

1975 KHC 819

Supreme Court of India

*V. R. Krishna Iyer; *R. S. Sarkaria; A. C. Gupta, JJ.*

State of Punjab and Another v. M/s. New Rajasthan Mineral Syndicate

C. A. No. 1883, 1884, 1885 of 1970

29 April, 1975

Constitution of India, Art.286(1)(b) - Central Sales Tax Act, 1956, S.5(1) -- Sales by assessee not sales effected in the course of export -- Hence, not exempt from imposition of sales tax under Art.286(1)(b). (Para 23, 24)

JUDGMENT

R. S. Sarkaria, J.

1 The common question of law that arises in these appeals by the same assessee, is whether the sales in question made by the assessee were sales effected in the course of export of goods out of the territory of India and as such were exempt from imposition of Sales Tax under Art.286 (1) (b), of the Constitution.

2 The relevant assessment years are 1957-58, 1958-59 and 1959-1960. The assessee, the New Rajasthan Mineral Syndicate is registered as a dealer under the Punjab General Sales Tax Act, 1948. It is not registered under the Central Sales Act, 1956, (for short called the Act). The assessee carries on the business of quarry contractors. In the relevant years, it held a licence from the then Punjab State to quarry iron ore at Nizampur, District Mohindergarh.

3 During the assessment year in question, the Sales tax Officer assessed the assessee-firm to tax under S.9 of the Act on a turnover of Rs. 3,18,757/6, Rs. 3,99,948/93 and Rs. 5 lakhs, respectively. The last assessment was made on the best judgment basis.

4 To impugn these assessment orders, the assessee filed three writ petitions in the High Court of Punjab under Art. 226 of the Constitution. It was averred in the petitions that the export of iron ore had been nationalised by the Central Government and no such export could be made by any private dealer like the assessee. The Government of India had authorised like the State Trading Corporation (to be hereinafter referred to as STC) as the sole authority for the purpose of exporting iron ore to other countries, including Japan. The STC had further nominated Sri Narayan and Co. (to be called for short N and Co.,) to procure the iron ore for the purpose of export. N and Co. accordingly entered into agreements with the assessee firm for procuring the iron ore from the assessee. Excepting the quantity to be supplied, the basic terms of the agreements were the same. The material part of one such agreement, reads as follows:

"Agreement made on this day, the 1st April, 1957, between Messrs. Shri Narayan Company, Mine Owners Exporters and Importers 174 Mahatma Gandhi Road, Calcutta - 7 hereinafter called Buyers and Messrs. Rajasthan Mineral Syndicate Maonda, Rajasthan hereinafter called Sellers, on the following terms and conditions:

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XXXX

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Quantity: 25,000 (twenty five thousand) tons of Hamoitite Iron Ore of their Dhanota Dhancholi Mines Railway Station, Nizampur.

Specification:

XXXX

XXXX

XXXX

produced copies of the agreement and other letters in support of his contention." It was further contended that no inter State tax was leviable in view of the exemption in S.5 (1) of the Act and Art.286 (1) (b) of the Constitution as the sale was in the course of export if goods outside the territory of India; the sale having occasioned the export. The assessing authority negated the assessee's claim to the, exemption, in these terms:

"The dealer has no privity of contract between the foreign buyers and plea taken by him that he exported the goods outside the State of Punjab holds no ground. It appears to me that the State Trading Corporation of India enters into contract with the foreign buyers for the suppliers of iron ore. In order to meet their obligations, the State Trading Corporation of India appoints certain procuring agents such as M/s. Shri Narayan and Co., as intermediaries. These intermediaries enter into contract with the quarries who extract iron ore charge their commission and pass on this iron ore to the State Trading Corporation. The agreement entered into between the New Rajasthan Mineral syndicate and M/s. Shri Narayan and Co. leaves no doubt that the former is the seller and the latter is the buyer. In view of the ambiguous position stipulated in the agreement, the dealer sold iron ore in the course of inter State trade and commerce. It is further evident that M/s New Rajasthan Mineral Syndicate are not the direct exporters of iron ore because they did not enter into contract between the foreign buyers. The inter State tax is therefore, leviable on the dealer viz. M/s. Narayan Rajasthan Mineral Syndicate."

7 The learned Single Judge of the High Court allowed the writ petitions and quashed the assessment orders with holding that "the petitioner was engaged in the export of the iron ore to Japan through the STC which in turn, for its facility, had appointed N. and Co. a broker and that at no point of time the property in goods passed either to N. and Co., or to TC."

8 The Letters Patent Bench of the High Court dismissed the appeal preferred by the Revenue. Mehr Singh C. J. who delivered the opinion of the Bench observed:

"These facts prove beyond controversy that the sale of iron ore by the assessee firm to the Japanese buyers through the State Trading Corporation and with the aid of the nominee of that Corporation leading to export of the iron ore from the country, and this export, is a single unbroken transaction or activity. Between the sale or supply of iron ore, its transportation to the port of shipment its shipment at that port, and its export to Japan, there intervenes no independent transaction not directly connected with the export of iron ore from this country to Japan. No completed and independent transaction of sale occurs between the assessee firm and any other party before the iron ore leaves the port of this country. The whole is one and the same ' transactionThe intervention of the State Trading Corporation or its nominee, as Shree Naravana and Company, is not as buyers, of iron ore from the assessee firm, but merely as intermediaries facilitating the export of iron ore by the assessee firm so that in regard to foreign exchange earned by such export what is earned is available to the nation without any questionable handling of the same. This manner and method of export of iron ore through the State Trading Corporation as an intermediary does not bring about any contractual relation between the assessee firm and the Corporation so that a conclusion can be drawn that there has first been a sale of iron ore by the assessee firm to the Corporation and thereafter the latter has been responsible for the export of the same."

9 Art.286 of the Constitution, so far as it is material for our purpose, reads thus:

"286 (1). No law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place.

(a) outside the State or

(b) in the course of import of the goods into or export of the goods out of the territory of India:

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)."

Pursuant to cl. (2) of Art. 286 Parliament has enacted S. 5 in the Central Sales Tax Act, 1956 sub-section (1) which runs thus:

"A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India."

10 In view of the tests prescribed by this sub-section, the points to be considered are: Did the sales in question made by the assessee occasion 'the export? Were these sales effected by a transfer of documents of title of the goods after the goods had crossed the customs frontiers of India? If the answer to either of these questions is in the affirmative; the sales would be deemed to have taken place in the course of export of the goods out of the territory of India. If neither of these tests is satisfied the sales would be sales in the course of inter State trade and taxable as such.

11 Learned counsel for the appellant has pressed these points into argument:

(1) The sales in question neither occasioned the export nor were they effected by transfer of documents of title after the goods crossed the customs frontiers of India. These Sales, at best, could be said to be for export and not in the course of export:

(2) The sales in question did not occasion the export because:

(a) the movement of the goods was the result of the agreement between the assessee and N. and Co., and was not caused by any agreement entered into by the assessee with the foreign buyers and

(b) There was no privity of contract between the assessee and the foreign buyers.

(3) there is no room for two or more sales "in the course of export" within the contemplation of Art.286 (1) (b). That constitutional provision is not attracted in the present case because there have been more than one sale, namely, one by the assessee in favour of N and Co. STC and another by the STC in favour of the foreign buyer.

12 Reference has been made to this Court's decisions in *Coffee Board Bangalore v. Joint Commercial Tax Officer Madras*, (1970 (3) SCR 147 : AIR 1971 SC 870); *Binani Bras. v. Union of India*, (1974 (1) SCC 459 : AIR 1974 SC 1510); *Dalmia Cement (Bharat) Ltd. v. The Commissioner of Commercial Taxes Bangalore*, (1974 (34) STC 553(Mys)); *Sales Tax Officer, Jodhpur v. Shiv Ratan G. Mohatta*, 1965 (3) SCR 71 : AIR 1966 SC 142.

13 At the outset the learned counsel tried to contend that the authenticity of the agreement and the letter dt. 2-9-1957 was doubtful and that the High Court was in error in basing its findings on these documents but subsequently he did not press this contention.

14 Mr. Sharma, learned Counsel for the assessee, has advanced these contentions:

(1) That the property in the goods, according to the agreement read with letter, dated 2-9-1957, never passed to the buyer before the goods had crossed the customs frontiers of India. It is stressed that the contract between the assessee and the nominee of the STC was an f. o. b. t. (fee on board trim). The point sought to be made out is that the sales in question were effected by transfer of documents of title to the goods after the goods had crossed the customs frontiers of India, and therefore, they had taken place "in the course of export" within the meaning of sub-sec. (5) (1). Reliance has been placed on this Court's decision in *National Tractors Hubli*

v. Commissioner of Commercial Taxes, Bangalore, 1971 (3) SCC 143 : AIR 1971 SC 2277 and B. K. Wadey v. Daulatram Rameshwar Lal, 16 STC 757 : AIR 1961 SC 311.

(2) The sales in question had directly occasioned the movements of the goods for export. The whole process that is the despatch of the iron ore from the quarry till it was handed over to the common carrier i.e. the shipper constituted one integrated transaction, N and Co., and STC being merely conduits in this course of export. Reference has also been made to Serajuddin and Co, v. Commercial Tax Officer Sealdah Charge, (1969) 23 STC 258 (Cal); J. V. Gokal and Co. (Pvt.) Ltd. v. The Asstt. Collector of Sales tax (Inspection) 11 STC 186 : AIR 1960 SC 595) and Ben Gorm Nilgiri Plantations Co. v. The Sales Tax Officer, Special Circle Ernakulam, 15 STC 753 : AIR 1964 SC 1752.

15 Mr. Sharma further tried to distinguish the decision of this Court in Coffee Board's case, (AIR 1971 SC 870) (supra) on the ground that there the auction sale by itself did not occasion the export. It is maintained that privity of contract between the indigenous seller and the foreign buyer is not an indispensable aspect to bring the sale within the ratio of Nilgiri Plantations' case (Supra).

16 As factual premises for his contentions, Mr. Sharma relied on these facts which are apparent from the agreement between the assessee and N. and Co. and the said letter dated 2-9-1957:

- (a) The iron ore was meant for export;
- (b) The assessee was a licensee from the Government authorised to quarry the ore.
- (c) The Government of India had appointed STC as the only authority competent to export iron ore out of India.
- (d) The goods were liable to be rejected even by the foreign importer and any shortage or loss according to the agreement had to be recovered from the assessee.
- (e) N. and Co. were merely brokers nominated by STC. They were entitled only to brokerage.
- (f) The bulk of the price was to be paid against actual weight of the ore sold by the assessee when either it was weighed at Kandla or weighed on ship.
- (g) The documents of title of the goods were prepared after the ore was tested at the port and thereafter the price was collected by N and Co. from the STC, and passed on to the assessee.

17 Towards the fag end of the arguments, it was brought to our notice that these very points which are in issue before us, were pending consideration by the Constitution Bench of this Court in Civil Appeals Nos. 697703 of 1973 (Mohd. Serajuddin v. State of Orissa. Judgment in Civil Appeals Nos. 697-703 of 1973 has since been delivered (reported in AIR 1975 SC 1564).) The facts of that case were very similar, if not on all fours with the one before us. There, the assessee had entered into two contracts with STC, for the supply of mineral ore (chrome concentrates). The STC entered into contract with the foreign buyers for sale of identical goods purchased by it from the assessee. Counsel for the assessee, in this Court contended as follows: "The contract in each case between the appellant and the Corporation is inextricably bound up with the export. The sale between the appellant and the corporation and the export by the Corporation to foreign buyers constituted one integrated transaction. Second, the Corporation has been interposed by the statute for a limited purpose between the appellant and the foreign buyer. Export cannot be made except by the Corporation. The inextricable link is not broken by the Corporation. The Corporation could not have diverted the goods to a buyer in India without violating export and import control order. Therefore, the sale is in the course of export. Third, the contract between the appellant and the corporation being on F. O. B. basis, the property in the goods passed only on shipment when the goods are in the stream of export. There is thus no sale in the taxable territory. Fourth, even if it is held that the appellant did not have any contract with the foreign buyer and that privity is essential the rigid rate of privity of

the contract should be relaxed in consideration of equity and justice and a realistic approach should be adopted. The nature of the entering into contracts through the channel of the Corporation raises in reality a presumption of the Corporation being an agent of the appellant in the integrated transaction."

18 The clauses of the agreement executed between the assessee and the STC, were similar to the terms of the agreement between the assessee and N and Co. in the present case. The price was expressed in U. S. Dollars per long ton. F. O. B. Ocean Liner Vessel. Calcutta. Under that agreement sampling and moisture determination had to be made at the time of unloading at the port of discharge by Far East Superintendence Company or U. S. Consultants and their certificate was to be final binding on both the buyer and the seller. Final weights as ascertained by Far East Superintendence Co. Ltd. or U. S. Consultants at the port of discharge was to be final and binding on both parties. The terms as to payment were these:

"90% against shipping documents as described in buyers corresponding sale contract. Buyers will assign the relevant foreign letter of credit which is to be opened in their name by their foreign buyers Messrs. Associated Metals and Minerals Corporation on receipt from the sellers of a Bank draft for difference between buyers FOB purchase value and FOB sale value, i.e. 1.00 (Rs. 4.75) per troy long ton for a Bank Guarantee from a Scheduled Bank. Guaranteeing that sellers will pay buyers F. O. B, purchase value shown in the contract and buyers FOB sale value as shown in the Foreign letter of credit and the buyers will endorse the bills of lading and deliver the same to sellers to negotiate against the above mentioned letter of credit. Balance after destination weight and analysis on the basis of documents mentioned in the Corporation's corresponding sale contract with buyers. If the balance 10% is insufficient to cover short fall in weight and analysis at destination or any penalty imposed by the Corporation foreign buyer the additional amount shall be payable by sellers to buyers on demand."

19 There were two other clauses of contract:

"(i) Unless otherwise agreed upon, the sellers agree that the contract shall be deemed as cancelled if for any reasons whatsoever M/s Associated Metals and Minerals Corporation, cancel their corresponding purchase contract with the buyers for supply of chrome ore.

(ii) The term and conditions of the buyers corresponding sale contract with M/s. Associated Metals and Minerals Corporation will apply to this contract also except to the extent specified in this purchase contract.

(iii) A true copy of buyers sale contract with M/s Associated Metals and Minerals Corporation is attached."

20 It was further argued on behalf of the assessee that the commodity could not be exported directly by him in view of the restrictions imposed by law; that he entered into negotiations with the foreign purchasers and settled all the conditions of the contract; the Corporation thereafter entered into a F. O. B. contract with the assessee and with the foreign buyers on identical terms that the Corporation was interested only in the commission of one Dollar per long ton from the assessee; that all necessary steps including payment of customs duty for the shipment and export had been taken by the assessee and that the contract between the assessee and the Corporation being on f.o.b. basis, the property in the goods passed only on shipment when the goods were in the course of export.

21 Almost all the relevant rulings which have been cited before us were noticed in that case. Following the ratio of the Coffee Board's case (AIR 1971 SC 870) (supra) and Binani Brothers' case, (AIR 1974 SC 1510) (supra) the learned Chief Justice who delivered the opinion of the majority negated the contentions of the assessee in these terms:

"The Coffee Board case as well as the of Binani Bros. (supra) clearly indicates that the distinction between sales for export and sales in the course of export is never to be lost sight of. The features which point with unerring accuracy to the contract between the appellant and the Corporation on the one hand and the contract between the Corporation and the foreign buyer on the other as two separate and independent contracts or sale within the ruling in the Coffee Board case (supra) and the Binani Brothers case, are these. The Corporation entered on the scene and entered into a direct contract with the foreign buyers to export the goods. The Corporation alone agreed to sell the goods to the foreign buyer. The corporation was the exporter of the goods. There was no privity of the contract between the appellant and the foreign buyer the privity of contract is between the Corporation and the foreign buyer. The immediate cause of the movement of goods and export was the contract between the foreign buyer who was the importer and the Corporation who was the exporter and shipper of the goods. All relevant documents were in the name of the Corporation whose contract of sale was the occasion of the export. The expression "occasions" in S.5 of the Act means the immediate and direct cause. But for the contract between the Corporation and the foreign buyer, there was no occasion for export. Therefore, the export was occasioned by the contract of sale between the corporation and the foreign buyer and not by the contract of sale between the corporation and the appellant.

The appellant sold the goods directly to the Corporation. The circumstances that the appellant did so to facilitate the performance of the contract between the Corporation and the foreign buyer on terms which were similar did not make the contract between, the appellant and the Corporation the immediate cause of the export. The Corporation in regard to its contract with the foreign buyer entered into a contract with the appellant to procure the goods. Such contracts for procurement of goods for export are described in commercial parlance as back to back contracts. In export trade it is not unnatural to find a string of contracts for export of goods. It is only the contract which occasions the export of goods which will be entitled to exemption. The appellant was under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the appellants were against the Corporation. Similarly the obligations of the appellant were to the Corporation. The foreign buyer could not claim any right against the appellant nor did the appellant have any obligation to the foreign buyer. All acts done by the appellant were in performance of the appellant's obligation under the contract with the Corporation and not in performance of the obligations of the Corporation to the foreign buyer."

22 With regard to the contention that the contracts between the assessee and the Corporation were F. O. B. contracts, the learned Chief Justice said:

"In the present case, the mention of F. O. B. price in the contracts between the appellant and the Corporation does not render the contracts F. O. B., contracts with the foreign buyer. The Corporation entered into independent contracts with the foreign buyers on F. O. B. basis. The appellants were required under the contracts between the appellant and the Corporation to bring the goods to the ship named by the Corporation. The shipment of the goods by the Corporation to the foreign buyers is the F. O. B. contract to which the appellants are not the parties. The course of export in the export stream is possible in direct contracts between the Indian seller and the foreign buyer. The Corporation purchased goods from the appellants in order to fulfil the contracts with the foreign buyer. The only scope of the deeming provision in the Act is to final out the contract of sale which is the direct cause or which occasions the export. . . ."

The directions given by the Corporation to the appellant to place the goods on board the ship are pursuant to the contract of sale between the appellant and the Corporation. These

directions are not in the course of export, because the export sale is an independent one between the Corporation and the foreign buyer. The taking of the goods from the appellant's place to the ship is completely separate from the transit pursuant to the export sale. The fact that the exports can be made only through the State Trading Corporation does not have the effect of making the appellants the exporter where there is direct contract between the Corporation and the foreign buyer."

23 The above observations, reproduced in extenso, furnish a complete and effective answer to all the arguments advanced on behalf of the assessee, in the instant case, to support the judgment of the High Court. Indeed, the factual premises on which Mr. Sharma's contentions are based, are weaker and less favourable to the assessee than those in Serajuddin's case (AIR 1975 SC 1564) (supra). Here there is no direct agreement between the assessee and the STC, the agreement is between the assessee and N. and Co. Here is thus room for argument that the export sale made by the STC to the foreign buyers was preceded by two separate sales, namely, the first made by the assessee to N and Co. and the second made by N and Co, to STC. Further, in the case before us, the assessee was entitled to payment even before shipment, if the goods were weighed and approved by STC at Kandla Port.

24 Be that as it may, the basic features of the case in hand are the same as those in, Serajuddin's case (AIR 1975 SC 1564) (supra). Respectfully following the ratio and reasoning of this Court in the above quoted observations in Serajuddin's case by which we are bound we accept the contentions canvassed on behalf of the appellant and negative those advanced by the assessee.

25 In the result we allow these appeals, set aside the judgment of the High Court, and dismiss the writ petitions filed by the assessee. We further direct that in the circumstances of the case, that the parties to bear their own costs.
