरोपण किये जाने में विधिक त्रुटि की गयी है, जबकि व्यवहारी द्वारा केन्द्रीय अधिनियम की धारा 6A के तहत माल का स्टॉक ट्रांसफर किया गया है। व्यवहारी ने सर्वेक्षण के पश्चात् कर निर्धारण अधिकारी द्वारा जारी किये गये कारण बताओ नोटिस की पालना में अपने समस्त बहियात एवं विस्तृत जवाब प्रस्तुत किया था, जिसे कर निर्धारण अधिकारी द्वारा बिना किसी कारण के अस्वीकार करते हुए अविधिक रूप से मांग सृजित की गयी है। उक्त कथन के साथ विद्वान अभिभाषक ने अपीलार्थी की अपीलें स्वीकार किये जाने पर बल दिया।



6. प्रत्यर्थी राजस्व की ओर से विद्वान उप-राजकीय अभिभाषक ने कर निर्धारण अधिकारी के आदेशों का समर्थन करते हुए कथन किया कि व्यवहारी द्वारा राजस्थान राज्य में बियर का निर्माण कर उसकी सप्लाई बिहार स्थित फर्म मैसर्स बिहार स्टेट ब्रेवरीज कॉर्पोरेशन लिमिटेड, पटना एवं झारखण्ड स्थित फर्म मैसर्स झारखण्ड स्टेट ब्रेवरीज कॉर्पोरेशन लिमिटेड, रांची को एक निश्चित करार के तहत की गयी है, जो स्पष्ट रूप से अन्तर्राज्यीय संव्यवहार की श्रेणी में आता है। व्यवहारी द्वारा बियर का निर्माण उक्त फर्मों द्वारा निश्चित किये गये मापदण्डों के अनुसार किया गया है एवं पैक की गयी बोतलों पर स्पष्ट रूप से यह अंकित किया गया है कि "केवल बिहार/झारखण्ड राज्य में बिक्री हेतु"। ऐसी स्थिति में व्यवहारी द्वारा स्पष्ट रूप से करापवंचन की मंशा से अन्तर्राज्यीय विक्रय को स्टॉक ट्रांसफर बताने का प्रयास किया गया है। अपने कथन के समर्थन में विद्वान उप-राजकीय अभिभाषक द्वारा माननीय राजस्थान कर बोर्ड की खण्डपीठ द्वारा इसी फर्म के वर्ष 2009-10 से 2013-14 के कर निर्धारण वर्षों के सम्बन्ध में प्रस्तुत अपील संख्या 1229-1233/2014/अलवर में पारित निर्णय 24.11.2014 का हवाला देते हुए कथन किया कि माननीय खण्डपीठ द्वारा इसी बिन्दु पर अपीलार्थी की अपीलें अस्वीकार करते हुए कर, ब्याज एवं शास्ति की पुष्टि की जा चुकी है, अतः अपीलार्थी व्यवहारी द्वारा प्रस्तुत अपील अस्वीकार किये जाने का निवेदन किया।

7. उभयपक्ष की बहस पर मनन किया गया तथा कर निर्धारण आदेश एवं उपलब्ध रेकॉर्ड का अवलोकन किया गया।

8. हस्तगत प्रकरण अपीलार्थी व्यवहारी मैसर्स युनाईटेड ब्रेवरीज लिमिटेड, भिवाड़ी के कर निर्धारण वर्ष 2013-2014 एवं 2016-17 से सम्बन्धित पारित किये गये आदेशों से सम्बन्धित हैं, जबकि इसी व्यवहारी के कर निर्धारण वर्ष 2009-10 से 2013-14 से सम्बन्धित पारित किये गये आदेश दिनांक 24.11.2014 के विरुद्ध प्रस्तुत की गयी अपील संख्या 1229-1233/2014/अलवर मैसर्स युनाईटेड ब्रेवरीज लिमिटेड, भिवाड़ी बनाम सहायक आयुक्त, प्रतिकरापवंचन, राजस्थान वृत्त-तृतीय, जयपुर में माननीय राजस्थान कर बोर्ड की समन्वय खण्डपीठ द्वारा निर्णय दिनांक 24.11.2014 पारित करते हुए अवधारित किया गया है कि व्यवहारी द्वारा करापवंचन की मंशा से अन्तर्राज्यीय विक्रय को स्टॉक ट्रांसफर दर्शाया गया है, अतः आरोपित कर, ब्याज एवं शास्ति की पुष्टि की गयी है। राजस्थान कर बोर्ड की माननीय खण्डपीठ के उपरोक्त निर्णय का सुसंगत अंश निम्न प्रकार है :-

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"After hearing the counsel for both the parties, studying judgments of the Hon'ble Courts (cited supra) and the record placed before us, we set out in the matter as given herein under :

At the outset, we agree with counsel for the Revenue that show cause notice issued was a detailed one and reply and submissions were properly given consideration, and proper opportunity of even personal hearing was given and speaking orders were passed.

Amidst rival contentions of the counsel, what transpires is that all essential conditions of section 3(a) of the CST Act are witnessable in the present case. On the authority of M/s TELCO Vs Assistant Commissioner, (supra) they could be deduced from Agreement to sale (supply) of beer between BSBCL and the appellants, necessitating and occasioning movement of beer from appellants manufacturing units in Rajasthan to Bihar on the premise of same transaction.

The interstate movement of beer in instant cases was preceded by Agreement to sale and interstate sale related to it was inextricably interwoven with corresponding beer movement from district Alwar, Rajasthan to Patna, Bihar. The facts here are distinguishable from those of Central Distilleries and Breweries (supra), on the authority of case applicable in present scenario, that is M/s Indian Oil Corpn. Ltd., (supra). It is manifest that interstate movement of beer from Alwar to Patna did not break there but after a brief interval continued to finally terminate at different BSBCL depots in Bihar. It did not rupture the inextricate relationship between the movement of goods and sale, because sale could only be made to BSBCL by the sole seller, appellant manufactures. With no third party involvement in the whole scheme of sales, such a brief stoppage of movement of beer at Patna at appellants depot at Patna for a while did not impact the nature of interstate sale because at the most it was a transit halt of the goods in question.

The respondent Assessing Authorities have made out a case that in relation to the movement of beer stocks round the year from the appellant assesses' manufacturing units situate in district Alwar of Rajasthan to their branch offices at Patna and Ranchi was not result of bare stock transfers of beer but rather sales thereof to the various retail outlets of the BSBCL (or, JSBCL) spread across the State of Bihar (or, Jharkhand) made in course of the inter-State trade and commerce, between appellants and BSBCL.

The facts of present cases require analysis in the light of the provisions of the section 3 of the CST Act, 1956. It is a simple fact that Inter State sale or purchase is carved out of and separated from inside sales or purchases for the purpose of situs of taxation. It is to be explored whether the movement of beer from the State of Rajasthan to the State of Bihar (or, Jharkhand) was the result of a covenant or an incident of the contract of sale entered to between the authorized representative of appellant company and Bihar State Beverage Corporation Limited, if it were so, the sale was an inter-State sale.

We may have a look at the provisions of the LSP which are contextually relevant in the present case and reproduced as under :

1. The clause 3.1 of the LSP stipulates that **manufacturers desirous of supplying liquor to the BSBCL for subsequent supply to buyers** shall submit certain documents, before their offer can be considered and action initiated, one of them being (iv) is, as follows:

"an agreement as in the format in Annexure 4 duly executed by the authorized signatory of the manufacturer/ supplier in a stamp paper of denomination of Rs.100/-

2. Clause 4.1 of the LSP says that labels of brands proposed to be supplied / marketed in Bihar by a manufacturer / supplier located in or outside the state have to be approved by the Excise Commissioner, Bihar, Patna. Such an approval shall be obtained by the manufacturer / supplier and submitted to the Corporation.

3. Clause 4.2 of the LSP lays down that manufacturers / suppliers located outside the state shall submit a copy of the permission for the manufacture of the brands proposed to be supplied, approval for labels as granted by the competent excise authorities of that state and the authorization for exporting from that state to Bihar.

4. Clause 5 of the LSP says that a statement for each brand of FMFL/IMFL/BEER/WINE indicating information for label registration of a brand of FMFL/IMFL/BEER/WINE shall be submitted .

5. Clause 5.5 (A) (i) of the LSP determines that the price, which will be offered now, shall be valid, at the option of the offerer.

6. Clause 5.5(ii) of the LSP says that In respect of brands manufactured in Bihar or imported from outside the state the corporation is required to declare the price for sale to retailer and the maximum retail selling price of such products. Manufacturer shall quote the landed price.

7. Clause 5(B) stipulates that the landed prices quoted should be F O R destination. The manufacturer / supplier has to incur the entire expenditure till the consignment is received and stacked at the destination i.e., designated depots of the Corporation or any other location within Bihar, as specified in the permit. Unloading of the goods at the depots shall be the responsibility of the manufacturer / supplier located both inside and outside the State of Bihar, the consignments have to be dispatched under valid permit issued in the name of the M/s Bihar Beverages Corporation Ltd., Patna by the competent authority.

8. In respect of stocks of FMFL/IMFL/BEER/WINE, imported from outside the State or procured from within the State, all the bottles are to be affixed with holograms if it is supplied by the Excise Commissioner, Govt. of Bihar.

9. Clause 5(C) The price quoted shall be uniform irrespective of the location of the destination within Bihar.




10. Clause 5.6 says that (a) The offerer shall quote only for the brands for which the labels are approved by the Excise Commissioner, Govt. of Bihar, as on the date of submission of offer.

11. Clause 5.8 of the LSP cautions manufacturers to note that they are required to work out the Landed cost and the maximum retail selling price, taking due note of the provisions of the different notifications with respect to duties, fees issued by the Excise Department or the Excise Commissioner, Government of Bihar under the Bihar Excise Act and rules framed there under.

12. Clause 5.9 of the LSP fixes the margin of Corporation to be calculated in such a way that it is not more than 5% of the M.R.P. Likewise retailers margin will also be calculated in such a way that it is not more than 15% of the MRP.

13. Clause 5.16 of the LSP declares there shall be a **Purchase Committee** duly constituted by Govt. of Bihar which will fix the price of 'brands quoted.

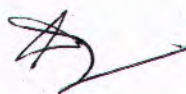
14. Clause Rule 6.1 of the LSP provides for the mechanism of issuance of OFS : Manufacturers / Supplies to the Corporation shall be based on the OFS issued by it. The corporation shall issue OFS based on the stock requirement of depots after duly considering the quantity held, the sales trend and requests of the manufacture / supplier, if any. To facilitate the process, the manufacture / supplier may indicate the requirement of its brands, and pack sizes in various depots. However, the corporation reserves its right to decide the quantity for which OFS can be issued.

15. Clause Rule 6.2 of the LSP holds that the Quantity to be procured from time to time shall depend upon the demand for the product. Further, the corporation shall not be under any legal compulsion to procure all or any brands produced by a particular manufacture / supplier, **simply because they have signed this Agreement and have made an offer.**

16. Clause Rule 6.4 of the LSP declares that two copies of the OFS will be issued for the exact quantity that the supplier / manufacture proposes to transport. It is, therefore, imperative that manufacture / supplier indicate their dispatch plan for issue of OFS. The OFS shall be signed by either of the authorized signatories of the Corporation.

17. Clause Rule 6.7 of the LSP sets out that In respect of supplies from within state or outside the State, the manufacture / supplier or their authorized representatives shall, after the issue of OFS , deposit the Import Fee, Excise Duty and other applicable duties or fees for their respective brands with the Excise Department and obtain required transport permit to ensure delivery.

18. Clause2 GENERAL D.Landed Price defines Landed Price at BSBCIL ware house means all inclusive of EDP, Freight, handling, Insurance, State/Central levies, duties, fees & excise duty and Commercial Tax.



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A. In this regard, It is imperative to go through the agreement entered into between the appellant and the BSBCL under the terms and conditions of the LSP as described in its Circular no.675/BSBCL, dated 12.03.2008 (extended for the relevant years : 2009-10 ,2010-11, 2011-12, 2012-13 and 2013-14).

B. At the background of above, It is apparent that the appellant **manufacturers who were desirous of supplying liquor to the BSBCL for subsequent supply to buyers** in reference to the aforesaid Clause 3.1 of the LSP submitted certain documents, before their offer was considered and action initiated by BSBCL. We find that in terms of Clause 3.1 (iv) of the LSP, an Agreement was struck between the two parties to the issue, the BSBCL and the appellant company, the introductory part of which is reproduced as under:

“This Agreement made at Patna...of 2008 between **the Bihar State Beverage Corporation Limited** (hereinafter called the Corporation) having its head office at....Patna represented by which term shall mean and include its executors,.....etc.,of the ONE PART AND **M/s Shivalik Industres Limited** represented by Shri L K Tiwari (hereinafter called manufacturer / supplier , the term including supplier) which term, unless repugnant to the context, shall mean and include its executors, administrators, successors in interest, assigns, ets., of the OTHER PART

In all matters connected with and in relation to all matters of liquor supplies to the Corporation for the year 2008-09 in the territory of the State of Bihar and witnessed ”, amongst other stipulations, under sub clause 1 of clause 1 “that the quantity of liquor to be procured and distributed shall be determined by the Corporation from time to time, keeping in view the demand for liquor manufactured / supplied by the manufacturer / supplier ”

4. This Agreement entered into between the BSBCL and the appellant companies having manufacturing units in Alwar, Rajasthan and the branches at Patna in Bihar and Ranchi in Jharkhand is the *cause celebre* in the present context, enabling appellants’ beer sales in the State of Bihar (or, Jharkhand) through the instrument called ‘Order for Supply ’ issued by the BSBCL to the appellant’s branch at Patna in Bihar,

5. The appellant assesses hold the above Agreement not as an Agreement for Sale of beer but an Agreement for distribution of beer in the State of Bihar.

6. Agreement to Sale or contract to sale, or in opinion of the appellants an Agreement to Distribution was implemented when OFS was issued by BSBCL, leading to import of beer from the manufacturing units of the appellant assesses and supply of which was as usual shown as having been stock transferred to Patna (or, Ranchi) branch of the appellants which in turn sold beer to the designated Depots of the BSBCL located in various towns of Bihar. The plea of the appellants that the beer by way of stock transfer, independent of any order, was continually

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transferred to the Patna branch of the appellants, where it was unloaded and stacked in the godown of the appellant company at Patna. When an OFS was issued by BSBCL for supply of beer to any of its depots located in any of the towns or city of Bihar, they raised the VAT invoice for such a sale and arranged transport for carrying beer to the designated depot of the BSBCL. This way, the sale of beer in Bihar was a local sale, and the bogey of inter-State sale raised by the respondents was a wild goose chase.

In the background of the above facts, it is found that the respondent Assessing Authority was right in assuming jurisdiction under section 25 of the RVAT Act, because he had sufficient reason to believe that the appellant had avoided paying CST on impugned transactions. On the authority of finding in case of M/s Hyderabad Engineering Vs State of Andhra Pradesh (supra), the respondent Assessing Authority rightly considered that it had not taken advantage of the presumption under Section 3(a) of the CST Act, but had rather made a positive case of inter-State sale in the course of Interstate trade and commerce that rendered declaration in Form "F" under section 6A irrelevant.

At the back drop of aforesaid analysis of facts and legal position, it is decided that impugned transactions were verily interstate sales under Section 3(a) of the CST Act, in which aforesaid Agreement to sale executed between BSBCL and appellants acted as contact to sale and caused interstate sales that occasioned movement of beer from district Alwar, Rajasthan to Patna, Bihar.

As regards, the imposition of interest under section 55 of the RVAT Act on the impugned interstate sale transactions, the learned counsel of the appellants had argued that interest was payable on the tax due in the books and returns and not the tax due as per assessment orders, whereas counsel for the respondent said it was due when leviable and payable. We find that the assessing authority levied tax on the impugned transactions which made the interest thereon payable. The assessing authority has correctly imposed interest.

As regards penalty imposed under Section 61 of the RVAT Act it could be levied in any of the following circumstances :

- (a) Concealment of particulars from any return; or
- (b) Deliberately furnishing inaccurate particulars in any return; or
- (c) Concealment of any transaction of sale or purchase from accounts, registers or documents; or
- (d) Avoidance or evading tax in any other manner

It was argued that the appellants had no intention to evade tax on the impugned transactions shown as stock transfers which were in reality transactions of interstate sales. Of course, it is an undisputed fact that impugned stock transfer transactions were declared and disclosed by the Appellant in the returns furnished with the VAT Authorities and further the disputed stock transfer transactions were well recorded and accounted for in the books of accounts maintained by the appellant companies.

The learned counsel for M/s Carlsberg India (P)Ltd, Mr. Laxamikumaran had argued that the appellant was under a bonafide belief that the transactions in question were a stock transfer transaction: the bonafide of the Appellant was based on the ratio decendi of decisions and case laws cited above, specifically, the case of Central Distilleries & Breweries (Cited supra), wherein under similar facts and circumstances the Hon'ble Allahabad High Court was said to have held transactions identical to the Appellants to be in the nature of stock transfer and not inter-state sales.

The learned counsel for M/s Mount Shivalik Industries Ltd, Mr. Alkesh Sharma, and Mr. Vivek Singhal for M/s United Breweries had emphasized that stock transfers of the appellant were converted into interstate sales by the Assessing Authority merely on presumptions and conjectures, based on a change of opinion inasmuch as not a single transaction of alleged sale or purchase had been detected by the Assessing Authority and which led to double taxation on the same goods. Relying upon the judgment of the Hon'ble Supreme Court in the case of M/s Shree Krishna Electricals vs State of Tamil Nadu (supra), they wanted that unjust levy of penalty under section 61 of 2003 Act be set aside. They had argued that Hon'ble Apex Court had held in the aforesaid case that "so far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's books of accounts. Where certain items are not included in the turn over, are disclosed in the dealers own books of accounts and the Assessing Authorities include these items in the dealers turnover disallowing exemption penalty cannot be levied", and submitted on this account that in their case all the transactions were appearing in the appellant's books of accounts and the deduction in respect of such branch transfers had been allowed, therefore there was no ground for imposing penalty in such cases.

In the humble opinion of the Bench, the facts of the present case differ from the facts prevailing in the aforesaid case of M/s Shree Krishna Electricals, wherein the assessee had not included certain items in the turnover but they were found entered in his books of accounts. Here, it is a case of the malafide intention of the appellants in consciously depriving the state of Rajasthan of their due tax revenue under Central Sales Tax by concealing the nature of inter-state transactions under the garb of stock transfers made from the State of Rajasthan to the State of Bihar (or , Jharkhand). The facts of the present cases are distinguishable from those of the aforesaid cases cited above. In the present context, they are not based on commodity and turnover but on nature of sales which has been deliberately misrepresented in the books of accounts and disclosed in returns as branch transfer Instead of as interstate sales.

Going by the facts and legal pronouncements as aforesaid hereinabove, we have come to the conclusion that agreement for supply of Beer to the BSBCL by the appellants was an agreement to sale which was duly executed between the BSBCL and the appellant companies having their manufacturing units in district Alwar Rajasthan and branch offices in Patna in year 2008, which inter alia, had agreed upon the terms and

conditions in respect of the fix Landed Price for supply and delivery of beer by the manufacturer to destinations of the designated warehouses in Bihar. The BSBCL in its liquor sourcing policy clearly defines the Landed Price as "Landed Price at BSBCL warehouse means all inclusive of EDP, Freight handling Insurance, State / Central levies, duties, fees & excise duty and Commercial Tax". The wording of Landed Price is quite revealing inasmuch as tax provisions are the concerned, it uses the word commercial tax which includes both state VAT & Central Sales Tax, the relevant document has not excluded Central Sales Tax from the ambit of the Landed Price. Nor has it confined itself to the local VAT in the state of Bihar. Appellant companies were asked to offer the firm prices for their liquor products on the basis of the Landed Price which included local Bihar VAT @50% on the sale of liquor products including beer to the designated depots of BSBCL in territories of Bihar. None debarred them from the inclusion of due CST applicable on such interstate sales of beer from their units in Alwar to the designated depots of BSBCL. Mere interruption of sales during the course of transit at their branches in Patna could not divert the nature of interstate sale effected between the appellants and BSBCL. So far as the liability to pay 50% VAT on local sales in Bihar is concerned it could have been taken care of by their inside sale mechanism in the state of Bihar on which the Board would not like to dwell upon as it would amount to exceeding its jurisdiction.

The charge that a single stock transaction has been converted into interstate transaction would lead to double taxation on the same product because the appellant had deposited VAT @50% on such transaction as local sale in state of Bihar is not correct proposition because the appellant is trying to coalesce the interstate sale from Bihar to Rajasthan into subsequent local sale in the state of Bihar in one transaction which in fact were two different sale transactions: one , interstate sale of beer between the appellant assessee and BSBCL and second local sale in the state of Bihar regarding which the respondent Revenue had no right to interfere in or advise on inasmuch as workability and applicability of local VAT on subsequent sale in other state was concerned. It was exclusively in the domain of appellant and BSBCL.

It would be worthwhile to go through Clause 5.7, Clause 5.8 and Clause 5.9 of the Liquor Sourcing Policy:

Clause 5.7 "The offerer shall quote the prices for their products on competitive basis keeping in view the existing prices of similar brands".

Clause 5.8 "Manufacturers may please note that they are required to work out the Landed cost and the maximum retail selling price, taking due note of the provisions of the different notifications with respect to duties / fees issued by Government of Bihar (Excise Department) / Excise Commissioner under Bihar Excise Act and rules framed there under. The corporation reserves the right to decide the extent of incidental overhead to be allowed for Bihar. Incidental overhead will include all other fees / levies / cost applicable other than the EDP".

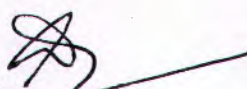
Clause 5.9 "The margin of Corporation shall be calculated in such a way that it is not more than 5% of the M.R.P. Likewise retailers margin will also be calculated in such a way that it is not more than 15% of the MRP".

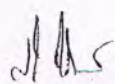
From the analysis of above Clauses emerges a picture that the appellants were allowed to fix Landed Cost and maximum selling price in which they could have included CST as well, apart from making provision for local VAT in Bihar which the appellants may have already done, as component of price quoted. However, Clause 5.9 in that case might have curtailed their profit margins. But that is not a point in consideration before us from the view point of applicability of Incidence of Central Sales Tax on the impugned transactions. In conclusion it comes about that the supply of beer to the BSBCL by the appellants from the initial stage was a premeditated deliberate exercise to excise CST on the inter-State sale transactions by the appellants in flagrant violation of conditions as exhibited in the aforesaid Agreement, implications of which were well known to the appellants right from the beginning when such interstate sales were deliberately disclosed as branch transfer transactions by them. In fact, the ratio decidendi was in favour of Assessing Authorities in respect of imposition of penalty under section 61 of the RVAT Act in the impugned assessment orders and is, therefore, upheld.

On the basis of aforesaid analysis of factual and legal matrix of the impugned assessment orders, the bench upholds tax, interest and penalty therein and dismisses the aforesaid appeals.

9. माननीय खण्डपीठ के उक्त विवेचन के आलोक में प्रकरण में अन्यथा किसी विवेचन की आवश्यकता नहीं होने से अपीलार्थी व्यवहारी द्वारा प्रस्तुत चारों अपीलें अस्वीकार की जाती हैं तथा कर निर्धारण अधिकारी द्वारा पारित किये गये आदेश दिनांक 30.08.2017 की पुष्टि की जाती है।

10. निर्णय सुनाया गया।


(के. एल. जैन)
सदस्य


(वी. श्रीनिवास)
अध्यक्ष