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Court : Karnataka

Decided On : Jul-21-1989

Reported in : ILR1989KAR3506; 1990(3)KarLJ507

Judge : M. Rama Jois and ;S. Rajendra Babu, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 2, 5, 5(1) and 5(3)

Appeal No. : S.T.R.P. No. 17 of 1982

Appellant : Coffee Board

Respondent : State of Karnataka

Advocate for Def. : M.R. Achar, Government Adv.

Advocate for Pet/Ap. : K. Srinivasan and ;H. Raghavendra Rao, Adv.

Judgement :

S. Rajendra Babu, J.

1. The brief facts of the case leading to this petition are as follows :

The petitioner, Coffee Board (hereinafter referred to as 'the Board') had a total turnover of Rs. 46,23,87,356.93 for the period between April 1, 1974, and March 31, 1975, including sale turnover of transactions arising within the State amounting to Rs. 23,75,20,382.38. The dealer, namely, the Board, claimed deduction in

respect of turnover of Rs. 22,41,37,445 as export sales. After verification of the books of accounts and the documents produced in support of the export sales, the assessing authority found that export of goods in a sum of Rs. 1,07,88,750 was made through the State Trading Corporation of India (hereinafter referred to as 'the STC') which does not amount to direct export sale within the meaning of section 5(1) of the [Central Sales Tax Act, 1956](#). On that a proposition notice was issued by the assessing authority to bring the said turnover to tax at 10 per cent as inter-State sale and not covered by C and D forms. By an order dated 2nd December, 1978, the Assistant Commissioner of Commercial Taxes, Asst.-I, City Division, Bangalore, completed the assessment of the petitioner under the [Central Sales Tax Act, 1956](#) (hereinafter referred to as 'the Act'), on a turnover of Rs. 1,14,97,031.70. This sum was further split into two categories in the following manner : A sum of Rs. 7,08,281.70 was held to be the turnover of sale of coffee covered by C and D forms and was assessed to tax at 3 per cent while a sum of Rs. 1,07,88,750 was held to be the turnover of sale of coffee to the STC not covered by C and D forms and was assessed to tax at 10 per cent.

2. The correctness of the assessment was challenged in appeal before the Deputy Commissioner of Commercial Taxes, principally, on two grounds. Firstly, that the supply of coffee effected through the STC to foreign buyer is an export sale exempted from taxation and, secondly, that the dealer did not have sufficient opportunity to file C forms of export transactions effected through the STC. The Deputy Commissioner held that there was no privity of contract between the foreign buyer and the dealer and, therefore, the transactions or sales were not in the course of export and the dealer cannot claim exemption as covered by section 5(1) of the Act. In regard to the request of the dealer to grant time to file C forms to avail of the concessional rate of tax he found that sufficient time had already been given to the dealer to file C forms, but it failed to do so. The Deputy Commissioner also observed that nothing prevented the dealer to file C forms under protest before the assessing authority at the time of assessment reserving the right to challenge the levy and dismissed the appeal. When the matter was taken up in second appeal to the Karnataka Appellate Tribunal, the Tribunal held that the transactions between the dealer and the STC, on the one hand, and the STC and foreign buyer, on the other, were two independent transactions and, therefore, not

covered by section 5(1) of the Act. It also repelled the contention of the dealer that the transactions amount to sale by transfer of documents to title after the goods had crossed the customs frontiers of India and upheld the orders made by the assessing authority and the first appellate authority. Aggrieved by that order the dealer has filed this revision petition.

3. Before us, the contentions raised in the appeals are reiterated. The learned State counsel supported the assessment order as affirmed in appeals. The Board contended that the contract with the STC clearly stipulated the terms in relation to passing of goods and the sale was by transfer of documents of title to the goods, namely, the bills of lading, after the goods crossed the customs frontiers of India and thus the sale in question was in the course of export within the meaning of second part of section 5(1) of the Act.

4. In order to appreciate the rival contentions it is necessary to briefly refer to certain provisions of the Constitution and the Act having a bearing on the questions raised in this case. Article 286(1)(b) of the Constitution provides that no law of a State should impose, or authorise the imposition of tax on the sale or purchase of goods where such sale or purchase takes place in the course of import of goods into or export of goods outside the territory of India. The Act was enacted to provide for principles of sale or purchase in the course of export. The Constitutional (Sixth Amendment) Act, 1956, provides for enactment by Parliament to lay down the principles to determine when a sale or purchase takes place in the course of import or export and pursuant thereto the Act was enacted in which section 5 laid down such principles. The provisions of the Act with which we are concerned during the relevant period did not contain sub-clause (3). Section 5(1) of the Act as it stood then, which deals with export of sales, could be analysed as follows : A sale or purchase of goods shall be deemed to take place in the course of the export of goods out of the territory of India only : (a) if the sale or purchase either occasions such export; (b) is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. The expression 'crossing the customs frontiers of India' has been defined under the Act, by section 2(ab), as meaning crossing the limits of area of a customs station in which imported goods or export goods are ordinarily kept before clearance by

customs authorities.

5. After the enactment of the Act a number of cases have come up before the Supreme Court in which section 5(1) of the Act has been interpreted. The first of those cases is in *Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer, Special Circle, Ernakulam* : [1964]7SCR706 . The majority of judges deciding the case held that not only there must be an intention to export, followed by actual export and there must also be an obligation to export which might be statutory or contractual arising from mutual understanding, agreement or from the nature of the transaction. In *Coffee Board v. Joint Commercial Tax Officer* : [1970]3SCR147 , the expression 'sale in the course of import or export of goods' was the subject-matter of consideration in which the concept of 'export' was explained stating that there must be an exporter in the country and an importer in a foreign country and there must be privity of contract between the two as a result of which the course of export must commence. The leading case on the question is the one in *Mod. Serajuddin v. State of Orissa* : AIR 1975 SC1564 , in which the facts of the case were almost identical with the present case. The Supreme Court in that case considered the effect of the induction of the STC into export and import contracts and the obligations arising therefrom with respect to actual export sales. The appellants in that case had negotiated for a sale of mineral ore with the foreign buyers. In order to satisfy the legal requirements of the Export Control Order, 1958, two contracts were entered into; one between the appellants and the STC and the other between the STC and the foreign buyer. Though apparently two contracts existed the STC was only entitled to a commission of one dollar per tonne of ore exported by it. The Supreme Court, by majority, held that the STC was exporter and under the contract the appellants had no right whatsoever against the foreign buyer. The notional sale to the STC was held to be taxable by the State. This decision was followed in *State of Punjab v. New Rajasthan Mineral Syndicate* : AIR 1975 SC1652 . It is only thereafter that in order to reduce the rigour of section 5(1) of the Act, section 5(3) has been introduced to the Act making a penultimate sale in the course of export also as a sale in the course of export. Thus, the present law is that the goods purchased for export in pursuance of an existing contract with a foreign buyer are also exempt from taxation. The position was further explained in *Binani Bros. (P.) Ltd. v. Union of India* :

[1974]2SCR619 , which was a case of import. The facts of the case were that the petitioner imported non-ferrous metals from foreign countries in order to fulfil the contract between the petitioner and the Government department. The Government of India while placing orders with the petitioner used to grant licence in terms of the contract. It was held in that case that though the purchase of goods from the foreign buyer had occasioned import of goods the sale by the petitioner inside India was distinct and liable to tax. The court rejected the contention based on the fact that the import licence was procured at the instance of the department solely for the supply of goods under the contract, as it was found that there was no absolute obligation on the department to procure those licences. It followed, therefore, that the dealer was not acting in the capacity of an agent of the department and hence could have diverted the goods after the import. Explaining the concept of export, the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Commercial Tax Officer* : [1961]1SCR902 , held that in the case of an export sale the goods must have a foreign destination. It was enunciated that an export sale is one which is effected between a seller in the State and the buyer outside the Indian territory. The foundation of such a sale is a contract between the parties in respect of goods or merchandise forming subject-matter of sale. The contract can be brought about by their respective agents duly authorised in this behalf. It is impossible to conceive an export sale without that essential element of privity of contract between two contracting parties, one exporter and another importer. The sale which has to be regarded as exempt is a sale which causes export to take place or is the immediate cause of export. Introduction of a third party dealer independently with the seller on the one hand and with the importer on the other, breaks the link between the two, for, there are two sales one to an intermediary and the other to the importer. The first sale is not in the course of export for, the export with the intermediary ends with importation.

6. The learned counsel for the petitioner contended that under section 5(1) of the Act there are two limbs and the first limb provides for a circumstance in which the sale itself occasions the export while the second limb contemplates a sale which arises as a result of transfer of documents of title after the goods crossed the customs frontiers. Elaborating further he submitted that in the present case considering the nature of agreement the goods stood transferred only after they

crossed the customs frontiers and, therefore, second limb of section 5(1) of the Act was attracted resulting in an export sale exempt from tax under article 286 of the Constitution. In this context he referred us to the various clauses of the contract, which read as under :

'10. Documents : All the documents of export including shipping documents shall be made out in the name Coffee Board a/c STC. The bills of lading shall be taken out in the name of Coffee Board a/c STC and the consignee shall be the foreign buyer.

* * *13. Passing of property in the goods : Notwithstanding anything contained in any other clause in this contract, the property in the goods agreed to be supplied under this contract shall not pass to the STC till the goods cross the customs frontiers of India, and the payments to the supplier of the full f.o.b. value of the goods, less half per cent service charges on the said value after the presentation of the document to the bank in accordance with clause 11 above.

* * *16. (iii) The coffee remains the property of the supplier until it has been paid for in full and till the goods cross the customs frontiers of India even if the supplier has already parted with the goods or the documents which represent them.'

No doubt clause 10 extracted above shows that the shipping documents are made out in the name of the petitioner. But the documents in this case clearly disclose that what is contemplated therein is transfer of title to the goods after they pass the customs frontiers and not a sale of goods by transfer of documents. Therefore, in our opinion, the second limb of section 5(1) is not at all attracted to the present case. However, the learned counsel submitted that though the goods were sold to the STC the dealer continued to be the owner of the goods till the same crossed the customs frontiers and entered the export trade. He contended that sale between the dealer and the STC should be exempt from tax on the ground that the property in goods passed only after the goods joined the export trade and that sale was inextricably connected with export and in support relied upon a decision of the Supreme Court in *National Tractors v. Commissioner of Commercial Taxes, Bangalore* : AIR 1971 SC2277 . But this decision was explained and a contrary view was expressed in *Murarilal Sarawagi v. State of Andhra Pradesh* :

[1977]2SCR441 . An analysis of the decision of the Supreme Court would lead us to the inference that in order to constitute an export sale the goods must reach foreign destination and there must be an Indian exporter and a foreign importer and the course of export is between them. It is clear that in finding the course of export the principles of section 5(1) of the Act should be complied with. If any one of the tests fail, there will be no export sale or a sale in the course of export attracting section 5(1) of the Act so as to be exempted from taxation under article 286 of the Constitution. Even if the contention that the goods passed to the STC after they crossed customs frontiers is right, it does not satisfy the test of export sale as the STC is only an Indian buyer and an exporter. Therefore, the transaction in question does not pass the muster of the tests of export sale.

7. To counter this view the learned counsel for the petitioner referred to us a decision of the Madhya Pradesh High Court in Hindustan Steel Ltd., Bhilai Steel Plant v. State of Madhya Pradesh [1982] 50 STC 287, But that decision, in our opinion, is in accord with the view expressed by the Supreme Court in National Tractors' case : AIR 1971 SC2277 , with regard to which the Supreme Court had struck a different note in its later decisions particularly in Murarilal Sarawagi's case : [1977]2SCR441 . In view of the fact that the Supreme Court having explained the position of law as set forth above in Murarilal Sarawagi's case : [1977]2SCR441 , wherein section 5 of the Act directly arose for its consideration, we cannot but answer the question as to whether the transactions entered into by the petitioner with the STC constitute export sale so as to be exempted under article 286 of the Constitution, in the negative.

8. On the second aspect of the matter, we are of the opinion that neither the Tribunal nor the authorities have acted in a reasonable manner in rejecting the request of the dealer to give it an opportunity of producing C and D forms in order to claim concessional rate of taxation. The proposition notice itself discloses that the sales in question between the dealer and the STC were inter-State sales but not covered by C and D forms. The main contention of the dealer has been that its transactions are export sales and, therefore, exempt from taxation, which was of course raised after due deliberation in consultation with legal advisers. Therefore, it cannot be said that the dealer had deliberately omitted to obtain C and D forms.

Moreover, the transaction is between a statutory organisation and a public sector undertaking and, therefore, the dealings between them cannot be doubted to say that there is anything shady in their transaction and even at this distance of time it would be reasonable therefore to permit the petitioner to avail of the opportunity to produce the C and D forms within one month from today and claim the benefit thereof before the assessing authority.

9. In the result we make the following order :

(i) This revision petition is accordingly allowed in part.

(ii) The finding of the Tribunal that the transactions of sale of coffee to the STC are not sales in the course of export covered by article 286 of the Constitution to be exempt from taxation, is confirmed. But in respect of the turnover of Rs. 1,07,88,750 the assessment order as affirmed by the Deputy Commissioner of Commercial Taxes (Appeals), and the Karnataka Appellate Tribunal is set aside and the matter is remanded to the assessing authority only to the limited extent of consideration of the claim of the petitioner based on C and D forms.

(iii) The petitioner is at liberty to produce within a period of one month from today, C and D forms for the period in question and claim the benefit of concessional rate of taxation which shall be duly considered by the assessing authority. In all other respects, the assessment order as affirmed by the appellate authority and the Tribunal remains undisturbed.

10. Petition partly allowed.