

THE DEPUTY COMMISSIONER OF AGRICULTURAL
INCOME TAX & SALES TAX, ERNAKULAM

v.

INDIAN EXPLOSIVES LTD.

AUGUST 19, 1985

[V.D. TULZAPURKAR, SABYASACHI MUKHARJI AND RANGANATH MISRA, JJ.]

Sales "in the course of import of the goods into India" - Whether the goods imported and supplied to customers on the strength of Actual Users' Import Licences of the customers are exempt from sales tax under the Kerala General Sales Tax Act, 1950 - Constitution of India, 1950 Article 286 (1) (b).

The Respondent-assessee deals in chemicals, dyes etc. import goods on the strength of the Actual Users' Import Licences that had been obtained by the customers and supply the same for use by the latter in their factories. The sales in question were put through by the respondent assessee in the following manner. The indigenous purchaser used to place orders with the respondent-assessee quoting his Import Licence Number, quantity of goods, rate, etc. as agreed to by previous correspondence with the respondent-assessee; the respondent-assessee then placed orders with the foreign supplier for the supply of the goods and in such orders the name of the local purchaser who required the goods as also its licence numbers, were specified; the actual import was done on the strength of two documents like, (a) the Actual Users' Import Licence and (b) Letter of Authority issued by Chief Controller of Imports and Exports whereunder the local purchaser was authorised to permit the respondent-assessee on his behalf to import the goods, to open letters of credit and make remittance of foreign exchange against the said licence to the extent of value specified therein. The import licence expressly contained two conditions (i) that the goods imported will be the property of the licence-holder at the time of clearance through the Customs and (ii) that the goods will be utilised only for consumption as raw material or accessories in the licence-holder's factory and that no portion thereof will be sold to or be permitted to be utilised by any other party. On receipt of the goods the respondent-assessee used to invoice the local purchaser.

The respondent-assessee was assessed to Sales Tax during the assessment years 1961-62, 1962-63 and 1963-64 under the

- A General Sales Tax Act, 1950 on the turn over of sales effected by them in those years of goods, imported on the strength of the customers' Actual Users' Import Licences and supplied to them. Such turnover subjected to tax was to the tune of Rs. 3,15,586.19 in the year 1961-62 and Rs. 4,03,427.72 in the year 1963-64. The respondent-assessee contended that these sales were in the course
- B of Article 286 (I) (b) of the Constitution. The contention was negatived by the assessing authority as also by the Appellate Assistant Commissioner but the Appellate Tribunal in second appeal accepted the contention and held that the disputed turn over in each year was not taxable. In the revisions preferred by the Deputy Commissioner the High Court confirmed the Tribunal's view. Hence the Revenue appeals by special leave of the Court.

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Dismissing the appeals, the Court,

HELD: 1.1 In order that the sale should be one in the course of import it must occasion the import and to occasion the import there must be integral connection or inextricable link between the first sale following import and the actual import

D provided by an obligation to import arising from statute, contract or mutual understanding or nature of the transaction which links the sale to import which cannot, without committing a breach of statute or contract or mutual understanding, be sapped. [628 B-C]

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Ben Gorm Nilgiri Plantations Company, Coonoor and Ors. v. Sales Tax Officer, Special Circle Ernakulam & Ors. [1964] 7 SCR 706 relied on.

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1.2 Reading the two documents, namely the Actual Users' Import Licence and letter of Authority issued by the Chief

F Controller of Imports and Exports together, it is clear that the import of the goods by the respondent-assessee was for and on behalf of the local purchaser and the respondent-assessee could not without committing a breach of the contract, divert the goods so imported for any other purpose. Having regard to the terms and conditions on which the respondent-assessee imported the

G goods and the manner in which the transactions were put through, it is clear that there was an integral connection between the sale to the local purchaser and the actual import of the goods from the foreign supplier. In other words it is clear that the movement of the goods from the foreign country (here the United States) to India was in pursuance of the conditions of the

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pre-existing contract of sale between the respondent-assessee and the local purchaser. That being so the sales in question were in the course of import. [627 A-D]

Ben Gorm Nilgiri Plantations Company, Coonoor and Ors. v. Sales Tax Officer, Special Circle Ernakulam & Ors. [1964] 7 SCR 706 and **K.G. Khosla & Co. (Pvt.) Ltd. Delhi v. Deputy Commissioner of Commercial Taxes, Madras Division**, [1966] 3 SCR 352 followed.

Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras & Anr. [1970] 3 SCR 147 and **State of Bihar & Anr. v. Tata Engineering & Locomotive Co. Ltd.** [1971] 2 SCR 849 referred to.

M/s. Binani Bros (P) Ltd. v. Union of India & Ors. [1974] 1 SCC 459 distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 867-869 of 1974.

T.S. Krishnamurthy, T. Karunakaran Nambiar and P.K. Pillai for the Appellant.

F.S. Nariman, R.F. Nariman, R.Suresh and D.N. Gupta for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J. The common question raised in these appeals is whether the sales effected by the respondent-assessee in the three concerned years of goods imported and supplied to customers on the strength of Actual Users' Import Licences of the customers were exempt from sales tax under the Kerala General Sales Tax Act, 1950 on the ground that these were sales "in the course of import of the goods into the territory of India".

The respondent-assessee deals in chemicals, dyes, etc. The concerned assessment years are 1961-62, 1962-63 and 1963-64. The respondent-assessee was assessed to sales tax under the General Sales Tax Act 1950 on the turnover of sales effected by them in those years of goods imported on the strength of the customers' Actual Users Import Licences and supplied to them. Such turnover subjected to tax was to the tune of Rs. 3,15,586.19 in the year 1961-62, Rs. 13,40,949-98 in the year 1962-63 and Rs. 4,03,427.72 in the year 1963-64. The respondent-assessee contended that

A these sales were in the course of import of goods into India and hence not taxable by virtue of Art. 286(1)(b) of the constitution. The contention was negated by the assessing authority as also by the Appellate Assistant Commissioner but the Appellate Tribunal in second appeal accepted the contention and held that the disputed turnover in each year was not taxable. In the
B revisions preferred by the Deputy Commissioner, the High Court confirmed the Tribunal's view. In doing so the High Court considered the several decisions that were cited before it and ultimately following the test laid down by this Court in **Ben Gorn Nilgiri Plantations Company, Coonoor and Ors. v. Sales Tax Officer, Special Circle Ernakulam & Others** [1964] 7 SCR 706, and mainly relying upon another decision of this Court in **K.G. Khosla & Co. (Pvt.) Ltd. v. Deputy Commissioner of Commercial Tax, Madras Division**, [1966] 3 SCR 352 = AIR 1966 SC 1216, it took
C the view that the sales covered by the disputed turnover in the facts and circumstances of the case were sales in the course of import. The Revenue has come up in appeal to this Court.

D It was not disputed that goods were imported by the respondent-assessee in the strength of the Actual Users' Import Licences that had been obtained by the customers and supplied to them for use by the latter in their factories. The sales in question were put through by the respondent-assessee, as found both by the Tribunal and the High Court, in the following manner. The indigenous purchaser for example M/s. Hindustan Insecticides
E Limited in Kerala, used to place orders with respondent-assessee quoting his Import Licence Number, quantity of goods, rate, etc. as agreed to by previous correspondence with the respondent-assessee; the respondent-assessee then placed orders with the foreign supplier for the supply of the goods and in such orders the name of the local purchaser who required the goods as also
F its licence numbers, were specified; the actual import was done on the strength of two documents like (a) Actual Users Import Licence and (b) Letter of Authority issued by Chief Controller of Imports and Exports whereunder the local purchaser was authorised to permit the respondent-assessee on his behalf to import the goods, to open letters of credit and make remittance of foreign
G exchange against the said licence to the extent of value specified therein. The import licence expressly contained two conditions, (i) that the goods imported will be the property of the licence-holder at the time of clearance through the Customs and (ii) that the goods will be utilised only for consumption as raw material or accessories in the licence-holder's factory and that
H no portion thereof will be sold to or be permitted to be utilised

by any other party. Reading these two documents together it was clear that the import of the goods by the respondent-assessee was for and on behalf of the local purchaser and the respondent-assessee could not, without committing a breach of the contract, divert the goods so imported for any purpose. On receipt of the goods the respondent-assessee used to invoice the local purchaser. Having regard to the terms and conditions on which the respondent assessee imported the goods and the manner in which the transactions were put through, it cannot be disputed that there was an integral connection between the sale to the local purchaser and the actual import of the goods from the foreign supplier. In other words it is clear that the movement of the goods from the foreign country (here the United States) to India was in pursuance of the conditions of the pre-existing contract of sale between the respondent-assessee and the local purchaser. If that be so the view of the Tribunal and the High Court that the sales in question were in the course of import will have to be upheld.

The test of integral connection or inextricable link between the sale and the actual import or export in order that the sale could become a sale in the course of import or export had been clearly enunciated by this Court in **Ben Gorn Nilgiri Plantations Company's** case (supra). There the question related to sale of tea which was claimed to be in the course of export out of the territory of India and though by majority it was held that the sales in question were not "in the course of export", the Court at p.711 of the Report laid down the test thus:

"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 of 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 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 export, but is not necessarily

A 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
 B sale cannot be called a sale in the course of export
 of goods out of the territory of India."

Conversely, in order that the sale should be one in the course of
 import it must occasion the import and to occasion the import
 there must be integral connection or inextricable link between
 the first sale following the import and the actual import
 C provided by an obligation to import arising from statute,
 contract or mutual understanding or nature of the transaction
 which links the sale to import which cannot, without committing a
 breach of statute or contract or mutual understanding, be sapped.

Counsel for the appellant attempted to suggest that the
 aforesaid test of integral connection or inextricable link
 D between the sale and the actual import or export in order that
 the sale could become a sale in the course of import or export
 has been diluted or deviated from in *Coffee Board, Bangalore v.*
Joint Commercial Tax Officer, Madras & Anr. [1970] 3 SCR 147, but
 the suggestion has to be rejected. We may point out that such
 suggestion was expressly rejected and the observations regarding
 E two independent sales in that case were properly explained as
 appropriate to the facts of that case by this Court in *State of*
Bihar & Anr. v. Tata Engineering & Locomotive Co. Ltd. [1971] 2
 SCR 849, where the test of integral connection or inextricable
 link was reaffirmed as a correct and well-settled test to decide
 the question.

F Counsel for the appellant fairly conceded that the facts in
K.G. Khosla & Co.'s case (supra) were on all fours with the facts
 obtaining in the instant appeals and that the ratio of that
 decision would appear to govern the question arising in these
 appeals, but he contended that a different view has been taken
 G by this Court in *M/s. Binani Bros (P) Ltd. v. Union of India &*
Others, [1974] 1 SCC 459, and in view of this later decision the
 High Court ought not to have applied the ratio of *K.G. Khosla &*
Co.'s case to this case. It is not possible to accept this
 contention as in our view *Binani Bros's case* is clearly
 distinguishable on two material aspects. In that case the
 H assessee itself held the import licence and the goods were
 imported on the strength of such import licence and not on the

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strength of any Actual Users Licence as is the case here. Secondly, unlike in the present case there was no term or condition prohibiting diversion of the goods after the import. In fact, it is these two factors obtaining in the instant case which establish the integral connection or inextricable link between the transactions of sale and the actual import making the sales in the course of import. In fact as pointed out earlier, the movement of the goods from the foreign country to India was in pursuance of the requirements flowing from the contract of sale between the respondent-assessee and the local purchaser and as such the sales in question must be held to be in the course of import.

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The view of the Tribunal and the High Court is confirmed and the appeals are dismissed. No order as to costs.

S.R.

Appeal dismissed.