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April 10

BEN GORM NILGIRI PLANTATIONS COMPANY, COONOOR AND ORS.

v.

SALES TAX OFFICER, SPECIAL CIRCLE, ERNAKULAM AND ORS.

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.]

Sales Tax—Sale of tea to local agents of Foreign buyers—Sales whether exempt under Art. 286(1)(b) of the Constitution—Constitution of India, Art. 286(1)(b)—Central Sales Tax Act, 1956, s. 5.

The appellants were carrying on the business of growing and manufacturing tea in their estates. The sellers of tea were the appellants; the purchasers were local agents of Foreign buyers. The sales were by public auction at Fort Cochin. They were conducted by brokers of tea. The sales were in conformity with the provisions of Tea Act of 1953. The Sales-tax Officer assessed the appellants to pay sales tax on transactions of sale of tea chests at the auctions held at Fort Cochin in the years 1956-57 to 1958-59. Against the orders of assessment the appellants filed petitions before the High Court for writs of *certiorari* and for writs of prohibition restraining the Sales-tax Officer from proceeding with the collection of sales tax. The petitions were dismissed by the High Court. With special leave the appellants appealed to this Court.

It was the common case of all the appellants that the purchases by the local agent of foreign buyers were with a view to export the goods to their principals abroad and that the goods were in fact exported out of India.

It was contended on behalf of the appellants that the sales of tea were "in the course of export out of the territory of India", and thus exempt from taxation under Art. 286(1)(b) of the Constitution.

Held: (per Gajendragadkar, C. J., Shah and Sikri, JJ.) (i) A transaction of sale which occasions export, or which is effected by a transfer of documents of title after the goods have crossed the customs frontiers, is exempt under Art. 286(1)(b) of the Constitution from sales tax levied under any State legislation. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale *for* export, but is not necessarily to be regarded as one *in the course* of export, unless the sale occasions export. Etymologically the expression "in the course of export", contemplates an integral relation or bond between the sale and the export.

In general where a sale is effected by the seller, and the seller is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with sale so that the bond cannot be dissociated without a breach of the obligations arising by statute, contract of mutual understanding between the parties arising from the nature of the transaction the sale is in the course of export.

(ii) A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In the present case there was between the sale and the export no such bond as would justify the inference that the sale and the export formed parts of a single transaction or that the sale and export were integrally connected. The appellants were not concerned with the actual exportation of the goods, and the sales were intended to be complete without the export, and as such it cannot be said that the said sales occasioned export. The sales were therefore *for* export and not *in the course of export*. Therefore the sales by the appellant to the agents of foreign buyers do not come with the purview of Art. 286(i)(b) of the Constitution.

State of Travancore-Cochin v. *Bombay Company Ltd.* [1952] S.C.R. 1112, distinguished.

State of Travancore-Cochin v. *Shanmugha Vilas Cashew Nut Factory*. [1954] S.C.R. 53, *State of Madras* v. *Gurviah Naidu and Company Ltd.* A.I.R. 1956 S.C. 158, *State of Mysore* v. *Mysore Shipping and Manufacturing Co. Ltd.* 13 S.T.C. 529 and *B.K. Wadear* v. *M/s. Daulatram Rameshwarlal* [1951] 1 S.C.R. 924, relied on.

M. R. K. Abdul Salem and Company v. *Government of Madras*, 13 S.T.C. 629, explained.

Per Ayyangar, J. In the present case the sale and the export being related to each other in the sense of one leading to the other are therefore within Art. 286(1)(b) of the Constitution. There could be no difference in legal effect between a sale to a Foreign buyer present in India to take delivery of the goods for transport to his country and a sale to his resident agent for that purpose. The buyer was an agent, who was not free to deal with the tea purchased by effecting a local sale, but was under an obligation to his Foreign principal to export the goods purchased to a Foreign destination. The goods purchased were in fact exported from this country. It was with such a buyer that the appellants entered into the transaction of sale. In other words it was a part of understanding between the seller and the buyer, inferrable from all the circumstances attendant on these transactions that the buyer was bound to export.

State of Travancore-Cochin v. *Shanmugha Vilas Cashew* [1954] S.C.R. 53, *State of Madras* v. *Gurviah Naidu and Co. Ltd.* A.I.R. 1956 S.C. 158, *State of Mysore* v. *Mysore Spinning and Manufacturing Co. Ltd.* A.I.R. 1958 S.C. 1002 and *East India Tobacco Co.* v. *The State of Andhra Pradesh*, [1963] 1 S.C.R. 404, referred to.

(ii) Even though the Tea Act does not in terms prohibit internal sale of tea purchased alongwith export quota rights, this could be explained by the circumstance that the rights to export tea is considered a privilege which secures an economic advantage to the exporter and hence there was no need for any statutory compulsion to do so.

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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 396—413 of 1963. Appeals by special leave from the judgment and order dated October 26, 1961 of the Kerala High Court in Writ Appeals Nos. 104—106, 107, 109, 112, 108, 113, 114, 111, 115, 116, 119, 120, 123, 124 and 122 of 1964.

M. C. Setalvad, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellants (in all the appeals).

V. P. Gopalan Nambiar, Advocate-General, Kerala and *V. A. Seyid Muhammed,* for the respondent (in all the appeals).

April 10, 1964. The judgment of GAJENDRAGADKAR, C.J., SHAH AND SIKRI JJ. was delivered by SHAH J. The dissenting Opinion of WANCHOO and AYYANGAR JJ. was delivered by AYYANGAR J.

SHAH, J.—The Sales-tax Officer, Special Circle Ernakulam assessed the appellants under the Travancore-Cochin General Sales Tax Act XI of 1125 M.E., to pay sales-tax on transactions of sale of tea chests at the auctions held at Fort Cochin in the years 1956-57 to 1958-59, rejecting their contention that the sales were exempted from tax by virtue of Art. 286(1)(b) of the Constitution. The appellants then petitioned the High Court of Kerala for writs of *certiorari* quashing the orders of assessment and for writs of prohibition restraining the Sales-tax Officer from proceeding with the collection of tax in pursuance of the orders of assessment. Vaidialingam J., rejected the petitions and his order was confirmed in appeal by a Division Bench of the High Court of Kerala. With special leave, the appellants have appealed to this Court.

The transactions of sale sought to be taxed by the Revenue authorities are in tea, which is a controlled commodity. The Parliament enacted the Tea Act (19 of 1953) to provide for the control by the Union of the tea industry, including the control of cultivation of tea in, and of export of tea from, India and for that purpose to establish a Tea Board and to levy customs duty on tea exported from India. By s. 3(f) "export" is defined as taking out of India by land, sea or air to any place outside India other than a country or territory notified in that behalf by the Central Government by notification in the Official Gazette. "Export allotment" is defined by s. 3(g) as the total quantity of tea which may be exported during any one financial year. Section 17(1) places an embargo upon exportation of tea unless covered by a licence issued by or on behalf of the Board. Section 18 provides that no consignment of tea shall be shipped or water-borne to be shipped for export or shall be exported until the owner has delivered to the Customs-Collector a valid export licence or special export licence or a

valid permit issued by or on behalf of the Board or the Central Government as the case may be, covernig the quantity to be shipped. Section 19 authorises the Central Government to declare export allotments of tea for each financial year, and by s. 20 it is provided that any tea estate shall, subject to conditions as may be prescribed, have the right to receive under the Act an export quota for each financial year. Section 21 provides that the owner of a tea estate to which an export quota has been allotted for any financial year shall have the right to obtain at any time export licences during that year to cover the export of tea upto the amount of the unexhausted balance of the quota. The export quota right is, by cl. (2) of s. 21, transferable, subject to such conditions as may be prescribed and the transferee of such right may again transfer the whole or any part of his right provided that nothing in the sub-section shall operate to restrict the issue of licences for the export of tea expressed to be sold with export rights. The other provisions are not material in deciding this group of appeals.

Trade in tea in the State of Kerala—internal as well as export—is carried on through certain defined channels. A manufacturer of tea applies for and obtains from the Tea Board allotment of export quota rights on payment of the necessary licence fee. The manufactured tea in chests is then sent to M/s. T. Stanes & Company Ltd. who warehouse the chests at Willingdon Island. Chests of tea are then sold by public auction through brokers at Fort Cochin. With the chests of tea for which export quota rights are obtained, export quota rights are sold by the auctioneer. At the auction sale, bids for tea chests with export quota rights are given by the agents or intermediaries in Cochin of foreign buyers. Tea chests are delivered at the warehouses by M/s. T. Stanes & Company Ltd. to the purchasers whose bids are accepted. The agents or intermediaries of the foreign buyers then obtain licences from the Central Government for export of tea chests under the export quota rights vested in them under the purchases made at the auction sales.

Tea cannot therefore be exported otherwise than under a licence: such a licence may be issued to a manufacturer or to the purchaser of the quota granted by the Central Government to the manufacturer when tea is sold with export rights. When auctions of tea with the export rights are held at Fort Cochin, it is in this group of appeals common ground, sellers on whose behalf the auctioneer acts as the agent know that bids are offered by the buyers of tea for the purpose of export. It is also known that the bidder is an agent or an intermediary of a foreign buyer.

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Is the sale by auction to the agent or intermediary of the foreign buyer, in the course of export within the meaning of Art. 286(1) of the Constitution? If the sale is in the course of export out of the territory of India, any State law which imposes or authorises the imposition of a tax on such sale is, because of Art. 286(1)(b), invalid. Before the Constitution was amended by the Constitution (Sixth Amendment) Act, 1956, there was no legislative guidance as to what were transactions of sale in the course of export out of the territory of India. But by the Constitution (Sixth Amendment) Act, cl. (2) of Art. 286 was substituted for the original clauses, and thereby the Parliament was authorised to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl (1). The Parliament has under the Central Sales Tax Act (74 of 1956) enacted by s. 5 that "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." This was legislative recognition of what was said by this Court in the *State of Travancore-Cochin and others* v. *The Bombay Company Ltd*(1) and *State of Travancore-Cochin and others* v. *Shanmugha Vilas Cashew Nut Factory and others*(2) about the true connotation of the expression "in the course of the export of the goods out of the territory of India" in Art. 286(1)(b). A transaction of sale which occasions export, or which is effected by a transfer of documents of title after the goods have crossed the customs frontiers, is therefore exempt from sales-tax levied under any State legislation.

The appellants set out in their respective petitions the manner in which sales tax of tea chests were conducted at Fort Cochin and in certain petitions affidavits in reply even were not filed by the State of Kerala. In the remaining petitions in which affidavits in reply were filed it was contended that the export of goods was made by the purchasers who had taken delivery of the goods from the manufacturers in Travancore-Cochin and in pursuance of the export licences obtained by the purchasers goods were exported. but such subsequent export by the purchasers did not affect the character of the sales by the manufacturers to the purchasers. It is true that there is no finding by the Sales-tax authorities that the respective purchasers at the auction were agents of foreign buyers, but the Advocate appearing on behalf of the State argued the case before the High Court on the footing that the bids were offered at the auctions by

(1) [1952] S.C.R. 1112. (2) [1954] S.C.R. 53.

the agents or intermediaries or foreign buyers, and the Court proceeded to dispose of the case before it on that footing.

Vaidialingam J., held that transactions of sale were complete when bids for purchase of tea together with the export quota rights were accepted, and the sellers had no concern with the actual export which was effected by the auction purchasers to their foreign principals. It could not, therefore, in the view of the learned Judge, be held that the sales in question had as an integral part thereof occasioned export; that is, the sales preceded the export and were not in the course of export. The High Court in appeal held that the ban imposd by Art. 286(1)(b) predicated a casual connection between the sale and the export—a connection which is intimate and real. The sale, it was said, must inextricably be bound up with the export and form an integral part thereof, so that without export the sale is not effectuated; but as the sale imposed or involved no obligation to export, there was no movement under the contract of sale and exemption claimed was not admissible. Correctness of this view is challenged in this appeal.

To constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods, to a foreign destination is necessary. But intention to export and actual exportation are not sufficient to constitute a sale in the course of export, for a sale by export "involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier or transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction": *State of Travancore-Cochin and others* v. *The Bombay Company Ltd.*(1). A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale *for*

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export, but is not necessarily to be regarded as one *in the course of* export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India and exports the goods and even if the seller has the knowledge that the goods are intended by the purchasers to be exported, such a transaction is not in the course of export, for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such a transaction without more cannot be regarded as one in the course of export because etymologically, "in the course of export", contemplates an integral relation or bond between the sale and the export. At the other end is a transaction under a contract of sale with a foreign buyer under which the goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale would indisputably be one for export, whether the contract and delivery to the common carrier are effected directly or through agents. But in between lie a variety of transactions in which the question whether the sale is one for export or is one in the course of export i.e., it is a transaction which has occasioned the export, may have to be determined on a correct appraisal of all the facts. No single test can be laid as decisive for determining that question. Each case must depend upon its facts. But that is not to say that the distinction between transactions which may be called sales *for* export and sales *in the course of* export is not real. In general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale *for* export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is *in the course of* export.

It may be conceded that when chests of tea out of the export quota are sold together with the export rights, the goods are earmarked for export, and knowledge that the goods were purchased by the bidders for exporting them to

the foreign principals of the bidders must clearly be attributable to them. Does the co-existence of these circumstances, impress upon the transactions of sale with the character of a transaction in the course of export out of the territory of India? We are unable to hold that it does. That the tea chests are sold together with export rights imputes knowledge to the seller that the goods are purchased with the intention of exporting. But there is nothing in the transaction from which springs a bond between the sale and the intended export linking them up as part of the same transaction. Knowledge that the goods purchased are intended to be exported does not make the sale and export parts of the same transaction, nor does the sale of the quota with the sale of the goods lead to that result. There is no statutory obligation upon the purchaser to export the chests of tea purchased by him with the export rights. The export quota merely enables the purchaser to obtain export licence, which he may or may not obtain. There is nothing in law or in the contract between the parties, or even in the nature of the transaction which prohibits diversion of the goods for internal consumption. The sellers have no concern with the actual export of the goods, once the goods are sold. They have no control over the goods. There is therefore no direct connection between the sale and export of the goods which would make them parts of an integrated transaction of sale in the course of export.

Decided cases on which reliance was placed at the Bar have mainly been of cases in which the benefit of the exemption of Art. 286(1)(b) was claimed in respect of sales preceding the export sale. Such a sale preceding the export could not, it was held, without doing violence to the language of Art. 286(1)(b), be given the benefit of the exemption from tax imposed by State legislation merely because of its historical connection with the export sale. In a majority of the cases to be presently referred there were at least two sales—sale under which goods were procured followed by a sale under which the goods so procured were exported, and the claim of the Revenue to tax the first transaction was upheld. It may be regarded as therefore settled law that where there are two sales leading to export—the first under which goods are procured for sale and the property in the goods passes within the territory of India, and the second by the buyer to a foreign party resulting in export—the first cannot be regarded as a sale in the course of export, for a sale in the course of export must be directly and integrally connected with the export. It cannot also be predicted that every sale which results in export is to be regarded as sale in the course of export. We may briefly refer to the cases which have come before this Court. Justification for citation of the cases is

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not to evolve a pinciple from the actual decisions, but to highlight the grounds on which the decisions were rendered. The first case which came before this Court in which Art. 286(1)(b) fell to be construed was the *State of Travancore-Cochin and others* v. *The Bombay Company Ltd.*(1). The assessee who had exported coir products to foreign purchasers claimed exemption from sales-tax relying upon Art. 286(1)(b). The Revenue authorities held that property in the goods having passed within the State, the transactions were liable to tax. The High Court disagreed with that view, holding that a sale in the course of export was not merely a sale when the goods had crossed the customs frontiers, but included a transaction which precede export. This Court agreed with the High Court. In appeal Patanjali Sastri C.J., speaking for the Court observed that sales which occasioned export were within the scope of the exemption under Art. 286(1)(b). But that was a case in which on the facts found there could be no dispute that the sale by the assessee occasioned export, for in pursuance of the contract the assessee had exported the goods sold.

The next case which came before this Court was the *State of Travancore-Cochin and others* v. *Shanmugha Vilas Cashew Nut Factory and others*(2). It was held by this Court that purchases in the State made by the exporters for the purpose of export are not within the exemption granted by Art. 286(1)(b) of the Constitution. Patanjali Sastri C.J., speaking for the majority of the Court observed:

> "The word 'course' etymologically denotes movement from one point to another, and the expression 'in the course of' not only implies a period of time during which the movement is in progress but postulates also a connected relation. * * * * A sale in the course of export out of the country should similarly be understood in the context of clause (1)(b) as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities."

He further observed that the phrase "integrated activities" cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export form parts of a single transaction. It is in that sense that the two activities—the sale and the export—were said to be integrated. But a purchase for the purpose of export like production or manufacture for export, being only an act

(1) [1952] S.C.R. 1112. (2) [1954] S.C.R. 53.

preparatory to export could not be regarded as an act done "in the course of the export of the goods out of the territory of India".

In the *State of Madras* v. *Gurviah Naidu and Company Ltd.*(1), S. R. Das, Actg. C.J., observed that an assessee who goes about purchasing goods after securing orders from foreign purchasers is not exempt from liability to pay tax by virtue of Art. 286(1)(b) of the Constitution in respect of the purchases made by him because those purchases do not themselves occasion the export. Goods were undoubtedly bought for the purpose of export, but the purchase did not occasion the export within the meaning of Art. 286(1)(b) of the Constitution.

In State of Mysore and another v. *Mysore Shipping and Manufacturing Co. Ltd. and others*(2), it was held that where goods were sold to a licenced exporter by the assessee and the licenced exporter sold the goods to a foreign purchaser it could not be said that the first was in the course of export. The licenced exporter was not an agent of the assessee and the two sales could not have both occasioned the export: it was only the second sale which did that, and the assessee not being a party to it either directly or through the exporter or through his agents, the first sale with which alone the assessee was associated did not occasion the export. If it did not, then it hardly matters whether the goods were exported through the instrumentality of the exporter or not, because all sales that precede the one that occasioned the export were taxable. In this case the Court expressed the opinion that for the sale to be one which occasions the export it must directly concern the assessee as an exporter.

In *East India Tobacco Company* v. *The State of Andhra Pradesh and another*(3) this Court held that only the sale under which the export is made that is protected by Art. 286(1)(b) of the Constitution and a purchase made locally by a firm doing business of exporting tobacco, which preceded the export sale did not fall within its purview though it is made for the purpose of or with a view to export.

One more judgment of this Court may be noticed: *B. K. Wadeyar* v. *M/s. Daulatram Rameshwarlal*(4). The assessees in that case sold goods to an Indian purchaser, who had agreed to sell them to a foreign buyer. The sales by the assessees "were on F.O.B. contracts under which they

(1) A.I.R. (1956) S.C. 158.
(2) A.I.R. (1958) S.C. 1002.
(3) [1963] 1 S.C.R. 404.
(4) [1961] 1 S.C.R. 924.

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continued to be the owners" till the goods crossed the customs barrier, and entered the export stream. It was held by this Court that since the goods remained the property of the assessees till they reached the export stream, the sales were exempt from tax imposed by a State under Art. 286(1)(a). This was undoubtedly a case of two sales resulting in export, and the first sale was held immune from State taxation: but that was so because the property in the goods had passed to the Indian purchaser when the goods were in the export stream. The first sale itself was so inextricably connected with the export that it was regarded as a sale in the course of export.

Mr. Setalvad on behalf of the appellants placed strong reliance upon the judgment of the Madras High Court in *M. R. K. Abdul Salam and Company* v. *The Government of Madras*(1). That was a case in which a dealer in the State of Madras in hides and skins after purchasing raw hides tanned them and sent them to Kovai Tanned Leather Co. Madras who acted as the dealer's agent for sale. Kovai Tanned Leather Company sold the goods to Dharamsee Parpia who acted as an agent of Srivan Brothers (Eastern) Ltd., London. There was another transaction between Kovai Tanned Leather Co. and Gordon Woodroffe and Company Ltd. who acted as agents for a foreign principal. The Sales-tax Tribunal refused to accept the transaction to Dharamsi Parpia as an export sale on the ground that Kovai Tanned Leather Company delivered the goods to the exporter—Dharamsi Parpia—and thereafter the exporter obtained the bills of lading, and that the sale became complete in the Madras State before shipment, and it was on that account not a sale in the course of export. The High Court disagreed with that view. Jagadisan J., speaking for the Court observed:

> "Where there is privity of contract between the foreign buyer and the seller in the taxing territory and the concluded sale between them occasions the export even if the property in the goods sold passes within the territory the transaction is nevertheless one in respect of which Article 286 imposes a ban on the State to levy tax."

We are not concerned to decide whether there was evidence in that case on which the High Court could come to the conclusion that the sale occasioned the export. But Mr. Setalvad relied upon the observation in support of the proposition that in all cases where there is a contract for purchase of goods in the taxing territory, between a local merchant and a foreign buyer acting through his agent, and the

(1)13 S.T.C. 629.

goods are after purchasing the same exported by the agent, the transaction must be deemed to be one in the course of export. We are unable to accept that contention. We do not read the judgment as laying down any such proposition, and none such is legitimately deducible. The second transaction in favour of Gordon Woodroffe & Co. was found to be one in which property in the goods passed beyond the customs frontier. Such a transaction would indisputably be a sale in the course of export.

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In our view the transactions of sale in the present case did not occasion the export of the goods, even though the appellants knew that the buyers in offering the bids for chests of tea and the export quotas were acting on behalf of foreign principals, and that the buyers intended to export the goods. There was between the sale and the export no such bond as would justify the inference that the sale and the export formed parts of a single transaction or that the sale and export were integrally connected. The appellants were not concerned with the actual exportation of the goods, and the sales were intended to be complete without the export, and as such it cannot be said that the said sales occasioned export. The sales were therefore *for* export, and not *in the course of* export.

The appeals therefore fail and are dismissed with costs. One hearing fee.

AYYANGAR, J.—We regret our inability to concur in the order that these appeals should be dismissed. We are clearly of the opinion that the appeals should be allowed.

Ayyangar, J.

This batch of 18 appeals which have been heard together are directed against a common judgment of the High Court of Kerala and are before this Court by virtue of special leave granted to the appellants. The appellants filed writ petitions in the High Court which were dismissed by the learned Single Judge whose judgment was affirmed on appeal by a Bench of the High Court. It is from this judgment that these appeals have been brought.

The appellants are 18 tea estates which are carrying on the business of growing and manufacturing tea in their estates. Their claim is that the teas grown by them have been sold by them "in the course of the export of goods out of the territory of India" within Art. 286(1)(b) of the Constitution and they, therefore, claim that the State of Travancore-Cochin in which these sales took place was not entitled to impose sales tax upon these sales.

The question for consideration is whether these sales effected by the appellants are, as they claim, sales "in the course of export". It is common ground that the tea sold

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under the transactions involved in these appeals was actually exported out of the territory of India. Doubtless, this circumstance would not *per se* render the sales which preceded the export "sales in the course of export" but the argument submitted to us is that these exports are so directly and immediately linked up with the sales effected by the appellants and so integrated with them that the two form part of the same transaction as to render the sales "sales in the course of export".

It was presented in this form, relying on the decision of this Court in *State of Travancore-Cochin* v. *Shanmugha Vilas Nut Factory*(1) where the learned Chief Justice observed:

> "The word 'course' etymologically denotes movement from one point to another and the expression 'in the course of' not only implies a period of time during which the movement is in progress but postulates also a connected relation... .....A sale in the course of export out of the country should be understood in the context of Art. 286(1)(b) as meaning a sale taking place 'not only during the activities directed to the end of exportation of the goods out of the country, but also as part of or connected with such activities.' .....The previous decision .....emphasised the integral relation between the two where the contract of sale itself occasioned the export as the ground for holding that such a sale was one taking place in the course of export."

It is this integrality that is involved in the concept which is expressed by the words that "the sale that occasions the export" is "a sale in the course of export".

The details of the sales on which tax is sought to be levied by the respondent, together with the facts relating thereto, as well as the several contentions urged before us and the decisions on which reliance is placed on either side have all been narrated in the judgment just now pronounced and we do not think it necessary to restate them. Similarly, the provisions of the Tea Act, 1953 and the rules framed thereunder so far they are relevant for the decision of the question involved in these appeals have also been set out and so we are not repeating them either. We shall confine ourselves to the very restricted area of our disagreement with our learned brethren which has occasioned this separate judgment.

(1) [1954] S.C.R. 53.

As preliminary to the discussion of the question involved, we shall put aside certain types of transactions as regards which there is no dispute that they clearly fall on one side of the line of the other. On the one side of the line would be the case where a seller in pursuance of a contract of sale with a foreign buyer puts the goods sold on board a ship bound for a foreign destination. Such a sale would be an "export sale" which would undoubtedly be within the constitutional protection of Art. 286(1)(b). In regard to this type, however, we would make this observation. In such a case we consider that it would be immaterial whether or not with reference to the provisions of the Sale of Goods Act, read in conjunction with the terms and stipulations of any particular contract, the property in the goods passes to the buyer on the Indian side of the customs frontier or beyond it. In either event the sale would have occasioned the export, for the sale and the export form one continuous series of transactions, the one leading to the other—not merely in point of time but integrated by reason of a common intention which is given effect to. In such a case it would be seen that there is but one sale—to the foreign buyer "which occasions the export", and which is implemented in accordance with the terms of the contract by an actual export which is the *sine qua non* of "a sale in the course of export".

A case on the other side of the line would be one where the sale is effected to a resident purchaser who effects the export by sale of the goods purchased to a foreign buyer. Here the first sale to the buyer who enters into the export sale would not be a "sale in the course of export" for it would not be the particular sale which occasions the export, notwithstanding that the purchase might have been made with a view to effect the export sale, or to implement a contract of sale already entered into with a foreign buyer. That such a sale is not one "in the course of export" has been repeatedly held by this Court (See *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory*(1), *State of Madras* v. *Gurviah Naidu and Co. Ltd.*(2), *State of Mysore* v. *Mysore Spinning and Manufacturing Co. Ltd.*(3) and *East India Tobacco Co.* v. *The State of Andhra Pradesh*(4).

This second type of case involves two sales—one to a resident purchaser who purchases it with a view to effect an export and the second, the export sale or sale in the course of export by the purchaser to a foreign buyer. The existence of the two sales and the consequent dissociation between the

(1) [1954] S.C.R. 53.
(2) A.I.R. 1956 S.C. 158 = 6 S.T.C. 717.
(3) A.I.R. 1958 S.C. 1002.
(4) [1963] 1 S.C.R. 404.

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first sale and the export causes a hiatus between that sale and the export and destroys the integrality of the two events or transactions viz., the sale and the factual export.

The sales involved in the present appeals are not of the 2nd type for here there is a single sale direct to a foreign buyer, the contract being concluded with and the goods sold delivered to his agent. It is hardly necessary to add that for purposes relevant to the decision of the question before us there could be no difference in legal effect between a sale to a foreign buyer present in India to take delivery of the goods for transport to his country and a sale to his resident agent for that purpose. Pausing here we should mention that there is no dispute (1) that the persons who bid at the auction at Fort Cochin and purchased the teas of the assessees were agents of foreign buyers or (2) regarding their having made these purchases under the directions of their foreign principals in order to despatch the goods to the latter—a contractual obligation that they admittedly fulfilled.

Under the sales here involved, though to foreign buyers and intended for export, the goods were not under the terms of the contract of sale placed by the seller on board the ship in the course of its outward voyage and that is the only reason why they do not conform strictly to the first type of an export sale which we have described earlier.

But the question is, do not these sales also "occasion the export" and in that sense sales "in the course of export". The test which has been laid down by this Court for determining the proximity of the connection between the sale and the export so as to bring the sale within the constitutional exemption in Art. 286(1)(b) is the integrality of the two events—the sale and the export. The question to be answered is therefore whether the sales now under consideration do not form part and parcel of a single integrated transaction with the export or are they distinct, distant and mediate, the sale and the export being related to each other only in sense of one leading to the other or the one succeeding the other merely in point of time. If the former, the sales are within Art. 286(1)(b), but if the connection between the two is as described later, they are outside the exemption.

What then are the facts of the present case. Before restating them for their being examined in the light of the criteria we have just specified, it is necessary to emphasise certain matters. When the assessees sought an opportunity to adduce evidence as to the facts which they offered to prove to establish their claim to the constitutional protection, the assessing authorities accepted their statements as correct and did not desire them to adduce evidence and so

no detailed evidence was led. If therefore on an examination of the legal position it is now found that there is any lacunae in the statement of facts or in the evidence whose existence would have brought the sales within the exemption, it appears to us that the appellant-assessees should in fairness be afforded an opportunity to adduce evidence to establish their case. We say so particularly because it could by no means be said that the law was clear as to the facts necessary to be proved to claim exemption in the case of sales of the type now before us.

To proceed with the facts, the assessees had applied for and obtained export quotas with a view to effect exports of a quantity of tea grown and processed by them. The sales at Fort Cochin were effected along with the export rights granted to the Appellant estates, the contract being that the purchaser at the auction would obtain a transfer of the export quota right of that estate whose tea he purchased to the extent needed to effect export of the tea purchased. The purchases were thus made only on the basis that the export rights of the seller would be transferred to the buyer and on the basis of these transfers the purchasers obtained export licences from Government for exporting the tea and effected the exports. The purchases were made by agents of foreign principals and it was part of the contractual duty of these agents vis-a-vis the principals to consign the goods purchased to them without avoidable delay. There was proof by the certificates produced that these agents had fulfilled their obligations to their principals and had shipped the goods bought as early as practicable to foreign destinations.

The principal contention urged by the learned Advocate-General of Kerala to persuade us to hold that the sales did not "occasion the export" was based on two circumstances: (1) that it was not part of the contract between the assessees and their buyers that the goods shall only be exported and not sold in the local market. In other words, it was urged that in the absence of such a specific term of contract it would have been open to the buyers to have diverted the goods from being exported and to have sold them locally. This was so far as the contractual relationship between the assessee-sellers and the buyers from them under the sale was concerned, (2) dealing next with the effect of the provisions of the Tea Act, 1953 and the rules framed thereunder on the sales effected by the assessees, the submission was that s. 21 and other provisions of the Tea Act, 1953 merely enabled an export to be effected and did not require the goods in regard to which they were issued to be exported. In other words, it was stressed that the Tea Act did not impose any obligation on the quota holder or his transferee

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to export the goods covered by the quota and that consequently the buyer—even after taking a transfer of the export quota rights alongwith his purchase was not compelled by law to export and was not precluded from failing to export and selling the goods locally. On this reasoning the argument was that here was a purchase under which the purchaser was free to export or not to export and the mere fact that he chose to export would not render the sale to him one which occasioned the export or one "in the course of export".

We consider that these arguments do not sufficiently take into account the actualities of the situation, but proceed on investing on formal requirements a significance which is not warranted.

When learned counsel says that there was no term in the contract between the seller and the buyer that the goods purchased were not to be sold locally but have to be exported, he is right only in the sense that it is not any express term of the contract. But could it be said that that was not the implicit common understanding on which the entire transaction was concluded. The buyer was not interested in the purchase except on terms of the export quota rights being transferred to him and that was why the transfer of the export right was effected or contracted to be effected as part and parcel of the sale of the goods. Again, the buyer was an agent, who as we have stated earlier was not free to deal with the tea purchased by effecting a local sale, but was under an obligation to his foreign principal to export the goods purchased to a foreign destination. It was with such a buyer that the assessee entered into the transaction of sale. On these facts we are satisfied that it was part of the understanding between the seller and the buyer, inferrable from all the circumstances attendant on the transaction that the buyer was bound to export. Pausing here, we would add that, we understand that importance is attached in this context to the need of a term in the sale contract laying an obligation on the part of the buyer to export only for the purpose of demonstrating the intimate connection between the sale and the export for establishing that it was the sale that occasioned the export. If we are right, then what is of significance is the real and common intention of the two parties to the transaction—whether they contemplated the goods purchased being sold locally, or whether they intended the goods sold being only exported and not whether there is such a term in the contract between the parties.

Coming next to the contention that the Tea Act does not compel export of goods covered by the quotas granted, we might mention that no evidence was led as to the prices

prevailing in the local market as compared to that in the foreign countries where the principals of the resident buyers resided, which would have disclosed whether a local sale of the tea bought ostensibly for export was in a commercial sense within the bounds of possibility, though if one went by the rationale underlying the provisions of the Tea Act and in particular ss. 17, 21 and 22, one gets the impression that export quota rights were considered to have a considerable value in the market which would be some indication that a buyer with an export quota would never sell in the local market. Thus it might be that even though the statute does not in terms prohibit internal sale of tea purchased alongwith export quota rights, this could be explained by the circumstance that the right to export tea is considered a privilege which secures economic advantages to the exporter and hence there was no need for any statutory compulsion to do so. We are making this observation because Parliament and the Central Government are keen on promoting exports and in the case of some commodities like sugar where the external price is lower than the local price, the regulations framed in that behalf require exports to be effected under compulsion. We consider therefore that the absence of a compulsive provision in the Tea Act requiring export of the quantity allotted to the estates, is not very material and that Parliament might well have left it optional with the estate owners to export seeing that economic factors provided the requisite compulsion.

If there was a contract or understanding between the buyer and seller by which the latter was to export the goods bought, it is conceded the sale of the assessee did occasion the export and in our view on the facts established, we consider this condition satisfied.

We would therefore allow the appeals and set aside the assessment in so far as they included the sales involved in these appeals.

ORDER

In accordance with the opinion of the majority, the appeals are dismissed with costs. One hearing fee.

Appeal dismissed.