M/S VELLANKI FRAME WORKS

v.

THE COMMERCIAL TAX OFFICER, VISAKHAPATNAM

(Civil Appeal Nos. 1322-1323 of 2019)

JANUARY, 13 2021

[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Central Sales Tax Act, 1956: s.5(2) – 'sale in the course of import' – Essential features – The basic principles for determining as to when a sale or purchase of goods takes place in the course of import or export are contained in s.5 of the CST Act – Under sub-section (2), a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India – The phrase 'sale in the course of import' carries three essential features - (i) that there must be a sale; (ii) that goods must actually be imported into the territory of India; and (iii) that the sale must be part and parcel of the import – A sale would become part and parcel of import if it either occasions such import or if it occurs by way of a transfer of document of title to the goods before the goods cross the customs frontiers of India.

Customs Act, 1962: s.2(26) – Importer, who is – Sale on High Seas – Appellant's case was that there was a quadripartite agreement whereby the supplier sold the goods in question to the first-buyer and delivered them at the port of shipment – Thereafter, while the goods were on high seas, first buyer transferred them to the appellant by endorsing the bill of lading in favour of the appellant – Further to this and while the goods were yet on high seas, appellant allegedly transferred them to the end-buyer by endorsing the bill of lading in favour of the end-buyer – Appellant also suggested that since the end-buyer did not have 'the requisite infrastructure' to undertake importation of goods whereas the appellant had the requisite infrastructure for importation, therefore, appellant was to act as an agent of the end-buyer and to clear the goods from customs authorities – Held: The inclusive definition of "importer" in s.2(26)

of the Customs Act cannot be used to usurp the identity of an importer from the person who filed the bill of entry; and the person in whose name the bill of entry is filed, does not cease to be an importer – In this case, the name of the appellant was reflected as importer in the Import General Manifest (IGM) of the vessel/s that brought the goods in question to the port at Visakhapatnam – High Court observed that if the alleged second high seas sale had taken place, the IGM would have reflected the name of the last high seas sale purchaser as the importer and if there was any bonafide omission, the IGM would have necessitated amendment because only the last purchaser of the goods on high seas could have been the importer/consignee – It is but apparent that that while bringing anything into India from a place outside India is generally regarded as "import" but, when the goods are cleared for home consumption, they are no longer imported goods for the purpose of the Customs Act – Significantly, in the process of importation, the importer, in relation to any goods, includes any owner or any other person holding himself to be the importer but, only between the time of their importation and their clearance for home consumption – In other words, the net result of the expanded definition of the expression "importer" is that while any person who imports goods into India would be an importer but, the owner of the goods or a person holding himself to be an importer would also be regarded as an importer during the period between importation of goods and their clearance for home consumption – This crucial period would generally be that period when the goods have been warehoused after importation and are cleared from warehouse by a person other than the person who actually imported the goods – That being the position, High Court rightly held that this definition of importer cannot be used to usurp the identity of an importer from the person who filed the bill of entry – In other words, the person in whose name the bill of entry is filed does not cease to be an importer and, if that person claims to be not the owner or importer, the onus would be heavy on him to establish that someone else is the owner or importer of goods – Further, if the appellant was merely acting as an agent, then bill of entry would have reflected the name of end-buyer as the importer and the appellant as an agent of the importer; and further to that, the said end-buyer would have been assessed for customs duty – It was not so – Thus, when all official documents as also dealings of

the appellant clearly establish that the appellant had been the importer, the consequences are bound to follow – It gets perforce reiterated that when the bills of entry recorded the name of the appellant as importer and the appellant alone was assessed to customs duty, the so called second high seas sale agreements never came into operation – Central Sales Tax Act, 1956 – s.5(2).

Central Sales Tax Act, 1956: s.5(2) – Claim for exemption under – Raising of debit notes by the appellant on the end-buyers – Effect of – Inter State Sales – Appellant had admittedly raised debit notes on the end-buyers but only after having cleared the goods by filing the bill of entry for home consumption – Once the suggestion about the second high seas sales is not accepted and it is found that the appellant had been the importer of goods and had cleared them for home consumption, the natural consequence of raising of such debit notes on the end-buyers situated in different States and movement of goods to such end-buyers would be to take these transactions in the category of inter-State sales in terms of s.3(a) of the CST Act – Appellant was not entitled to the exemption of s.5(2) of the CST Act and rightly been held liable for tax over inter-State sales – After the appellant got the goods released by filing bill of entry for home consumption, indisputably, the goods were ultimately received by various end-buyers in different States and appellant raised debit notes from the State of Andhra Pradesh – These facts were sufficient to establish that the movement of goods inside the country from one State to another had been on account of the sale by appellant to the end-buyers; and such sales took place only after the appellant obtained the goods from the bonded warehouse for home consumption – High Court was right in observing that once the appellant got released the goods after filing the bill of entry for home consumption, the import stream dried up and the goods got mixed in the local goods – Any movement of the goods thereafter was bound to be a sale under s.3(a) of the CST Act; and such movement being from the State of Andhra Pradesh to other State, it had been a matter of inter-State sale – The principle that actual sale may not necessarily precede the movement of goods, in its true effect, operates rather against the appellant in relation to the sale to end-buyers after the goods were cleared for home consumption – The claimed exemption under s.5(2) of the CST Act was rightly denied to the appellant and the High Court was justified

A *in dismissing the writ petitions filed by the appellant – No case for interference is made out.*

Central Sales Tax Act, 1956: s.5(2) – Whether any case for relegating the appellant to the remedy of appeal made out – Appellant, despite being aware of the availability of remedy of B *statutory appeal, consciously chose to file writ petitions against the assessment orders and consciously contested the entire matter in the High Court – High Court, even after noticing the framework of certiorari jurisdiction, examined the merits of the case thoroughly and even examined the submission made for the first time in writ petitions that the import of goods was occasioned by the sales in* C *question – Of course, in that regard, the High Court pointed out that it was not a pure question of law but in any case, such submission was belied by the fact that the name of the appellant was reflected in the bill of entry as the importer and not that of the end-buyer – There is no error or fault in the approach of High* D *Court in this case – After having consciously invoked the writ jurisdiction of the High Court and having contested the matter on merits, the appellant cannot now be allowed to re-open the matter in appeal – The extraordinary writ jurisdiction cannot be utilised by a litigant only to take chance and then to seek recourse to the other remedy after failing in its attempt on the basic merits of the* E *case before the High Court – A litigation cannot be allowed to be unendingly kept alive at the choice of a litigant – Writ jurisdiction.*

Dismissing the appeals, the Court

HELD: 1.1 In exercise of its powers under Clause (2) of F **Article 286, the Parliament has enacted the Central Sales Tax Act, 1956. In Section 3, thereof, it is laid down that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-(a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods** G **during their movement from one State to another. [Para 20.2][943-E-F]**

1.2 The basic principles for determining as to when a sale or purchase of goods takes place in the course of import or export are contained in Section 5 of the CST Act. Under sub-section (2),

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a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. [Para 20.3][944-D-F]

Hotel Ashoka (Indian Tourist Development Corporation Ltd.). v. Assistant Commissioner of Commercial Taxes and Anr. **(2012) 3 SCC 204 : [2012] 1 SCR 808 – held inapplicable.**

Tata Iron and Steel Co. Ltd., Bombay v. S.R. Sarkar and Ors. **AIR 1961 SC 65 : [1961] 1 SCR 379;** *Minerals & Metals Trading Corporation of India Ltd. v. Sales Tax Officer and Ors*. **(1998) 7 SCC 19 : [1998] 2 Suppl. SCR 112 – distinguished.**

K. Gopinathan Nair and Ors. v. State of Kerala **(1997) 10 SCC 1 : [1997] 3 SCR 226 – relied on.**

J.V. Gokal & Co. (Private) Ltd. v. Assistant Collector of Sales-Tax (Inspection) and Ors. **[1960] 2 SCR 852;** *State of Maharashtra v. Embee Corporation, Bombay* **(1997) 7 SCC 190 : [1997] 3 Suppl. SCR 497 – referred to.**

2.1 The appellant has suggested existence of quadripartite agreement whereby and whereunder, the supplier (party number 1) sold the goods in question to the first-buyer (party number 2) and delivered them at the port of shipment. Thereafter, while the goods were on high seas, party number 2 transferred them to the appellant (invariably party number 3 in these transactions), by endorsing the bill of lading in favour of the appellant. Further to this and while the goods were yet on high seas, the appellant allegedly transferred them to the end-buyer (party number 4) by endorsing the bill of lading in favour of the end-buyer. The appellant has also suggested that though the goods were being purchased by the end-buyer and were to move only after inspection and selection by the end-buyer but the methodology of such quadripartite agreement was adopted because of the reasons that the end-buyer was not having 'the requisite infrastructure' to undertake importation of goods whereas the appellant was having

the requisite infrastructure for importation and the first-buyer was having the credit facility with the seller. It has, therefore, been suggested that there was always a privity of contract between the seller and the end-buyer; and that the appellant was to act as an agent of the end-buyer and to clear the goods from customs authorities. The appellant has also suggested that in each of the transactions, the process was carried out as envisaged in the quadripartite agreement and in the manner that the first-buyer endorsed the bill of lading in favour of the appellant when the goods were on high seas; and while the goods continued to be on high seas and had not crossed the customs frontiers of India, the appellant endorsed the bill of lading in favour of the end-buyer. According to these suggestions, the appellant only acted as an agent of the end-buyer while getting the goods cleared from the customs port at Visakhapatnam. [Para 26][962-F-H; 963-A-D]

2.2 However, the suggestions by the appellant do not remain as innocuous and over-simplified as projected, for the reason that in each of these transactions, when the goods in question reached the port at Visakhapatnam, the appellant carried out the proceedings envisaged by the Customs Act and filed a bill of entry for warehousing and thereafter, filed another bill of entry for home consumption (ex-bond); and on the basis of such bills of entry, the appellant was duly assessed for customs duty. Admittedly, after the goods were cleared for home consumption, they moved from the State of Andhra Pradesh to different States where the respective end-buyers were situated; and the appellant raised debit notes on the end-buyers.In these transactions, the goods in question, upon reaching the port of destination, were not cleared by the end-buyers after paying the requisite customs duties.[Para 26.1][963-D-G]

3. Filing of bill of entry for home consumption by the appellant: Implication

3.1 The High Court has observed that the inclusive definition of "importer" in Section 2(26) of the Customs Act cannot be used to usurp the identity of an importer from the person who filed the bill of entry; and the person in whose name the bill of entry is filed, does not cease to be an importer. In this case, the

name of the appellant was reflected as importer in the Import General Manifest of the vessel/s that brought the goods in question to the port at Visakhapatnam. The High Court has meticulously examined the entire process relating to the arrival of goods as cargo in a vessel; and filing of IGM as also the contents of the bill of entry and has pointed out that the cargo declaration form, an essential part of IGM, was required to carry, amongst others, the particulars of bill of lading and the name of consignee/ importer. After finding that the name of the appellant was reflected as importer in IGM, the High Court has observed that if the alleged second high seas sale had taken place, the IGM would have reflected the name of the last high seas sale purchaser as the importer and if there was any bonafide omission, the IGM would have necessitated amendment because only the last purchaser of the goods on high seas could have been the importer/ consignee. The High Court has also observed that there was no material on record to show that either the IGM contained the name of end-buyer as the importer/consignee or that the same was subsequently amended in terms of Section 30(3) of the Customs Act. These had been the pivotal reasons for which the High Court rejected the suggestion of second high seas sales in favour of the end-buyers and held that the only attempt of the appellant had been to avoid inter-State sales under the CST Act. In the given facts, the High Court specifically recorded the findings that the sale of goods by appellant to the end-buyers had not been high seas sales; and such sales could have been effected only after the appellant was assessed to customs duty and had cleared the goods for home consumption. [Para 27.1][964-D-H; 965-A-C]

3.2 It is but apparent that that while bringing anything into India from a place outside India is generally regarded as "import" and the imported goods are those goods which are brought into India from a place outside but, when the goods are cleared for home consumption, they are no longer imported goods for the purpose of the Customs Act. Significantly, in the process of importation, the importer, in relation to any goods, includes any owner or any other person holding himself to be the importer but, only between the time of their importation and their clearance for home consumption. In other words, the net result of the

expanded definition of the expression "importer" is that while any person who imports goods into India would be an importer but, the owner of the goods or a person holding himself to be an importer would also be regarded as an importer during the period between importation of goods and their clearance for home consumption. This crucial period would generally be that period when the goods have been warehoused after importation and are cleared from warehouse by a person other than the person who actually imported the goods. That being the position, the High Court has rightly said that this definition of importer cannot be used to usurp the identity of an importer from the person who filed the bill of entry. In other words, the person in whose name the bill of entry is filed does not cease to be an importer and, if that person claims to be not the owner or importer, the onus would be heavy on him to establish that someone else is the owner or importer of goods. [Para 30][967-B-C; 968-A-C]

Union of India and Anr. v. Sampat Raj Dugar and Anr. **(1992) 2 SCC 66 : [1992] 1 SCR 269 – held inapplicable.**

3.3 The definition of "importer" in Section 2(26) of the Customs Act, even if not directly decisive of the question of title, has its implications on the facts of the present case for the reason that the appellant alone filed the bills of entry for warehousing as also for home consumption. Yet further, the requirements of filing import manifest, as per Section 30 of the Customs Act, have their own bearing on the present case. It remains indisputable that the name of the appellant was reflected as importer in IGM. If, as asserted by the appellant, the goods had been sold on the high seas, the cargo declaration of IGM would have reflected the name of last high seas purchaser as importer and in other event, the IGM would have necessitated amendment because only the last purchaser of the goods on high seas would have been declared as consignee/importer in IGM. The fact that the name of Radha (and other end-buyers) was not mentioned in IGM as the importer/consignee nor the relevant IGM was amended, the suggestion about second high seas sale in favour of Radha (and other end-buyers) turns out to be only a self-serving suggestion of the appellant, which has no corroboration on the record; rather

the official records totally belie the suggestion of the appellant. [Para 32][973-D-G; 974-A]

3.4 The fact of the matter remains that even though the appellant has suggested that the bills of lading were endorsed in favour of Radha (and other end-buyers) when goods were on high seas but this bald assertion is not corroborated by any of the official documents which form the part of the process of importation, warehousing and clearance of goods. On the contrary, the High Court has pointed out as illustration the details of one of the bills of entry, which distinctively gave out all the particulars of IGM, the invoice, the value of cargo, etc. and the High Court has found that in the bill of entry, the name of appellant alone was shown as the importer who cleared the goods from customs with the assistance of the Customs House Agent. In the given set of facts, if the goods were at all sold to Radha (and other end-buyers) on high seas, the name of such end-buyer would have appeared as importer and not that of the appellant. The same considerations operate against the assertion that the appellant was only acting as an agent of the end-buyers. The High Court has rightly pointed out that the Customs House Agent is an entirely different person who acts only to present papers for clearance of the imported goods under a bill of entry. Of course, under Section 147 of the Customs Act, a person could act on behalf of importer or owner but such a person cannot be treated as owner of the goods nor could be made liable for customs duty. If the appellant was merely acting as an agent, then bill of entry would have reflected the name of end-buyer as the importer and the appellant as an agent of the importer; and further to that, the said end-buyer would have been assessed for customs duty. It were not so. [Paras 32.1, 33][974-A-F]

3.5 Though the definition of importer includes owner or any person holding out himself as the importer; and this definition of importer is not really relevant to the question of title but, that does not mean that a person who holds out himself to be the importer; and who files the bill of entry for home consumption; and who is assessed for customs duty; and whose suggestion about transfer of title to a third person is not established by any reference to any official record, the transfer on high seas may be

presumed on mere suggestion about the alleged endorsement of bill of lading.When all other official documents as also dealings of the appellant clearly establish that the appellant had been the importer, the consequences are bound to follow. It gets perforce reiterated that when the bills of entry recorded the name of the appellant as importer and the appellant alone was assessed to customs duty, the so called second high seas sale agreements never came into operation. [Paras 34, 34.1][974-F-H; 975-A-B]

4. <u>Whether sale in question occasioned import of goods:</u>

The CTO specifically observed that it had not been the case of the appellant that the sale in question occasioned the import of goods into the country. However, an attempt was made before the High Court to suggest that the entire import was occasioned by ultimate sale in favour of Radha and, therefore, the matter would also be covered in the first part of sub-section (2) of Section 5 of the CST Act. The High Court noticed that such a plea could not have been raised for the first time in the writ petition for being a mixed question of facts and law. The High Court also observed that even such suggestion was belied by the fact that only the name of the appellant was reflected in the bill of entry as importer and not of Radha. The argument was made that the quadripartite agreement triggered the movement of goods from foreign country to India and not merely from Andhra Pradesh to other States; that, in fact, the sales in question had not been inter-State sales but these sales had occasioned the movement of goods from outside India into India; and that the Indian leg of the integrated transaction cannot be segregated so as to be taxed as inter-State sale under the CST Act. These suggestions also remain totally baseless. [Para 35][975-B-F]

5. <u>These had been inter-State sales</u>

5.1 The effect of raising of debit notes by the appellant on the end-buyers has its own bearing in the present case.The appellant had admittedly raised such debit notes on the end-buyers but only after having cleared the goods by filing the bill of entry for home consumption. Once the suggestion about the second high seas sales is not accepted and it is found that the appellant

had been the importer of goods and had cleared them for home consumption, the natural consequence of raising of such debit notes on the end-buyers situated in different States and movement of goods to such end-buyers would be to take these transactions in the category of inter-State sales in terms of Section 3(a) of the CST Act. The appellant was not entitled to the exemption of Section 5(2) of the CST Act and has rightly been held liable for tax over inter-State sales. [Para 37][978-G-H; 979-A-B]

5.2 After the appellant got the goods released by filing bill of entry for home consumption, indisputably, the goods were ultimately received by Radha at Lucknow in the State of Uttar Pradesh (and other end-buyers in different States) and appellant raised debit notes from the State of Andhra Pradesh. These facts are sufficient to establish that the movement of goods inside the country from one State to another had been on account of the sale by appellant to the end-buyers; and such sales took place only after the appellant obtained the goods from the bonded warehouse for home consumption. [Para 38][979-B-D]

5.3 The High Court was right in observing that once the appellant got released the goods after filing the bill of entry for home consumption, the import stream dried up and the goods got mixed in the local goods. Any movement of the goods thereafter was bound to be a sale under Section 3(a) of the CST Act; and such movement being from the State of Andhra Pradesh to other State, it had been a matter of inter-State sale. The principle that actual sale may not necessarily precede the movement of goods, in its true effect, operates rather against the appellant in relation to the sale to end-buyers after the goods were cleared for home consumption. [Para 39][979-D-F]

6. <u>If any case for relegating the appellant to the remedy of appeal made out</u>

The appellant, despite being aware of the availability of remedy of statutory appeal, consciously chose to file writ petitions against the assessment orders aforesaid and consciously

contested the entire matter in the High Court. The High Court, even after noticing the framework of certiorari jurisdiction, examined the merits of the case thoroughly and even examined the submission made for the first time in writ petitions that the import of goods was occasioned by the sales in question. Of course, in that regard, the High Court pointed out that it was not a pure question of law but in any case, such submission was belied by the fact that the name of the appellant was reflected in the bill of entry as the importer and not that of the end-buyer. There is no error or fault in the approach of High Court in this case. After having consciously invoked the writ jurisdiction of the High Court and having contested the matter on merits, the appellant cannot now be allowed to re-open the matter in appeal. The extraordinary writ jurisdiction cannot be utilised by a litigant only to take chance and then to seek recourse to the other remedy after failing in its attempt on the basic merits of the case before the High Court. A litigation cannot be allowed to be unendingly kept alive at the choice of a litigant. [Paras 40.1, 40.2, 40.3][979-G-H; 980-A-C; 981-C-D]

Star Paper Mills Ltd. v. Union of India and Ors. **(1995) 4 Suppl. SCC 674 – held inapplicable.**

Minerals and Metals Trading Corporation of India Ltd. v. State of Andhra Pradesh **1999 (106) ELT 23;** *State of Travancore-Cochin and Ors. v. Shanmugha Vilas Cashewnut Factory, Quilon* **AIR 1953 SC 333 : [1954] SCR 53 – referred to.**

Case Law Reference

[2012] 1 SCR 808	**held inapplicable**	**Para 14.6**
[1997] 3 Suppl. SCR 497	**referred to**	**Para 16.2**
[1961] 1 SCR 379	**distinguished**	**Para 16.2**
[1960] 2 SCR 852	**referred to**	**Para 16.3**
[1998] 2 Suppl. SCR 112	**distinguished**	**Para 16.3**
[1954] SCR 53	**referred to**	**Para 16.5**
[1992] 1 SCR 66	**referred to**	**Para 16.6**

(1995) 4 Suppl. SCC 674	**held inapplicable**	**Para 16.8**	A
[1997] 3 SCR 226	**referred to**	**Para 24**	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1322-1323 of 2019.

From the Judgment and Order dated 18.12.2014 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition Nos. 4552 of 2013 and 6258 of 2013. B

Siddharth Bhatnagar, R. Venkataramani, Sr. Advs., Ms. Charanya Lakshmikumaran, Aaditya Bhattacharya, Ms. Apeksha Mehta, Ms. Ishita Mathur, Dhruv Surana, Aditya Sidhra, Joydeep Mazumdar, Ashish Choudhary, Ms. Shalini Kaul, Rohit Dutta, Ms. Priyata Chakraborty, Ms. Sujatha Bagadhi, Praveen Vignesh, T. Vijaya Bhaskar Reddy, G. N. Reddy, Ms. Urmila Kar Purkayastha, Sandeep, Ms. Madhumita Bhattacharjee, Advs. for the appearing parties. C

The Judgment of the Court was delivered by D

DINESH MAHESHWARI, J.

Preliminary and brief outline

1. These appeals by special leave are directed against the common judgment and order dated 18.12.2014 in Writ Petition Nos. 2552 of 2013 and 6258 of 2013 whereby, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh[1] upheld the assessment orders dated 20.01.2010 and 18.05.2010 passed by the Commercial Tax Officer, Chinawaltair Circle[2] and held that the transactionsin question were not the sales in the course of import but had been inter-State sales, liable to Central Sales Tax; and denied the exemption claimed under Section 5(2) of the Central Sales Tax Act, 1956[3] while granting time to the appellant to produce the prescribed C-Forms to the assessing authority for availing the benefit of concessional rate of tax. E F

2. We may usefully observe at the outset that, in all, seven transactions of similar nature form the subject matter of these appeals; one relating to the assessment for the year 2005-06 and others relating G

[1] Hereinafter referred to as 'the High Court'
[2] Hereinafter referred to as 'the CTO'.
[3] Hereinafter referred to as 'the CST Act'. H

A to the assessment for the year 2006-07. The common salient features of all these transactions had been that they were for supply of timber from a foreign country and were allegedly executed in a similar fashion thus: The supplier (party number 1) sold the goods in question to the first buyer (party number 2) and delivered them at the port of shipment. Thereafter, while the goods were in transit on high seas, party number 2
B transferred the goods to the appellant (who was invariably party number 3 in these transactions) by endorsing the bill of lading in favour of the appellant. Further to this and while the goods were on high seas, the appellant allegedly transferred them to the end-buyer (party number 4) by endorsing the bill of lading in favour of the end-buyer.

C 2.1. However, in each of these transactions, when the goods in question reached the port at Visakhapatnam (also known as Vizag), the appellant carried out the proceedings envisaged by the Customs Act, 1962[4] and filed a bill of entry for warehousing and thereafter, filed another bill of entry for home consumption (ex-bond). Accordingly and on the
D basis of such bills of entry, the appellant was duly assessed for customs duty. The appellant later on raised debit notes on the end-buyers.

3. With reference to the aforementioned transactions and the high seas sale agreements, the case of appellant had been that it had only acted as an agent of the end-buyers while filing the bills of entry; and the
E sales of the goods in question to the end-buyers, being the sales taking place in the course of import of goods into the territory of India,were eligible for exemption from payment of sales tax by virtue of Section 5(2) of the CST Act. However, in the assessment orders dated 20.01.2010 and 18.05.2010, the CTO denied the benefit of exemption to the appellant, particularly for the reason that the appellant cleared the
F goods from the customs after filing the bills of entry and later on raised debit notes, showing sales to the end-buyers. The CTO held that the goods in question had crossed the customs frontiers of India when the bills of entry were filed by the appellant and the goods were assessed to customs duty and hence, the sales effected by the appellant to the end-
G buyers could not be said to be high sea sales.

4. The appellant felt aggrieved of the orders so passed by the CTO but, instead of availing the statutory remedy of appeal, chose to challenge the same by way of writ petitions in the High Court. These writ petitions have been considered and dismissed by the High Court by

H [4] Hereinafter referred to as 'the Customs Act'.

way of the impugned judgment and order dated 18.12.2014. The High Court rejected the contention that the appellant had only acted as an agent of the respective end-buyers while filing the bills of entry at the port of destination with the findings, *inter alia,* to the effect that customs duty could be assessed only on the importer of goods; that neither in the bill of entry nor in the Import General Manifest[5] the name of end-buyer was reflected as the importer; that it was the appellant alone who had imported the goods; and that the sale by the appellant to the end-buyer could have only been effected after the goods were cleared for home consumption. The High Court also rejected the contention that high seas sale to end-buyer had occasioned the import of goods into the territory of India. The appellant has challenged the decision of the High Court by way of these appeals on a variety of grounds as shall be noticed hereafter.

5. As noticed, the transactions involved in the present matters had been of similar nature. For appropriate dealing with the issues involved, we may take note of the facts relating to the assessment order dated 20.01.2010 pertaining to the tax period 2005-06 and the assessment order dated 18.05.2010 pertaining to the tax period 2006-07 in necessary details.

Assessment Order dated 20.01.2010: relevant facts and background

6. The appellant M/s. Vellanki Frame Works is said to be a sole proprietary concern, engaged in the business of sale and purchase of logs, timber and wooden batons; and in the course of its business, the appellant also imports timber from other countries.

7. For the tax period 2005-06, in respect of inter-State sales falling within clause (a) of Section 3 of the CST Act, the appellant claimed payment of tax at the concessional rate of 4% covering a turnover of Rs. 55,23,233/- and in support thereof, furnished 9-Nos. of C-Forms; and also sought exemption from payment of tax on a turnover of Rs. 1,14,86,342/- on the ground that these sales were effected by transfer of title documents before the goods had crossed the customs frontiers of India. Even while accepting the claim of the appellant for concessional rate of tax on the inter-State sales turnover, the CTO proposed to reject the claim for exemption for want of evidence and to treat the transactions in question as inter-State sales under Section 3(a) of the CST Act. Hence, the CTO issued show-cause notice dated 19.11.2009 to the appellant

[5] 'IGM' for short.

A stating, *inter alia*, that the appellant had claimed exemption on the ground that the said sales were effected by transfer of the document of title before the goods had crossed customs frontiers of India but had not furnished any evidence in support thereof.

7.1. In response to the said show-cause notice, the appellant B asserted that the transactions in question were covered by Section 5(2) of the CST Act; and furnished seven documents being the sales invoice, bill of lading, two high seas sale agreements, bill of entry for warehousing, bill of entry for ex-bond and the debit note raised on the end-buyer. The CTO, however, found that on filing of the said bills of entry, the appellant alone was assessed to customs duty at both the stages. Hence, the CTO C was of opinion that the import stream dried up on such clearance by the customs authorities and the goods got mixed into the stream of local goods; and any subsequent sale by the appellant would constitute a sale of local goods exigible to tax. In view of this opinion, the CTO proposed to treat the sale by the appellant to the end-buyer as inter-State sale D falling under Section 3(a) of the CST Act and issued further show-cause notice dated 02.12.2009 inviting objections, if any, from the appellant.

8. After taking a few adjournments, the appellant filed its letter of objection to the show-cause notice dated 02.12.2009 while giving out the particulars of the transactions in question and the details of its stand E which could be usefully noticed as follows:

8.1. The case of the appellant had been that M/s. Radha Industries, Lucknow (Uttar Pradesh)[6] was its close business associate; that Radha desired to purchase the subject goods from M/s. World Best Trading Co. (L.L.C.), Dubai (U.A.E.)[7] but, for not having the requisite F infrastructure with the Customs Department, approached the appellant for help; that though the appellant had the requisite infrastructure facilities at Visakhapatnam Customs, but was not having the letter of credit facilities for import; that in the given circumstances, the appellant and Radha entered into a quadripartite agreement with the seller and Indus Tropics Ltd.[8] whereby, it was agreed that Indus would purchase the goods and G during the course of transit of the goods from the port of shipment, would sell them to the appellant; that the appellant would purchase the said goods from Indus as the agent of Radha and transfer the documents

[6] The end-buyer, hereinafter also referred to as 'Radha'.
[7] The seller, hereinafter also referred to as 'WBT'.
H [8] The first buyer, hereinafter also referred to as 'Indus'.

on high seas in favour of Radha for which, Radha would pay the appellant commission of 2% plus bank charges.

8.2. It was asserted by the appellant that pursuant to the said quadripartite agreement, Indus purchased the goods from WBT and the seller sent the consignment from the port of shipment with bill of lading dated 09.12.2005; that on 10.12.2005, Indus caused transfer of the bill of lading on high seas in favour of the appellant; and that on 12.12.2005, another high seas sale agreement was entered into between the appellant and Radha whereby the bill of lading was sold in favour of Radha. It was further asserted by the appellant that on and from 12.12.2005, the appellant did not have control over the bill of lading dated 09.12.2005, as the same had been parted in favour of Radha by then. It was yet further asserted that since Radha did not have the customs facility at Visakhapatnam customs port, the appellant had extended its help by filing the bills of entry in its name for the purpose of customs bonding as well as customs clearance but, it had only been a friendly transaction arranged by the appellant in favour of Radha and the appellant paid the entire amount to Indus without retaining anything as commission.

8.3. The submissions of the appellant had been that the circumstance of its filing the bill of entry had no relevance in determining the nature of transaction which was evidenced by the relevant documents, including (i) quadripartite Master Agreement dated 21.11.2005; and (ii) High Seas Sale Agreement dated 12.12.2005. According to the appellant, it had transferred the import document on high seas and at any rate, the title in the goods always stood vested in Radha, as the owner of the goods; and that the appellant was merely acting as an agent of Radha at all points of time. The appellant maintained that by reason of transfer of the import document, it could not be said that it had sold the goods to Radha; on the contrary, as the appellant had acted as the agent of Radha, at all points of time including at the time of purchase,the transactions between the appellant and Radha cannot be treated as between one principal and another. The appellant further maintained that it had charged commission at 2% plus bank charges to Radha and had parted with the entire amount to Indus, which was the proof that it had only acted as a conduit, as a friendly gesture to Radha. It was also submitted that the transaction was accounted in the books of accounts of the appellant as an agency purchase; that receipt and payment of commission was also accounted in its books of accounts; and the balance sheet for the year

A also supported this submission. Put in a nutshell, the appellant asserted that the transfer of imported goods by it to Radha did not partake the character of sale of goods and that, in any event, the transfer, having been effected over high seas before bonding with the customs authorities, cannot be treated as inter-State sale in the State of Andhra Pradesh.

B 9. The contentions of the appellant were examined by the CTO in the impugned assessment order dated 20.01.2010.For their relevance, the observations and findings in this assessment order could be usefully noticed as follows:

9.1. The CTO summed up the stand of the appellant that the C documents of title to the goods were transferred to Radha on high seas by virtue of the High Seas Sale Agreement dated 12.12.2005; that the transaction did not attain the character of an inter-State sale; and that filing of the bill of entry had no relevance in determining the nature of the transaction. The CTO observed that it was not the case of the appellant that the sale or purchase had occasioned the import falling under the D first limb of Section 5(2) of the CST Act and the question which necessitated examination was as to whether there was a sale of goods by the appellant, or it had been a commission transaction as stated by the appellant. The CTO examined the computer printout of the Trading Account for the year 2005-2006 where the purchase was shown as E purchase trading (high seas), and the relevant sale was shown as sales trading (high seas). After referring to a few other details of the ledger account and debit note etc., the CTO noted the contents of High Seas Sale Agreement dated 10.12.2005 entered into between Indus and the appellant wherein the appellant was described as 'the buyer'; the contents of second High Seas Sale Agreement dated 12.12.2005 wherein the F appellant and Radha were described as 'the seller' and 'the buyer' respectively; and the letter of the appellant dated 25.11.2009 wherein, while submitting certain documents like the sales invoice, the bill of lading, high seas sale agreement, bill of entry for warehousing and the bill of entry for home consumption, the appellant had stated that exemption G from payment of tax was claimed on the ground that the said sales were effected by transfer of documents of title to the goods before the goods had crossed the customs frontiers of India. The CTO, therefore, observed that obviously, the intention of the appellant was to sell the goods and, in fact, there was a sale; and there was no truth in the statement of appellant that it had acted as the agent of Radha.The relevant part of the order H reads as follows:

"1)….In the High Sea sale agreement dated 10.12.2005 entered into between M/s Indus Tropics Ld and M/s Vellanki Frame Works the assessee was described as 'the buyer'.

In the 2nd High Sea sale agreement dated 12.12.2005 entered into between the assessee M/s Vellanki frame Works and M/s Radha Industries -the parties were described as 'the seller' and 'the buyer' respectively.

Similarly in the letter dated 25.11.2009…..the assessee stated that they claimed exemption from payment of tax on the ground that the said sales were effected by the transfer of document of title to the goods before the goods have crossed the customs frontiers of India.

Therefore, it is obvious that there is intention to sell the goods and infact there was sale. There is no truth in their statement that they acted as an agent to M/s Radha Industries."

9.2. In regard to the main contention of the appellant that document of title was transferred before the goods had crossed the customs frontier of Indiaand the transaction fell within Section 5(2) of the Act, the CTO examined the documentary evidence placed on record and found the facts that: (i) Indus had imported 324 PCS of Myanmar Hardwood Gurjan Round Logs from Yangon (Myanmar) to Vizag (India) and the bill of lading No. 01/YGN-VZG dated 09.12.2005 was endorsed by the importer in favour of the appellant; (ii) on the strength of such endorsed documents, Sri Sanjiv Kumar Agarwal (sole proprietor of the appellant) presented the bill of entry No. 804116 dated 12.12.2005 for warehousing and customs duty was assessed on the appellant alone on this bill of entry for warehousing; and (iii) subsequently, the appellant filed the bill of entry for home consumption No. 804353 dated 28.12.2005 and customs duty was assessed on the appellant alone on this bill of entry. The CTO also referred to the debit note dated 12.01.2006 raised by the appellant on Radha for a sum of Rs. 1,14,86,342/-and observed that though the intention of the parties in High Seas Sale Agreement dated 12.12.2005 was to effect the transfer before the goods crossed the customs frontiers in India but, in fact, the said agreement did not come into operation and the sale took place on 12.01.2006, as shown in the debit note.

9.3. The CTO further held that the goods must be treated as having crossed the customs frontiers of India when the bill of entry was

made and the goods were assessed to customs duty; and the sale effected by the appellant could not be said to be sale in the course of import or high seas sale inasmuch as the goods had crossed the customs frontiers. The CTO reiterated that the second high seas sale agreement had not come into operation; and there was no case for claiming that the transfer of documents was effected by virtue of the said agreement itself. With reference to the facts of the case and the relevant case-law, the CTO held that the sale in fact took place only after customs clearance and proceeded to overrule the contentions of the appellant. The CTO, *inter alia*, observed and held as under:

> "2)…. In view of the above legal position and the facts of the case, it is to be treated that the goods had crossed customs frontiers of India when the bill of entry having been made, the goods were assessed to customs duty, Hence the sales effected by the assesees can't be said to be sales in the course of import or High Sea Sales in as much as the goods had crossed the customs frontiers.
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> 4) It may not be out of place to mention that as far as the quadripartite agreement to have been entered into on 21.11.05 is concerned, it has not come into operation while the transactionsis taking place. Had there been any nexus in respect thereof the necessity of the subsequent two high sea sale agreements dated 10.12.2005 and 12.12.2005 would not have arose in the scheme.
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> 5) It is to be further noted that obviously the 2nd high sea sale agreement has not come into operation when the sale is taking place. Thus there is no case in claiming that the transfer of documents was effected by virtue of the said agreement itself. As. was held by the Honourable Apex Court in the case of Tata Iron & Steel Co Ltd, Bombay Vs. S.R. Sarkar and others 11 STC 655 – a sale will be reckoned as a sale on completion of such sale and a mere contract of sale is not a sale within the definition of sale in Section 2(a). Therefore, it is to be observed that the sale has not taken place in the manner contemplated in the agreement. The sale in fact took place after-customs clearance only. Thus, there is no nexus to the said agreement."

9.4. In view of the above, the CTO disallowed the exemptions claimed by the appellant on the turnover of Rs. 1,14,86,342/- while treating

the transactions as inter-State sales falling under Section 3(a) of the CST Act and carried out assessment accordingly, holding the appellant liable to pay balance tax to the tune of Rs. 14,35,793/-.

Assessment Order dated 18.05.2010: relevant facts and background

10. Six other transactions of similar nature formed the subject matter of the assessment order dated 18.05.2010 relating to the tax period 2006-07. The CTO found that the appellant had claimed exemption from payment of tax, in respect of a turnover of Rs. 4,05,09,427/-, while contending that this turnover represented the sales effected by transfer of documents of title before the goods had crossed the customs frontiers of India but, had not filed any evidence to show that the said sales were effected in such a manner. Accordingly, a show-cause notice dated 26.11.2009 was issued. In response thereto, the appellant furnished certain documents relating to these six transactions of similar nature involving four parties, being the seller, the first buyer, the appellant, and the end-buyer respectively.

10.1. As regards first transaction, Master Agreement dated 01.04.2006 for supply of timber logs was entered into amongst Alkemal Singapore Pte Ltd. (seller), Purbanchal Lumbers Pvt. Ltd. (first buyer), Vellanki Frame Works (appellant) and the said Radha Industries (end-buyer). Purbanchal Lumbers Pvt. Ltd., imported 155 PCS of Myanmar Hardwood Gurjan Round logs from Yangon (Myanmar) to Vizag (India); the bill of lading No. GCTC/531/06/11 dated 08.04.2016 was endorsed in favour of the appellant on 11.04.2006 pursuant to the High SeasSale Agreement; and on 11.04.2006 itself, bill of lading was endorsed by the appellant in favour of Radha. Thereafter, on 12.04.2006, bill of entry for warehousing (B/E No. 601744) was filed by the appellant for warehousing of timber and then, on 26.04.2006, bill of entry for home consumption (B/E No. 602044) was filed by the appellant.

10.2. As regards second transaction, Master Agreement dated 01.08.2006 for supply of timber was entered into amongst Wood Craft International Pte. Ltd. (seller), Alpine Panels Pvt. Ltd. (first buyer), Vellanki Frame Works (appellant) and M/s. Indo Bitumen Products, Rajasthan (end-buyer). M/s. Alpine Panels Pvt. Ltd., imported 273 PCS of Malaysian Round Logs from Singapore to Vizag; the bill of lading No. AMB1106/VIZ-05 dated 20.08.2006 was endorsed in favour of the

A appellant on 26.08.2006 and on this very date, the bill of lading was endorsed by the appellant in favour of the end-buyer M/s. Indo Bitumen Products. Thereafter, on 30.08.2006, bill of entry for warehousing (B/E No. 604498) was filed by the appellant for warehousing of timber and then, on 07.09.2006, bill of entry for home consumption (B/E No. 604677) was filed by the appellant. Here again, customs duty was assessed on Sri Sanjiv Kumar Agarwal, Vellanki Frame Works, Vizag (the appellant).

10.3. The third and fourth transactions in this assessment had been of the same nature wherein two Master Agreements dated 01.10.2006 for supply of timber were asserted involving the said Wood Craft International Pte Ltd. (seller), Purbanchal Lumbers Pvt. Ltd. (first buyer), Vellanki Frame Works (appellant) and M/s. Pine Exporter, New Delhi (end-buyer). These transactions involved two bills of lading, Nos. AMB1306/VIZ-01 and AMB1306/VIZ-02 dated 08.10.2006, which were similarly endorsed by the first buyer in favour of the appellant on 18.10.2006 and on the same date, the appellant endorsed the same in favour of the end-buyer. Thereafter, in a similar fashion, the appellant filed the bills of entry on 19.10.2006 for warehousing and then, on 31.10.2006 for home consumption.

10.4. Again, the fifth and sixth transactions in this assessment had also been of the same nature wherein two Master Agreements dated 11.12.2006 and 15.12.2006 for supply of timber were asserted involving the said Wood Craft International Pte Ltd. (seller), M/s. G.K. Ganeriwala & Sons (first buyer), Vellanki Frame Works (appellant) and M/s. Esskay Impex, New Delhi (end-buyer). These transactions involved two bills of lading, Nos. CON1206/VIZ-04 and CON1206/VIZ-05 dated 21.12.2006 which were similarly endorsed by the first buyer in favour of the appellant on 04.01.2007 and on the same date, the appellant endorsed the same in favour of the end-buyer. Thereafter, in the similar fashion, the appellant filed the bills of entry on 05.01.2007 for warehousing and then, on 18.01.2007 for home consumption.

10.5. In all these transactions and dealings, after filing of bills of entry, customs duty was assessed on Sri Sanjiv Kumar Agarwal, the proprietor of appellant firm. However, the appellant maintained that the said transactions had been of high seas sales to the respective end-buyers, on whom the debit notes were raised by the appellant later.

11. In the assessment order dated 18.05.2010, the CTO held, *inter alia*, that on filing the bill of entry for warehousing and the bill of entry

for ex-bond (home consumption), the appellant alone was assessed to customs duty; that the import stream dried upon such clearance by the customs authorities and the goods mixed into the stream of local goods; that any subsequent sale by the appellant, therefore, constituted sale of local goods exigible to tax; and that the transactions, for which the appellant had claimed exemption as high sea sales, were liable to be treated as inter-State sales falling under Section 3(a) of the CST Act. In other words, the assessing authority held that the sales by the appellant to the end-buyers took place only after assessment of customs duty on the appellant upon filing the bills of entry and thus, the said sales attained the character of sale of local goods, for the goods in question having crossed the customs frontiers of India.

11.1. Apart from the above, the CTO also pointed out that when the letters were addressed to the dealers at the other end (i.e., the end-buyers), one of them, M/s. Pine Exporters, New Delhi, stated that the referred party (i.e., the appellant) was not known to them and that they had never received any Malaysian Round logs from the appellant whereas the letter sent to M/s. Esskay Impex, New Delhi, was returned with the postal endorsement that no such firm was existing at the given address. These factors were also taken into account by the assessing authority to hold that the claim of the appellant was not genuine; and the transactions, on which the appellant had claimed exemption as high sea sales, should be treated as inter-State sales falling under Section 3(a) of the CST Act.

11.2. The relevant part of the observations and findings of the CTO in the assessment order dated 18.05.2010 could also be usefully extracted as under:-

> "When these settled principles are applied to the instant case, as is ascertainable from the bills of entry for ware-house and the ex-bond of entry-transfer of title deeds has not taken place before filing the bills of entry and the assessment of duty. The sale took place after the assessment is made on the assessee and on filing of the bills of entry. Thus the said sales attained the character of sales of local goods.
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> Therefore, in view of the above legal position and the facts of the case, it is to be treated that the goods had crossed customs frontiers of India when the bill of entry having been made, the goods were assessed to customs duty. Hence the sales effected by the assessee cant be said to be sales in the course of import or

high sea sales in as much as the goods had crossed the customs frontiers.

Further, when addressed the dealers at the other end requesting to confirm the purchase from the assessee- M/s Pine Exporters, New Delhi (sale reported at transaction No.3 Rs.11057059/- and transaction No.4 Rs.4124375/- total 15581434-00) the party replied that they do not know the referred party and have never received any Malaysian Round Logs from the said party which shows that the dealer's claim is not genuine.

Further, the letter sent to M/s Esskay Impex, New Delhi requesting to confirm the purchase from the assessee in transaction No. 5 Rs.8277263 and transaction No.6 Rs.3454968 total = 11732231/-, was returned by the postal authorities with an endorsement "No such firm at this place" which also shows that the dealer's claim is not genuine.

In view of this position, the transactions on which the assessee has claimed exemption being high sea sales are treated as interstate sales falling under Section 3(a) of CST Act."

Writ Petitions before the High Court

12. As noticed, the assessment orders aforesaid could have been challenged in statutory appeal but the appellant chose to challenge the same by way of writ petitions, being W.P. No. 4552 of 2013 (against the assessment order dated 20.01.2010) and W.P. No. 6258 of 2013 (against the assessment order dated 18.05.2010). Both these writ petitions were taken up for consideration together by the High Court and were dismissed by the common judgment and order dated 18.12.2014.

13. The High Court, in the impugned judgment and order dated 18.12.2014, examined the variety of contentions urged by the parties and took up for determination the issues arising in the matter under different headings while primarily dealing with the facts relating to the assessment order dated 20.01.2010 as involved in W.P. No. 4552 of 2013.The High Court examined the issues: (i) as to whether the CTO before whom the dealer had filed returns under CST Act was having authority to pass the assessment order in the absence of authorisation from the Deputy Commissioner; (ii) the extent, scope and contours of judicial review of assessment order in the writ jurisdiction; (iii) as to whether the sale by appellant to Radha was an inter-State sale for the appellant having filed

the bill of entry and having been assessed to customs duty; (iv) as to whether the sale in favour of Radha occasioned movement of goods into the country; (v) as to whether the procedure prescribed for duty-free shop was applicable to the present case; and (vi) as to whether the appellant was entitled to be granted time to submit C-Forms? A

14. Having regard to the facts and circumstance of the case, we may briefly summarise the observations and findings of the High Court in relation to these issues. B

14.1. As regards the question of the authority of CTO to pass the assessment order in question, the High Court extensively examined the scope of the provisions contained in A.P. Value Added Tax Act, 2005, A.P. Value Added Tax Rules, 2005 and Section 9(2) of the CST Act and ultimately rejected the contentions urged on behalf of the appellant that the CTO was lacking authority to assess the appellant to tax under the CST Act. C

14.2. As regards judicial review of assessment order in writ jurisdiction, the High Court took note of the extensive arguments on behalf of the appellant as regards nature of transaction with reference to quadripartite agreement and endorsement of bill of lading by the importer in favour of the appellant and subsequently by the appellant in favour of Radha (end-buyer) while the goods were on high seas as also the argument that there was no finding against genuineness of the endorsements on the bill of lading. The High Court observed that the appellant had invoked writ jurisdiction against the assessment order without availing the statutory remedy of appeal; and also pointed out that though certiorari was the appropriate remedy in challenge to a quasi-judicial order, the appellant had sought a writ of mandamus. The High Court further observed that it was not even the case of the appellant that the first respondent had failed to perform a statutory duty or that the appellant's legal rights were adversely affected and therefore, the appellant was not entitled to a writ of mandamus. The High Court, thereafter, pointed out the limited parameters within which the validity of assessment orders and findings therein could be examined in certiorari jurisdiction. The High Court took note of the consideration adopted and the findings recorded in the impugned assessment orders and observed that the assessing authority had not taken into consideration the effect of high seas sale agreement and bill of lading etc., but has held the sales by appellant to Radha and other end-buyers outside the State to be inter- D E F G H

A State sales for the reason that those sales could only have been effected after the appellant had filed the bills of entry for home consumption and was assessed to customs duty. The High Court observed that only if those findings were set aside would the matter call for remand with direction to the assessing authority to consider the other documents relied upon by the appellant. The High Court observed thus:

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> "In passing the impugned assessment orders, and in subjecting the transactions to tax as an inter-state sale under Section 3(a) of the CST Act, the assessing authority has not taken into consideration the effect of the High Sea sales agreements and other agreements, the bill of lading or the provisions of the Indian Bill of Lading Act. He has held that the sale of goods by the petitioner to Radha Industries (and other outside the State purchasers) was an inter-state sale on the ground that these sales could only have been effected after the petitioner had filed the bill of entry for home consumption, and after he was assessed to customs duty. It is only if these findings are set aside, would the matter necessitate remand, and the assessing authority being directed to consider the other documents relied upon by the petitioner."

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14.3. After having dealt with the aforesaid preliminary aspects, the High Court entered into the core issue involved in the matter i.e., as to whether the sale by appellant to Radha was an inter-State sale for the appellant having filed the bill of entry and having been assessed to customs duty. The High Court took note of the rival submission where, on one hand, it was contended on behalf of the appellant that there was no prohibition under the Customs Act or the Rules/Regulations made thereunder, for clearance of goods by the holder of an authorisation by the endorsee of the bill of lading; that even otherwise, an importer under the Customs Act includes any owner or any person holding himself out to be an importer and, as the bill of lading had been endorsed in his favour, the appellant was entitled to file the bill of entry as an importer; and that the department's contention, that payment of customs duty by the appellant was conclusive of the import having ended and any sale by the appellant thereafter could only be a domestic sale, was not flowing from the provisions of the Customs Act.On the other hand,it was contended on behalf of the department that the appellant alone was assessed to customs duty by virtue of his filing the bill of entry as the

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importer; that the system permitted only the appellant to file the bill of entry as his name alone was recorded in the Import General Manifest (IGM) as the importer; that the contents of the bill of entry made it clear that there was no high seas sale, subsequent to the high seas sale in favour of the appellant asthe bill of entry was generated on the basis of the IGM; that Radha was not assessed to customs duty and if Radha was the last buyer during importation, IGM would have reflected the same; that the appellant was assessed to customs duty as being the last buyer/final importer of the goods before the goods got mixed with the general goods and the sale of goods by appellant to Radha was not a sale in the course of import, rather it was an inter-State sale as Radha was located outside the State of Andhra Pradesh; and that if the appellanthad sold the goods to Radha and yet gotitself assessed to customs duty, it could only mean that the appellant and Radha had colluded to evade customs duty on the sale transaction value.

14.4. In view of the rival submissions, the High Court took note of the requirements of Section 5(2) of the CST Act that, for a sale to be 'in the course of import', it has to be either the one which has occasioned the import or the one which has been effected by a transfer of document of title to the goods before the goods had crossed the customs frontiers of India. As the claim of the appellant, for treating the sale in question to be in the course of import, was being denied by the department for the reason that the appellant alone had filed the bill of entry for warehousing as also the bill of entry for home consumption, the High Court proceeded to examine the facts of the case vis-a-vis the essential features related with the processes of importation and filing of bill of entry while sub-dividing its consideration with reference to various terms in, and various provisions of, the Customs Act and the CST Act.

14.4.1. The High Court took note that the expression ''crossing the customs frontiers of India'' was defined in Section 2(ab) of the CST Act to mean crossing the limits of the area of a customs station in which the imported goods or exported goods are ordinarily kept before clearance by customs authorities; and as per the Explanation thereto, ''customs station'' and ''customs authorities'' shall have the same meaning as in the Customs Act. The High Court observed that ''the customs frontiers'', for the purpose of the CST Act, was equated to the limits of the area of the customs station in which the goods were stored; and crossing of such station being regarded as amounting to crossing the customs frontiers of India.

14.4.2. As regards connotation of the term "importer", the High Court examined the definition of "import" in Section 2(23) and of "imported goods" in Section 2(25) of the Customs Act and observed that the moment goods, brought into India from a foreign country, are cleared for home consumption, they get mixed with the local goods and cease to be imported goods thereafter. The High Court also examined the inclusive definition of "importer" in Section 2(26) of the Customs Act and observed that any person who imports goods from a foreign country to India would undoubtedly be an importer; and the owner of the goods and a person holding himself out be an importer would also be an importer, but only during the period between the importation of the goods and the time they are cleared for home consumption, and not prior thereto or thereafter. The High Court observed that the expanded definition of "importer" could not be used to usurp the identity of an importer from the person who has filed the bill of entry; and as the bill of entry showed the goods to have been cleared by the appellant for home consumption, the appellant was the importer of the goods. The High Court also observed that if the appellant had sold the goods on high seas to Radha, it was only Radha who would be the importer and not the appellant and the very fact that the name of Radha was not reflected as the importer in the bill of entry for home consumption belied the contention of the appellant about high seas sale to Radha. The relevant parts of observations and findings of the High Court could be usefully extracted as under:-

> "Section 2(23) of the Customs Act defines import, with its grammatical variations and cognate expressions, to mean bringing into India from a place outside India. Section 2(25) defines imported goods to mean any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. Use of the words does not include in Section 2(25) would mean that the moment goods, brought into India from a foreign country, are cleared for home consumption, they get mixed with the local goods and cease to be imported goods thereafter. Going by the definition of the term 'import' under Section 2(25) of the Act as "to bring into India from a place outside India," and as he has imported the goods (his name being reflected in the Bill of Entry as the importer), the petitioner has rightly been held to be the importer.
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In view of the expanded definition of importer in Section 2(26), while any person who imports goods from a foreign country to India would undoubtedly be an importer, the owner of the goods and a person holding himself out be an importer would also be an importer, however only during the period between the importation of the goods and the time they are cleared for home consumption, and not prior thereto or thereafter. This period is when the goods are warehoused after importation, and are cleared from such warehouse by a person other than the person who actually imported the goods. That limb of the definition of importer, in Section 2(26) of the Customs Act, is designed to protect the interests of the owner or the exporter where the goods have not been claimed or redeemed by the designated importer in India. The definition cannot be used to usurp the identity of an importer from the person who filed the bill of entry. As Section 2(26) is an inclusive definition, the person in whose name the bill of entry is filed does not cease to be the importer. In other words, the person who has secured the release of the goods from the carrier, who has filed the bill of entry, and who has undertaken the work of clearance, continues to be an importer. The bill of entry shows the goods to have been cleared for home consumption by the petitioner who is, therefore, the importer of the goods.

The person who holds himself out to be the importer of the goods must furnish proof of being the importer before the goods are cleared for home consumption. No doubt, Section 2(26) permits any one holding himself out to be the importer between the date of importation and clearance of the goods for home consumption. But here the petitioner, in whose name the goods have been manifested, has, by filing a Bill of Entry, already held himself out to be the importer. As shall be detailed hereinafter, the import manifest has not been amended, the petitioner has filed the Bill of Entry for clearance of the goods for home consumption, and has held himself out to be the importer. …. It is evident, therefore, that, before its importation, it is only the person who imported the goods who would be the importer. If, as contended by the petitioner, they had sold the goods on high seas to Radha, it is only Radha who would be the importer and not the petitioner. The very fact that the name of Radha is not reflected as the importer in the bill

A of entry ex-bond (home consumption) belies the petitioners contention of a high sea sale by them to Radha Industries."

14.4.3. The High Court, thereafter, proceeded to examine the relevance and importance of Import General Manifest required to be delivered prior to the arrival of vessel at the customs station in terms of B Section 30 of the Customs Act; permissibility of its amendment or supplementation under the Levy of Fee (Customs Documents) Regulations, 1970; and its contents in terms of Import Manifest (Vessels) Regulations, 1971. The High Court observed that as per the requirements of IGM, it should have reflected the name of the last high sea sale C purchaser as the importer; and otherwise, the IGM would have necessitated amendment, as it is only the last purchaser of the goods on high seas who would be the importer/consignee. The High Court observed that there was no material on record to show that either the IGM contained the name of Radha as the importer/consignee or that it was subsequently amended in terms of Section 30(3) of the Customs Act; D and hence, held that the contention of high seas sales was raised by the appellant only to avoid the goods being subjected to tax as inter-State sales under the CST Act. The High Court observed and held as under:-

> "The Import General Manifest contains a cargo declaration wherein, among others, the name of the importer, the importers E code number, IGM number and date are required to be detailed. It is not even the petitioners case that his name is not reflected as the importer in the Import General Manifest. If, as is now contended by him, the goods had been sold on the high seas, the Import General Manifest should have reflected the name of the last high sea sale purchaser as the importer. Otherwise, the Import General F Manifest would have necessitated amendment as it is only the last purchaser of the goods on high seas who would be the importer/consignee. There is no material on record to show that either the Import General Manifest contained the name of Radha as the importer/consignee or that it was subsequently amended in G terms of Section 30(3) of the Customs Act. It is evident, therefore, that the contention of high seas sales has been raised by the petitioner only to avoid the goods being subjected to tax as inter-state sales under the CST Act."

14.4.4. After having found that the appellant was rightly held to H be the importer of goods and such a conclusion was fortified by the

contents of IGM, the High Court proceeded to further examine the effect of filing of bill of entry for home consumption by the appellant. In this regard, the High Court examined the scope and requirements of the provisions contained in the Customs Act relating to entry of goods on importation; clearance of goods for home consumption as also the requirements of the Bill of Entry (Electronic Declaration) Regulations, 1995. The High Court further examined the contents of one of the bills of entry, as placed on the record of W.P. No. 6258 of 2013 where the second party (first buyer) was Purbanchal Lumbers Pvt. Ltd. and found that the said bill of entry made no reference to Radha and held that this omission made it clear that the goods were imported by the appellant on a high seas sale effected in its favour by the said first buyer. The High Court, accordingly, concluded that the appellant had imported the goods; and the sale of goods by the appellant to Radha could have only been effected after the goods had been cleared for home consumption. The High Court, *inter alia*, observed and held as under:-

> "…..It is evident, from the said Bill of Entry, that the goods were imported by the petitioner, and were cleared from customs with the assistance of the customs house agent M/s.Srinivasa Transports. If, as contended by the petitioner, the goods were sold by them to M/s. Radha Industries on high seas, and before the goods entered the customs port, the name of the importer should have been shown as Radha Industries, and not as Sanjiv Kumar Agarwal, Vellanki Frameworks. The fact that the name of the importer is shown as Sanjiv Kumar Agarwal, Vellanki Frameworks, and the Bill of Entry makes no reference to Radha Industries, goes to show that the goods were imported by the petitioner on a high sea sale effected in their favour by Purbanchal Lumbers Private Limited; it is they who had imported the goods; and sale of goods by them to Radha Industries could only have been effected after the goods had been cleared for home consumption."

14.4.5. The High Court also examined the submissions that the appellant acted merely as an agent of the end-buyer and rejected the same, again with reference to the contents of the bill of entry where the name of appellant was shown as the importer and there was no reference to Radha. The High Court also observed that customs duty could be assessed only on the importer of goods and not on his agent; and found

A that the appellant alone was assessed to customs duty and not Radha. In view of the given facts, the High Court reiterated its findings that the sale of goods by appellant to Radha was not a high seas sale; and such a sale could have been effected only after the appellant was assessed to customs duty and had cleared the goods for home consumption. The High Court observed and held, *inter alia*, as follows:-

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> "If, as contended by him, the petitioner was merely acting as an agent, the bill of entry would have reflected the name of the importer as M/s.Radha Industries and the petitioner as their agent instead of M/s. Srinivasa Traders as the clearing house agent; and the petitioners name would have been recorded in the bill of entry, along with Purbanchal Lumbers Private Limited. The very fact that the name of the importer is shown as Sanjiv Kumar Agarwal, Vellanki Frameworks, and the Bill of Entry makes no reference to Radha Industries, shows that the goods were imported by the petitioner, on the goods being sold to them on high seas by Purbanchal Lumbers Private Limited. Sale of goods by them to Radha Industries could only have been effected after the goods had been cleared for home consumption.
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> *** *** ***
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> Transfer of title to the goods on high seas would make the person, who purchased the goods on high seas, the importer of the goods and it is he who would be liable to be assessed to customs duty. As the Bill of Entry records the petitioners name as the importer, and as it is not in dispute that it was he who was assessed to customs duty, and not Radha, it is evident that the sale of goods by the petitioner to Radha is not a high seas sale. Such a sale could only have been effected after the petitioner was assessed to customs duty, and he had cleared the goods for home consumption."

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14.4.6. With reference to a Division Bench decision of Andhra Pradesh High Court in the case of ***Minerals and Metals Trading Corporation of India Ltd. v. State of Andhra Pradesh*: 1999 (106) ELT 23**, an argument was advanced on behalf of the appellant that the name on the bill of entry was irrelevant because the name of the importer alone would be recorded in it, even if the transfer of title deeds was effected before filing of the bill of entry and assessment of duty. The

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High Court took note of the principal issue involved in the said case of ***Minerals and Metals*** and held that the question, as to whether name on the bill of entry was relevant or not and as to whether the name of importer alone would be recorded therein, even if transfer by title deed was effected before filing of bill of entry and assessment of duty, did not arise for consideration therein. Therefore, the observations occurring in said decision as regards the relevance of name in the bill of entry were held to be not of a binding declaration of law.

14.5. Having thus held that CTO was justified in holding that sale of goods by appellant to Radha was an inter-State sale liable to tax under the CST Act, the High Court took note of another submission made on behalf of the appellant that the sale in favour of Radha occasioned the movement of goods into the country. It was contended on behalf of the appellant that the entire import of the goods was occasioned by the ultimate sale by the appellant in favour of Radha and even though the documents executed referred to the sale as a high seas sale, but when the very sale itself occasioned the movement of goods across the customs barrier, it had been a sale in the course of import. It was also submitted on behalf of the appellant that though the case was not presented in this light before the assessing officer, it being a pure question of law, could be considered by the High Court. *Per contra*, it was submitted on behalf of the department that such submissions were inconsistent and contrary to the earlier stand of the appellant that it had been a high seas sale. It was also submitted, again with reference to bill of entry, that the name of Radha was not reflected there as the last buyer.

14.5.1. The High Court observed that it was for the first time such a plea was taken in the writ proceedings that the sale of goods to Radha occasioned the import of goods; and the writ Court would be disinclined to entertain this plea, being based on certain clauses of agreements and being a mixed question of facts and law. This apart, the High Court also observed that even otherwise, such a submission was belied by the fact that the name of the appellant, and not Radha, was reflected in the bill of entry as the importer of the goods.

14.6. Another argument advanced on behalf of the appellant before the High Court had been that the principles enunciated in the said Division Bench decision of Andhra Pradesh High Court in the case of ***Minerals and Metals*** and another decision of Madras High Court got tacit approval

in the decision of this Court in the case of ***Hotel Ashoka (Indian Tourist Development Corporation Ltd.). v. Assistant Commissioner of Commercial Taxes and Anr.*: (2012) 3 SCC 204**. The High Court distinguished the said decision of this Court while pointing out that it related to the goods sold at duty-free shops which are beyond the customs frontier of India; the goods sold thereat must be said to have been sold before having crossed the customs frontiers of India; and consequently, the sale of goods thereat is in the course of import.

14.7. Having thus held that the sale in question was an inter-State sale, the High Court took note of the alternative prayer made on behalf of the appellant for an opportunity to submit C-Forms from the buyers and granted this prayer with reference to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957.

14.8. With the aforesaid findings and liberty, the High Court proceeded to reject the challenge to the impugned assessment orders while granting three months' time to the appellant to produce the prescribed C-Forms. The High Court also commented on the doubts expressed by the assessing officer about existence of some of the dealers and observed that the appellant would be able to procure C-Forms only if such dealers were in existence. The High Court concluded on the writ petitions in the following words:-

> "For the reasons aforementioned, the impugned assessment orders do not necessitate interference, and the challenge thereto by the petitioner is rejected. The petitioner is, however, granted three months time from today to produce the prescribed C-Forms. While the assessing authority has expressed his doubts regarding the very existence of some of the dealers outside the State, it is not necessary for us to delve on this aspect any further, as it is only if such dealers are in existence would the petitioner be able to procure C-Forms from them, and furnish it to the assessing authority. While the prescribed concessional rate of tax, payable by the petitioner on the inter-state sale of goods, shall be paid by them forthwith, the respondents shall not take coercive steps for recovery of the balance tax for a period of three months from today. In case the petitioner produces C-Forms within the aforesaid three month period, they shall be extended the benefit of concessional rate of tax to the extent for which C-Forms are produced. It is made clear that, in case the petitioner fails to submit

the C-Forms within three months from today, it is open to the respondents thereafter to proceed and recover the balance tax due from them in accordance with law.

Subject to the above observations, both the Writ Petitions fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand automatically dismissed. However, in the circumstances, without costs."

Rival Submissions and the issues involved

15. The aforesaid decision of the High Court is questioned in these appeals. We may now summarize the principal submissions made on behalf of the parties.

16. Assailing the impugned judgment, learned counsel for the appellant has made elaborate reference to the quadripartite agreement dated 21.11.2005 involving four parties and stipulating that Indus would raise the purchase order on the foreign exporter i.e., WBT and thereafter, when the goods were on high seas, Indus would transfer the documents of title (bill of lading) in favour of the appellant; and the appellant would then transfer the documents of title to the goods in favour of Radha before the goods cross the customs frontiers of India. The learned counsel would submit that the intention behind entering into a quadripartite agreement was that Indus enjoyed a 180-day line of credit with WBT while the appellant had the requisite infrastructure to undertake importation of goods but the agreement specifically identified Radha as final buyer of the goods and stipulated that the goods would move only after inspection and selection by Radha and hence, there was always a privity of contract between WBT (the seller) and Radha (the end-buyer). The learned counsel has further submitted that as per Schedule I to the agreement, the appellant was to act as an agent of Radha and to clear the goods from customs authorities where delivery of goods was to be completed once the appellant had issued a delivery note to Radha; and the responsibility of carriage of goods, after clearance, from the port to the factory premises in the State of Uttar Pradesh was that of Radha.

16.1. In the aforesaid backdrop, the learned counsel for the appellant has strenuously contended that the sale in question, being in the nature of "sale in the course of import", is not taxable under the CST Act; that the sale in question, having not occasioned movement of goods between two States within India, is not an "inter-State sale" under Section

A 3(a) of the CST Act and rather, this sale has occasioned movement of goods from outside India into India; and that the department had been unjustified and wrong in ignoring the second high seas sale agreement between the appellant and Radha and by treating the appellant as owner of goods only for having filed the bill of entry and having raised the debit note.

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16.2. Elaborating on the submissions, learned counsel has referred to Article 286 of the Constitution of India while pointing out that it prohibits the State Government from imposing sales tax on sales made in the course of import or export; and the Parliament could formulate the principles to determine as to when a sale takes place in the course of

C import or export. The learned counsel has referred to Section 5 of the CST Act, laying down as to when a sale is treated to have taken place in the course of import or export and has referred to sub-section (2) thereof, providing that sale of goods is deemed to take place in the course of import of the goods into the territory of India only if the sale occasions

D such import or is effected by a transfer of document of title to the goods before they have crossed the customs frontiers of India. Learned counsel has also referred to Section 3 of the CST Act and the decision of this Court in the case of ***State of Maharashtra v. Embee Corporation, Bombay:*** **(1997) 7 SCC 190** to submitthat the terms 'sale occasioning

E movement of goods' and 'sale occasioning import of goods' carry the same meaning insofar as Sections 3 and 5 of the CST Act are concerned; and that the words "sale of goods" in Section 3 and the words "contract of sale" in Section 4(2) of the CST Act have been assigned the same meaning, which is wider to the meaning of sale in the general law. While also relying on the decision of this Court in ***Tata Iron and Steel Co.***

F ***Ltd., Bombay v. S.R. Sarkar and Ors.:*** **AIR1961 SC 65,** the learned counsel has submitted that in both the situations where sale occasions movement of goods and sale occasions import of goods, the contract of sale or a covenant of a contract of sale triggers the movement from either one State to another or from outside India into India.

G 16.3. Learned counsel for the appellant has contended that to qualify under Section 5(2) of the CST Act, the essential ingredients of high sea sales would be of the transfer of document of title and transfer of goods to be made while the goods are on high seas. With reference to the definition of term "crossing the customs frontiers of India", as occurring in Section 2(ab) of the CST Act, learned counsel has pointed

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out that this term means crossing the limits of the area of customs station in which imported goods or exported goods are ordinarily kept before clearance by customs authorities. Then, with reference to Section 2(4) of the Sale of Goods Act, 1930[9] and the decisions of this Court in ***J.V. Gokal& Co. (Private) Ltd. v. Assistant Collector of Sales-Tax (Inspection) and Ors:*** **(1960) 2 SCR 852** and ***Minerals & Metals Trading Corporation of India Ltd. v. Sales Tax Officer and Ors*****: (1998) 7 SCC 19[10],** learned counsel has submitted that the transfer of bill of lading signifies transfer of title in the goods. As regards transfer before the goods crossing customs frontiers of India, the learned counsel has referred to the decision of this Court in ***Hotel Ashoka*** (supra) to submit that when the goods are kept in the bonded warehouse, they cannot be said to have crossed the customs frontiers of India.

16.4. As regards the facts of the case, learned counsel would submit that the endorsement by appellant on the bill of lading in favour of Radha was made on 12.12.2005 when the goods were on the high seas and had not even reached the customs frontiers of India and then, the bill of entry for home consumption was filed on 28.12.2005. Therefore, according to the learned counsel, the title to the goods in question was transferred in favour of Radha before the goods crossed the customs frontiers of India and, accordingly, the transaction between the petitioner and Radha had been a sale in the course of import not liable to be taxed under the CST Act.

16.5. The learned counsel has also contended that the transaction in question is sought to be taxed as inter-State sale within the ambit of Section 3(a) of the CST Act, for being not covered under Section 5(2) of the CST Act but, for a transaction to be covered under Section 3(a) of the CST Act, the agreement of sale must trigger the movement of goods and the goods must move between one State to another within India as a consequence of such agreement. The learned counsel has referred to the decision of this Court in ***State of Travancore-Cochin and Ors. v. Shanmugha Vilas Cashewnut Factory, Quilon:*** **AIR 1953 SC 333** and has strenuously argued that in the present case, the goods moved into India from outside as a result of the quadripartite agreement; that

[9] Hereinafter referred to as 'the Sale of Goods Act'.

[10] Hereinafter this case of ***Minerals & Metals*** has also been referred to as 'Orissa case', in order to maintain the distinction with the other decision of Andhra Pradesh High Court carrying the same first name, which was referred to by the High Court in the impugned judgment.

A the inter-State movement within India was only a part of one whole integrated transaction of sale; that when a part of integrated import transaction involves movement of goods within India, the department cannot selectively question only one part of the transaction; and that the quadripartite agreement, clearly establishing the privity amongst the parties involved, could not have been ignored in part and the Indian leg B of the transaction could not have been dissected in order to be taxed.

16.6. In another leg of principal submissions, learned counsel has contended that the High Court has fallen in error in using the bill of entry to determine the ownership of goods. Learned counsel would submit that the ownership of goods could only be determined under the Sale of C Goods Act read with the Indian Contract Act; that the customs duty is collected from the person having possession of goods at the time of importation, who need not be the owner of good, as appearing from the definition of "importer" under the Customs Act, which includes "owner and any other person"; that in distinction to the customs duty, sales tax is D a tax on the transaction of sales or purchase when ownership of goods is transferred and the questions as to when does the sale take place and who is the owner of goods would be determined only under the Sale of Goods Act, and not under the Customs Act. With a strong reliance on the decision of this Court in the case of ***Union of India and Anr. v. Sampat Raj Dugar and Anr.:*** **(1992) 2 SCC 66**, learned counsel has E submitted that the definition of importer in the Customs Act only indicates the person who is in possession of goods at the time of filing of bill of entry but does not indicate the title to the goods.

16.7. As regards raising of debit note, learned counsel has argued that the respondent has tried to rely upon a subsequent debit note raised F by the appellant on Radha to conclude that the sale took place after the goods crossed the customs frontiers of India but, as per the definition contained in Section 2(g) of the CST Act, "sale" includes transfer of property in goods for deferred payment and therefore, issuance of debit note on a later date is of no effect on the passing of title of goods, which G had taken place before the goods crossed the customs frontiers of India. According to the learned counsel, endorsement of the bill of lading and its date are the only factors relevant for determination as to whether the sale in question is covered by Section 5(2) of the CST Act or not; and all other factors are irrelevant for determining the core issue regarding point of sale; and the High Court has been in error in proceeding on irrelevant H

considerations while ignoring the relevant aspects and the law applicable to the case.

16.8. In the alternative part, learned counsel has contended that the High Court, despite indicating its disinclination to reappreciate the evidence in writ jurisdiction, has proceeded to render findings on fact rather than relegating the matter to the appellate authority. While relying on the decision in the case of ***Star Paper Mills Ltd. v. Union of India and Ors.:*** **1995 Supp (4) SCC 674,** the learned counsel would submit that the appellant may be allowed to contest the matter in the statutory appeal, particularly in view of the facts involved.

17**.** *Per contra*, learned counsel for the respondent has contended that on a conjoint reading of the agreements sought to be relied upon by the appellant and the appellant's dealing with the goods before the customs frontier at Visakhapatnam, make it clear that the alleged agency agreement between the appellant and Radha was a sham and nominal document, drawn only for the purpose of evasion of tax liability under the CST Act. The learned counsel would submit that the alleged agency agreement played no role at all in the import transaction and it was the appellant alone who was the real importer and was rightly treated so. The learned counsel would further submit that the documents presented by the appellant before the customs frontier at Visakhapatnam could not have shown Radha as the real importer since the high seas sale agreement designated appellant as the buyer; and the customs frontier at Visakhapatnam was not called upon to even consider the agency agreement as the basis for the bill of entry.

17.1. Learned counsel for the respondent has emphatically argued that in the given set of facts and circumstances, while reading the agreements in question and the real intent behind them, coupled with filing of bill of entry by the appellant, the conclusion drawn by the High Court that the appellant alone was the importer remains unexceptionable. Learned counsel would also submit that the import was complete only by and through the appellant and until completion of importation, Radha was nowhere in picture; and the monetary transactions between the appellant and Radha are proof enough of the transaction of sale between them after the goods had crossed the customs frontiers of India. In other words, according to the learned counsel, delivery of goods to Radha by the appellant and their movement from Visakhapatnam (in the State of Andhra Pradesh) on way to Lucknow (in the State of Uttar Pradesh)

A constituted an inter-State sale and hence, the appellant has rightly been held liable to tax for this inter-State sale.

17.2. While distinguishing the decisions cited on behalf of the appellant, learned counsel for the respondent has argued that the relied upon decisions, essentially relating to the questions as to what triggered
B an import and when did the title pass on to an importer, are not relevant for the purpose of deciding as to who has been the importer in the present case. This question, according to the learned counsel, has rightly been examined by the Assessing Officer with reference to the nature of dealings of the parties and such conclusions have rightly been endorsed by the High Court.
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18. We have heard learned counsel for the parties at length and have scanned the record with reference to the law applicable.

19. In summation of what has been noticed hereinabove, it is apparent that while asserting that the sales in question took place "in the
D course of the import" and do qualify for exemption under Section 5(2) of the CST Act, the main plank of the case of the appellant is that in accordance with the quadripartite agreements, the appellant had transferred the goods on high seas (before goods had crossed the customs frontiers of India) by endorsing the bills of lading in favour of the respective end-buyers and that had completed the sale. On the other
E hand, the mainstay of the department is that the appellant alone cleared the goods from the customs area after filing the respective bills of entry and thereafter raised debit notes showing sales to the end-buyers; and such sales having taken place only after the goods crossing the customs frontiers of India and the end-buyers being situated outside the State of
F Andhra Pradesh to whom the goods were dispatched, the sales in question had only been inter-State sales. The appellant's counter to such a stand of the department is that filing of bill of entry and assessment to customs duty in accordance with the Customs Act are not the factors determinative of the ownership of goods because the importer could be the owner or even any other person and merely becausethe appellant
G filed the bills of entry, the legal consequences of transfer of bill of lading when the goods were on high seas cannot be ignored.

19.1. Therefore, the principal issue in these appeals is as to whether the sales in question took place in the course of the import of the goods into the territory of India and qualify for exemption under Section 5(2) of
H the CST Act?

Sale in the course of import: Connotations

20. For determination of the principal issue and variety of questions arising in this matter, at the outset, a brief insight into the constitutional and statutory provisions relating to the "sale in the course of import" shall be apposite.

20.1. Under Article 286 of the Constitution of India, restrictions have been placed on the power of the State as to imposition of tax on the specified category of sales and purchases. At the relevant point of time, Clauses (1) and (2) of Article 286 read as under[11]:-

> "**286.Restrictions as to imposition of tax on the sale or purchase of goods.-**(1) No law of a State shall impose, or authorize 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 the 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)."

20.2. In exercise of its powers under Clause (2) of Article 286, the Parliament has enacted the Central Sales Tax Act, 1956. In Section 3, thereof, it is laid down that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-(a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Section 3 with its Explanation 1 and Explanation 2 could also be usefully extracted as under[12]:-

> **"3.When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce**. —

[11] This Article 286 has undergone a few amendments later which need not be referred herein.

[12] Explanation 3 inserted to this Section 3 by Act 28 of 2016 is not relevant for the present purpose.

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. — Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. — Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

20.3. The basic principles for determining as to when a sale or purchase of goods takes place in the course of import or export are contained in Section 5 of the CST Act. As per sub-section (1) of Section 5, 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. Under sub-section (2), a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.In the present case, we are only concerned with sub-section (2) of Section 5 relating to the course of import and hence, may extract the relevant part of Section 5 of the CST Act as under:-

"5. When is a sale or purchase of goods said to take place in the course of import or export. —

xxx. xxx xxx

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India

only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

xxx xxx xxx"

20.4. The definition/meaning of the expressions "crossing the customs frontiers of India" and "sale", as occurring at the relevant time in Clauses (ab) and (g) of Section 2 of the CST Actmay also be usefully noticed as under[13]:-

"(ab) "crossing the customs frontiers of India" means crossing in the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Explanation.- For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);

(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

[13] At the relevant time, the expression goods was defined in the CST Act in Section 2(d) as under:-

"(d) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers actionable claims, stocks, shares and securities."

Indisputably, the goods in question were covered in the said definition.

A (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods;"

20.5. The expression "crossing the customs frontiers of India" refers to "customs port" and "customs station", as defined in the Customs Act. Hence, we may usefully refer to the relevant definitions in Clauses (11), (12), (13) and (29) of Section 2 of the Customs Act, as applicable at the relevant time, asunder:-

"(11) "customs area" means the area of a customs station[14] and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

(12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot;

(13) "customs station" means any customs port, customs airport[15] or land customs station;

(29) "land customs station" means any place appointed under clause (b) of section 7 to be aland customs station;"

20.6. Having regard to the submissions made and the questions raised, we may also take note of the definition of the expression "document of title to goods" in Section 2(4) ofthe Sale of Goods Actas under:-

"(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control

[14] The words "or a warehouse" inserted at this place by Act 18 of 2017

[15] The words "customs airport, international courier terminal, foreign post office" substituted in place of "customs airport" at this place by Act 7 of 2017

of goods, or authorizing or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;"

21. The meaning, connotation, effect and operation of the said provisions related with 'sale in the course of import' had come up for consideration in several decisions of this Court and had been the subject matter of adjudication in variegated factual setups concerning the transactions and the dealings of the parties involved. Before entering into all the necessary niceties, we may usefully notice that the phrase 'sale in the course of import'carries three essential features - (i) that there must be a sale; (ii) that goods must actually be imported into the territory of India; and (iii) that the sale must be part and parcel of the import. A sale would become part and parcel of import if it either occasions such import or if it occursby way of a transfer of document of title to the goods before the goods cross the customs frontiers of India.

22. Having taken note of the essential features of the phrase 'sale in the course of import', we may now refer to the cited decisions, to find the expositions therein and examine their applicability to the present case.

22.1. In the Constitution Bench decision of this Court in the case of **J. V. Gokal & Co.** (supra), the petitioner company entered into two contracts on 24.03.1954 and 15.04.1954 with Government of India for selling two consignments of sugar - One of 9,500 long tons of Peruvian origin and the other of 25,000 metric tons of continental origin. The petitioner placed orders with dealers in foreign countries. Some weeks before the vessel carrying the goods in question arrived at the Bombay harbour i.e., when the vessels were on the high seas, the Government of India received the documents of title, including bills of lading, pertaining to the sugar purchased by them and paid the price to the petitioner. After the goods reached the port, they were unloaded, taken delivery of, and cleared by the Government of India after paying the requisite customs duties.For the assessment year 1954-55, the petitioner was assessed to sales tax wherethe Sales Tax Officer deducted the price of the said two sales from the petitioner's turnover. However, on 31.01.1958, the Assistant Collector of Sales Tax issued notice to the petitioner, proposing to review the said assessment. The petitioner filed its objections contending, *inter alia*, that the sales had taken place in the course of import and therefore they were not liable to sales tax. The first respondent rejected the contentions of the petitioner and held that sales tax was

payable in respect of said two transactions. The petitioner questioned the demand notice consequently issued against it by way of the petition in this Court. It was contented, *inter alia*, that the sales in question were not liable to sales tax inasmuch as they took place in course of import of the goods into the territory of India. This Court examined the questions as to what does the phrase "in the course of the import of the goods into the territory of India" convey and when could it be said that a sale has taken place in the course of import journey. This Court referred to various decisions including the opinions expressed in the case of **Shanmugha Vilas Cashew Nut Factory** (supra) and said as under:-

> "9……We respectfully agree with the aforesaid observations of the learned Judges. The course of the import of the goods may be said to begin when the goods enter their import journey i.e. when they cross the customs barrier of the foreign country and end when they cross the customs barrier of the importing country.
>
> 10. The next question is, when can it be said that a sale takes place in the course of import journey? This Court in *State of Travancore-Cochinv*. *The Bombay Co. Ltd*., held that a sale which occasioned the export was a sale that took place in the course of export of the goods. If A, a merchant in India, sells his goods to a merchant in London and puts through the transaction by transporting the goods by a ship to London, the said sale which occasioned the export is exempted under Art. 286(1)(*b*) of the Constitution from the levy of sales-tax. The same principle applies to a converse case of goods which occasioned the import of the goods into India. This Court again in*State of Travancore-Cochhin and Ors. v. Shanmugha Vilas Cashewnut Factory* extended the doctrine to a case of sale or a purchase of goods effected within the State by transfer of shipping documents while the goods were in the course of transit. The decision dealt with three types of purchases viz. (*i*) purchases made in the local marker; (*ii*) purchases made in the neighbouring districts of an adjacent State; and (*iii*) imports from Africa. The imports from Africa consisted of two groups - one group consisted of goods that were purchased when they were on the high seas and shipped from the African ports to Cochin or Quilon: we are not concerned with the other group. In the said case some commission agents at Bombay arranged for the purchase on behalf of the assessee, got delivery

of the shipping documents at Bombay through a bank which advanced money against the shipping documents and collected the same from the assesses at destination. This Court, by a majority, held that, in respect of the purchases falling under the first group of imports, the commission agents acted merely as agents of the respondents therein and that the said purchases occasioned the import and therefore came within the exemption. That was not a case where the goods were sold by an importer in India to a third party when the goods were on the high seas. It was a case where a party in Cochin purchased goods which were on the high seas through his agent at Bombay and the agent paid the price through a bank against the shipping documents. But the learned Judge, Patanjali Sastri, C.J., expressing the majority view, considered the scope of the exemption in all its aspects and summarized the conclusions thus p. 69 :

> "Our conclusion may be summed up as follows:(*1*) Sales by export and purchases by import fall within the exemption under article 286(1)(b) ..... (*2*) Purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs barrier are not within the exemption. (*3*) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs barrier are within the exemption, assuming that the State power of taxation extends to such transactions."

Das, J., as he then was, in his dissenting judgment, agreed with Patanjali Sastri, C.J., on the third conclusion with which we are now concerned. The learned Judge put forward his view at p. 94 thus:

> "Such sales or purchases, by delivery of shipping documents while the goods are on the high seas on their import journey were and are well recognised species of transactions done every day on a large scale in big commercial towns like Bombay and Calcutta and are indeed the necessary and concomitant incidents of foreign trade. To hold that these sales or purchases do not take place 'in the course of' import or export but are to be regarded as purely ordinary local or home transactions distinct from foreign trade, is to ignore the realities of the

A situation. Such a construction will permit the imposition of tax by a State over and above the customs duty or export duty levied by Parliament. Such double taxation on the same lot of goods will increase the price of the goods and, in the case of export, may prevent the exporters from competing in the world market and, in the case of import, will put a greater burden on the consumers. This will eventually hamper and prejudicially affect our foreign trade and will bring about precisely that calamity which it is the intention and purpose of our Constitution to prevent."

C The learned Judge also in his judgment elaborately considered the great hardship that would be caused to an Indian importer if he was not permitted to sell the goods which were on the high seas by delivery of shipping documents against payment. Though that case dealt with a different situation, we agree with the learned Judge's observations that an importer can, if he receives the D shipping documents, transfer the property in the goods when they are on the high seas to a third party by delivering to him shipping documents against payment and such a sale is one made in the course of import."

22.1.1. The Court thereafter proceeded to summarize the legal E position in respect of import sale in the following words:-

"11. The legal position vis-a-vis the import-sale can be summarized thus; (*1*) The course of import of goods starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the F goods cross the customs barrier; (*2*) the sale which occasions the import is a sale in the course of import; (*3*) a purchase by an importer of goods when they are on the high seas by payment against shipping documents is also a purchase in the course of import, and (*4*) a sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents G of title against payment or otherwise, to a third party by a similar process is also a sale in the course of import."

22.1.2. Having expounded on the legal position, the Court examined the facts of the case and held that the case fell under the fourth principle aforesaid when the petitioner, pursuant to the earlier H

contract with the Government, delivered the shipping documents including the bill of lading to the Government against payment when the goods were on high seas. Hence, it was held that the sales in question took place in the course of imports of goods into India. The Court also scrutinized the terms of contract to ascertain whether they disclosed any intention of the parties that notwithstanding the delivery of bills of lading against payment, the property in the goods should not pass to the Government and held, after scrutiny of all the terms of contract that they did not indicate any such intention. Though the scrutiny and analysis of the terms of contract relates to the facts of that case only but worthwhile it would be to reproduce the same to indicate that ultimately, on the facts, the Court found that the sale took place in the course of import. The Court analysed and held as follows:-

> "13. Let us now scrutinize the terms of the contract to ascertain whether they disclose any intention of the parties that notwithstanding the delivery of the bill of lading against payment the property in the goods should not pass to the Government. The circumstances under which the contracts were entered into between the parties indicate that both the parties were interested to see that property in the goods passed in the ordinary way when the shipping documents were handed over to the Government against payment. The sellers had to meet their liability to the foreign companies with whom they opened letters of credit and the Government must have been anxious to get the title to the goods so that the sellers might not divert the goods towards their other commitments or to other buyers for more tempting prices. Under the contract every safeguard for securing the goods of agreed specifications was provided for in the earlier clauses and therefore there was no reason for postponing the passing of the property in the goods to the buyer till the goods were actually delivered in the port. The sellers on their side would have been anxious that the property should pass when the goods were on the high seas, for otherwise they would be compelled to pay sales-tax. Nor are the clauses of the contracts relied upon by the respondents inconsistent with the property in the goods passing in accordance with the mercantile usage. …….
>
> 14. Apart from the terms of the contract, reliance is also placed by the learned counsel for the respondents on the following

A circumstances: (*i*) the seller himself chartered the ship; and (*ii*) the licence issued by the Government was made non-transferable. We do not see how these two facts indicate the contrary intention. If the seller himself chartered a steamer, when the goods he purchased were loaded in the ship, the property in the goods passed to him and therefore he was in a position to sell the same to the B Government. The fact that the licence was non-transferable has no relation to the property in the goods passing to the Government.

…….

15. For all the foregoing reasons we hold that the property in the goods passed to the Government of India when the shipping C documents were delivered to them against payment. It follows that the sale of the goods by the petitioner to the Government of India took place when the goods were on the high seas.

16. That being so, the sales in question must be held to have taken place in the course of the import into India and therefore D they would be exempted from sales tax under Art. 286(1)(*b*) of the Constitution."

22.2. It does not appear necessary to dilate further on the decision in the case of ***Shanmugha Vilas Cashew Nut Factory*** (supra) which had been, as noticed, considered in detail in the case of ***J.V. Gokal & Co***. (supra). However, another decision cited on behalf of the appellant E and relating to multiple transactions involving import, being the Orissa case of ***Minerals & Metals*** (supra), need to be noticed. The fact situation in that case had been that the appellant, a Government of India undertaking,was functioning as a canalising agent for import and export of minerals and metals. On 31.03.1991, Steel Authority of India Limited F (SAIL) requested appellant to register import of 15,000MT of tin mill black plate coils. On 14.07.1991, SAIL opened a letter of credit directly in favour of the exporter, M/s. Samsung Co. Ltd., Seoul, South Korea. The consignee therein was shown as SAIL. On 02.08.1991, the appellant placed a purchase order with the exporter for and on behalf of SAIL. G On 16.08.1991, the appellant wrote to SAIL enclosing a copy of its purchase order and stating that they shall arrange delivery on high seas by endorsement and transfer of shipping documents after the documents have been paid by the banker. On 23.10.1991, the appellant sent to SAIL its invoice, adjusting the amount that had already been paid by SAIL H through its bankers. On 28.10.1991, the appellant wrote to SAIL that it

had decided to make a high seas sale of the said coils to SAIL. Accordingly, the documents, including the original bill of lading, with due endorsement, were sent to SAIL to get the said coils cleared. On the same day, the appellant wrote to Assistant Collector of Customs, Paradeep Port, Cuttack that the said coils had been imported by the appellant and had been sold to SAIL on high seas basis and SAIL would process the bill of entry and pay the customs duty. The vessel arrived at Paradeep Port on 11.11.1991. Then, on 18.11.1991, the bill of entry in respect of the said coils was submitted and processed by SAIL. However, on 31.12.1994, the Sales Tax Officer levied sales tax on the aforesaid sale while rejecting the case of the appellant that no sales tax was payable, this being a sale in the course of import covered by Section 5(2) of the Central Sales Tax Act, 1956. The Sales Tax Officer held that there had been two sales, one between the exporter and the appellant and the other between the appellant and SAIL; and that the sale to SAIL had not occasioned the import. There had been another sale made by the appellant to Paradeep Phosphates Ltd., the facts whereof were similar. The appellant's challenge to the levy of sales tax on the aforesaid sales failed in the High Court and hence, the matter was before this Court.

22.2.1. After taking note of the relevant constitutional and statutory provisions as also the decision in ***J.V. Gokal & Co***. (supra), this Court said thus:-

> "The judgment states that it is well settled in the commercial world that a bill of lading represents the goods and the transfer of it operates as the transfer of goods. The delivery of the bill of lading while the goods are afloat is equivalent to the delivery of the goods themselves."

22.2.2. The Court examined the facts of the case and held the sales in question to be those in the course of import in the following words:-

> "9. The facts aforestated, based upon documents, show that the bill of lading had been endorsed in favour of SAIL while the consignment of the said coils was still upon the high seas. The sale, therefore, was a sale in the course of the import of the said coils into the territory of India; it was effected by transfer of the documents to the said coils before they had crossed the limits of the customs station at Paradeep Port. The position would be the same in respect of the goods sold to Paradeep Phosphates Ltd."

22.3. The appellants have cited the decision in the case of ***Embee Corporation*** (supra) to submit that the terms 'sale occasioning movement of goods' and 'sale occasioning import of goods' in Sections 3 and 5 of the CST Act carry the same meaning; and that the use of words "sale of goods" in Section 3 of the CST Act and the words "contract of sale" in Section 4(2) of the Sales Tax Act were assigned the same meaning, which is much wider than the meaning of sale in general law. In the said case, this Court examined the definition of sale as existing at the relevant time in Section 2(g) of the CST Act and held as under:-

> "6. On perusal of the aforesaid provisions of the Act, the question that arises for consideration herein is, what meaning should be given to the expression "sale occasions import". It is almost settled by numerous decisions of the Supreme Court that the expression "sale occasions import" is to be interpreted in the same manner in which the expression "occasions the movement of goods" occurring in Section 3(*a*) of the Act has received interpretation. In other words, the expression "sale occasions import" has to be given the same meaning which the expression "occasions the movement of goods" has received by the Courts. In the light of aforesaid settled legal position emerging from the Constitution Bench decisions, we will now examine the meaning of "sale" as defined in the Act. Section 2(*g*) of the Act defines "sale" thus:
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> > 2(*g*) 'sale', with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;
>
> 7. The above definition of "sale" in the Act shows that the word "sale" has been given a very wide meaning so as to include not only the sale of goods, but also the transactions, namely, a transfer of goods on hire-purchase system. Further, the use of words "sale of goods" in Section 3 of the Act and the words "contract of sale" occurring in Section 4(2) of the Act have been assigned the same meaning which is wider than the meaning of sale in the general law. In such a situation the word "sale" defined

in Section 2(*g*) of the Act and employed in Section 3 and other sections of the Act would embrace not only completed contract, but also the contract of sale or agreement of sale if such contract of sale or agreement of sale provides for movement of goods or movement of goods is incident of the contract of sale. This matter may be examined from another angle. An agreement to transfer goods to the buyer for a price is an important element of sale and the same is also borne out from Section 4 of Sale of Goods Act. If Section 4 of the Sale of Goods Act is read along with Sections 3 and 4 of the Act, it would mean an agreement to sell would also be a sale within the meaning of sale provided such agreement of sale stipulates for transfer or movement of goods or movement of goods is incident of the contract of sale and in that case, such movement of goods would be deemed to be occasioned by the sale. It is immaterial that actual sale does not take place at that time of movement of goods and takes place later on. This interpretation of Section 3(*a*) of the Act if applied to sub-section(2) of Section 5 of the Act, would mean that if an agreement for sale stipulates import of goods or import of goods is incident of contract of sale and goods have entered the import stream, such import would fall within the expression "sale occasions import".In the present case, the import of Carbamite is direct result of the contract of sale and as such it can be safely held in the present case that sale has occasioned the import."

22.3.1. In the said case of ***Embee Corporation***, the respondent/ assessee, who was engaged in the business of buying and selling chemical, replied to the invitation of tender of Director General of Supplies and Disposal (DGS&D) for the supply of Carbamite. The tender of the respondent was accepted by DGS&D with a few conditions including the one that the contracted material shall be inspected by the Chief Inspector, C.I.M.E., Kirkee, Pune at Bombay Port and the General Manager, Cordite Factory, Aruvankadu was mentioned as the indentor. The respondent mentioned the name of the supplier from Germany from whom the materials were to be imported and for which, import recommendation certificate was required. The required import recommendation certificate was issued whereupon the authority concerned issued the requisite licence with the condition, *inter alia*, that the goods imported shall be utilised in the manner stipulated in DGS&D's letter and the imported materials shall not be utilised or disposed of in

A any other manner. The DGS&D also furnished the necessary end-use certificate. In the bill of lading, the name of respondent was shown as a party to be notified and the General Manager, Cordite Factory Aruvankadu was described as the consignee of Carbamite. After the consignment arrived, the same was forwarded to the consignee so named in the contract.Once the goods were supplied to DGS&D, the respondent B claimed exemption from levy of sales tax on the ground that the supply under the contract was a sale in the course of import of goods into India. The plea of the respondent was rejected by the department and the Tribunal. The High Court, however, held that there were two sales: One between the respondent and DGS&D and the other between the foreign C supplier and the respondent; and that the sale had occasioned the import of material, liable for exemption from sales tax under the CST Act. In the appeal, this Court while dismissing the appeal of the State, was of the view that while interpreting the expression "sale occasions import" occurring in Section 5(2) of the Act, it was not necessary that a completed sale should precede the import.

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22.4. In the case of ***Tata Iron and Steel Co.*** (supra), the petitioner was engaged in the business of manufacturing and selling iron and steel goods and had its factory at Jamshedpur in the State of Bihar and Head Sales office at Calcutta in the State of West Bengal. The petitioner was registered as dealer under the Bihar Sales Tax Act as also under the E Central Sales Tax Act in the State of West Bengal. For the period of assessment 01.07.1957 to 31.03.1958, the petitioner submitted its return of taxable sales to the Commercial Tax Officer, Lyons Range, Calcutta, disclosing the gross taxable turnover in respect of sales liable to Central Sales Tax in the State of West Bengal. The said Commercial Tax Officer F directed the petitioner to submit a statement of sales from Jamshedpur for the period under assessment, "documents relating to which were transferred in West Bengal or of any other sales that may have taken place in West Bengal under Section3(b) of the Central Sales Tax Act, 1956". The petitioner, by its letter dated 30.09.1959, informed the Tax Officer that the requisition for production of statement of sales made G from Jamshedpur in the course of inter-State trade or commerce was without jurisdiction while contending that "all the sales from Jamshedpur were of the type mentioned in Section 3(a) of the Central Sales Tax Act and at the same time, some of them also fell within the category mentioned in Section 3(b) of the Act"; that even if the sales were "of the type H mentioned in Section 3(b) of the Act, the appropriate State of the place

where the sales take place or are effected alone had jurisdiction to assess such sales to Central sales tax"; and that in respect of inter-State sales from Jamshedpur, the situs of the sale was always the State of Bihar as the goods were in Bihar either at the time of the contract of sale or at the time of appropriation to the contract. However, the Tax Officer proceeded to make 'best judgment assessment' on a gross turnover while including the disputed sales too which were accounted for in the return filed with the Sales Tax Officer, Jamshedpur. Hence, in the said case, the petitioner Company felt aggrieved of the proposition of the Tax Officer at Calcutta to recover Central Sales Tax in respect of the sales which were included in the assessment proceedings before the Bihar Sales Tax Authorities. In the given backdrop, this Court expounded on the scope of Section 3 of the CST Act, *inter alia*, in the following:-

> "18. In our view, therefore, within clause (*b*) of section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto: clause (*a*) of Section 3 covers sales, other than those included in clause (*b*), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State"

This Court pointed out the error on the part of the Tax Officer at Calcutta and held as under:-

> "30. The Commercial Tax Officer has taxed all the sales effected by the company under Section 3, clause (*b*), on the view that sales in which the documents of title were handed over in Calcutta were taxable in the State of West Bengal. The assessment is made on two assumptions, (1) that all the sales effected in favour of West Bengal parties satisfied the conditions prescribed by Section 3(*b*), and (2) that the place where the documents are delivered by the company through its Head Sales Office to the purchaser is the place where the sale is effected. Neither of these assumptions is correct. The Commercial Tax Officer had, in our judgment, to ascertain before he could order payment of tax under the Central Sales Tax Act, whether on the materials he was satisfied, (a) that the goods at the time of transfer of documents of title were in movement from the State of Bihar to the State of West Bengal, (b) that the place where the sale was effected was

A under Section 4, clause (2), within the State of West Bengal. The Commercial Tax Officer has, in our view, failed to apply the correct tests and has made assumptions which are not warranted and on a true interpretation of the provisions of the Central Sales Tax Act, the order of assessment discloses an error apparent on its face and a writ of certiorari must issue quashing the assessment. It will be for the Commercial Tax Officer of West Bengal to re-assess the company in respect of transactions of sale which are properly taxable within the State of West Bengal by the application of the test which we have already set out."

C 22.5. Learned counsel for the appellant has also attempted to rely upon the decision in the case of ***Hotel Ashoka*** (supra) which was rendered in the fact situation where the goods were kept in the bonded warehouse and were made available in the duty-free shops for sale. This Court opined that since the goods were supplied to the duty-free shops situated at the International Airport, Bengaluru for sale, it cannot D be said that the said goods had crossed the customs frontiers of India. The Court finally answered the claim of the appellants therein on the finding that the liquor, cigarettes, perfumes and food articles were sold "at the duty-free shops" at the International Airport, Bengaluru, for which no tax was payable by the appellants as the goods sold at the duty-free shops were sold directly to the passengers and even the delivery of E goods took place at the duty-free shops before importing the goods or before the goods had crossed the customs frontiers of India. The issue considered in the said decision, therefore, was as to whether the sale at the duty-free shops situated at the Bengaluru International Airport would attract levy of sales tax.

F 23. Before proceeding further, we may cull out the relevant attributes of the decisions aforesaid vis-à-vis the questions involved in the present case.

23.1. The basic question in the case of ***Hotel Ashoka*** (supra) was as to whether the sales at duty-free shops would attract levy of G sales tax. As noticed earlier, the definition of "customs station" clearly refers to customs airport as defined in Section 2(10) of the Customs Act. As the duty-free shop is situated in airport area, the sale of goods at the duty-free shop was deemed to have taken place in the course of import of the goods into the territory of India and before the goods crossing H customs frontiers of India. In the present case, the appellant alleges that

the sale took place on high seas before goods had crossed customs frontiers of India, whereas the department contends that the sale in question took place after the appellant had filed the bill of entry for home consumption and the goods were taken out of the bonded warehouse. It is but apparent that the decision in ***Hotel Ashoka*** (supra), relating to the sale of goods at duty-free shops, has no relevance whatsoever to the present case. The decision in ***Tata Iron and Steel Co.*** (supra) also related to an entirely different factual set up and the question involved therein was also different. The said case related to the movement of goods from one State to another on the sale made by the petitioner-company having its works in the State of Bihar and having sales office at Calcutta in the State of West Bengal. What was sought to be taxed in the State of West Bengal were the sales in which the documents of title were handed over in that State on the assumption that the sales effected in favour of West Bengal parties satisfied the conditions prescribed by Section 3(b) of CST Act; and that the place where the documents were delivered by the company to the purchaser was the place where the sale was effected. The enunciations in the said case as regards the operation of Section 3 of CST Act do not call for any debate but they hardly provide any guide for determination of the real questions involved in the present matter. Similarly, the observations in ***Embee Corporation*** (supra) to the effect that "sale occasioning movement of goods" and "sale occasioning import of goods" respectively in Section 3 and Section 5 of CST Act carry the same meaning are not of much dispute. The other observations, that for interpreting the expression "sale occasions import" occurring in Section 5(2) of the Act, it is not necessary that a completed sale should precede the import, shall have their implication only when the nature of dealings of the parties in the transactions in question and the effect of movement of goodsare examined.

23.2. This takes us to the decisions of this Court in ***Minerals & Metals*** (Orissa case) and in ***J. V. Gokal & Co.*** (supra).

23.2.1. As noticed, in the case of ***Minerals & Metals*** (Orissa case), the appellant, a Government of India undertaking, had been functioning as canalising agent for import and export of minerals. It was in such a capacity that the appellant was requested by SAIL to ensure import of the goods in question and the appellant took up the proceedings accordingly. The dealings of the parties made it clear that the appellant had sold the goods to SAIL on high seas by endorsement on the bill of

A lading. The fact was duly communicated to the port authorities too. Significantly, when the vessel arrived at the port of destination, the bill of entry in respect of the goods was submitted and processed by SAIL, the end-buyer. This Court specifically found that bill of lading had been endorsed in favour of SAIL while the consignment of goods was still upon the high seas. It had been, on such findings of fact, that the sale in
B question was held to be a sale in the course of import and having been effected by transfer of goods (bill of lading) before they had crossed the limits of customs frontiers of India.

23.2.2.The law declared in ***J. V. Gokal & Co.*** (supra) that bill of
C lading represents the goods and its transfer operates as transfer of goods; and delivery of bill of lading while the goods are afloat is equivalent to the delivery of goods (as duly applied by this Court in ***Minerals & Metals***) is neither of any doubt nor could be a matter of debate. However, in the said case of ***J. V. Gokal & Co.*** too, on facts, it was found by the Court that the petitioner, pursuant to the earlier contract with the Government,
D delivered the shipping documents including the bill of lading to the Government against payment when the goods were on high seas. It was also noticed that after the goods reached the port, they were unloaded, taken delivery of, and cleared by the Government (the end-buyer) after paying the requisite customs duties. Significantly, in ***J. V.Gokal & Co.***,
E the Constitution Bench went on to scrutinize the terms of contract to ascertain whether they disclosed any intention of the parties that notwithstanding delivery of bill of lading against payment, the property in goods should not pass and then, the Court found no such intention being indicated. It was only after such finding on facts the Court held that the sale of goods by the petitioner to the Government took place when the
F goods were on the high seas and hence, the sales took place in the course of import into India.

23.2.3. Noteworthy common features in the decisions of this Court in ***J. V. Gokal & Co.*** and Orissa case of ***Minerals & Metals*** (supra) had been that pursuant to a previous contract with the end-buyer, the
G seller concerned arranged for importation of goods; and transferred the property in goods in favour of the end-buyer by endorsement of bill of lading when the goods were on high seas. Coupled with these, another common feature had been that in both those cases, the goods in question, upon reaching the port of destination, were taken delivery of, and cleared by the end-buyer after paying the requisite customs duties. Those had
H

not been the cases like the present one where the seller purportedly acted as an intermediary and even after alleged transfer of bill of lading when the goods were on high seas, filed the bill of entry for home consumption at the port of destination and got the goods cleared from the customs.

24. Apart from the decisions so cited, for taking into comprehension the nuances of 'sale in the course of import' with involvement of an intermediary, we may take note of the case of ***K. Gopinathan Nair and Ors. v. State of Kerala:*** **(1997) 10 SSC 1** wherein, after a detailed reference to various Constitution Bench decisions, this Court has expounded on the factors to be reckoned for determining as to whether a particular sale or purchase could be deemed to have taken place in the course of import. We may point out that the decision in this case of ***K. Gopinathan Nair*** had been by a 3-Judge Bench of this Court where the learned Judges differed in their views on the question as to whether the transactions in question were in the course of import and, therefore, immune under Section 5(2) of the CST Act. We shall refer to this decision and implication of different views therein over the factual setup of the present case in the later part of this judgment. At present, we may reproduce the relevant part of the decision of majority, delineating the basic factors which are germane to determination of the question as to whether a particular sale had been in the course of import or not, as under:-

> "14. In the light of the aforesaid settled legal position emerging from the Constitution Bench decisions of this Court the following propositions clearly get projected for deciding whether the concerned sale or purchase of goods can be deemed to take place in the course of import as laid down by Section 5(2) of the Central Sales Tax Act:
>
> (1) The sale or the purchase, as the case may be, must actually take place.
>
> (2) Such sale or purchase in India must itself occasion such import, and not vice versa i.e. import should not occasion such sale.
>
> (3) The goods must have entered the import stream when they are subjected to sale or purchase.
>
> (4) The import of the goods concerned must be effected as a direct result of the sale or purchase transaction concerned.

A (5) The course of import can be taken to have continued till the imported goods reach the local users only if the import has commenced through the agreement between foreign exporter and an intermediary who does not act on his own in the transaction with the foreign exporter and who in his turn does not sell as principal the imported goods to the local users.

B (6) There must be either a single sale which itself causes the import or is in the progress or process of import or though there may appear to be two sale transactions they are so integrally interconnected that they almost resemble one transaction so that the movement of goods from a foreign country to India can be ascribed to such a composite well-integrated transaction consisting of two transactions dovetailing into each other.

C (7) A sale or purchase can be treated to be in the course of import if there is a direct privity of contract between the Indian importer and the foreign exporter and the intermediary through which such import is effected merely acts as an agent or a contractor for and on behalf of the Indian importer.

D (8) The transaction in substance must be such that the canalizing agency or the intermediary agency through which the imports are effected into India so as to reach the ultimate local users appears only as a mere name lender through whom it is the local importer-cum-local user who masquerades."

E 25. The principles aforesaid would obviously apply to the present case; and if the factors so indicated are answered in favour of the appellant, it could be treated to be a matter of sale in the course of import.

F 26. In order to bring the case within the four-corners of the factors aforesaid, the appellant has suggested existence of quadripartite agreement whereby and whereunder,the supplier (party number 1) sold the goods in question to the first-buyer (party number 2) and delivered them at the port of shipment. Thereafter, while the goods were on high seas, party number 2 transferred them to the appellant (invariably party number 3 in these transactions), by endorsing the bill of lading in favour of the appellant. Further to this and while the goods were yet on high seas, the appellant allegedly transferred them to the end-buyer (party number 4) by endorsing the bill of lading in favour of the end-buyer. The

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appellant has also suggested that though the goods were being purchased by the end-buyer and were to move only after inspection and selection by the end-buyer but the methodology of such quadripartite agreement was adopted because of the reasons that the end-buyer was not having 'the requisite infrastructure' to undertake importation of goods whereas the appellant was having the requisite infrastructure for importation and the first-buyer was having the credit facility with the seller. It has, therefore, been suggested that there was always a privity of contract between the seller and the end-buyer; and that the appellant was to act as an agent of the end-buyer and to clear the goods from customs authorities. The appellant has also suggested that in each of the transactions, the process was carried out as envisaged in the quadripartite agreement and in the manner that the first-buyer endorsed the bill of lading in favour of the appellant when the goods were on high seas; and while the goods continued to be on high seas and had not crossed the customs frontiers of India, the appellant endorsed the bill of lading in favour of the end-buyer. According to these suggestions, the appellant only acted as an agent of the end-buyer while getting the goods cleared from the customs port at Visakhapatnam.

26.1. However, the suggestions by the appellant do not remain as innocuous and over-simplified as projected, for the reason that in each of these transactions, when the goods in question reached the port at Visakhapatnam, the appellant carried out the proceedings envisaged by the Customs Act and filed a bill of entry for warehousing and thereafter, filed another bill of entry for home consumption (ex-bond); and on the basis of such bills of entry, the appellant was duly assessed for customs duty. Admittedly, after the goods were cleared for home consumption, they moved from the State of Andhra Pradesh to different States where the respective end-buyers were situated; and the appellant raised debit notes on the end-buyers.In these transactions, the goods in question, upon reaching the port of destination, were not cleared by the end-buyers after paying the requisite customs duties, as had been the fact situation in the case of ***J. V. Gokal & Co.*** as also in Orissa case of ***Minerals & Metals*** (supra). While examining the question pertinent if the appellant acted merely as an intermediary or name-lender through whom the import was effected and merely acted as an agent for and on behalf of the Indian importer that is, the end-buyer, the significant facts of the present case cannot be overlooked that in relation to the goods in question, only the appellant filed the bill of entry for warehousing as also the bill of

A entry for home consumption and was assessed to customs duty and further that before the customs authorities, there was no suggestion that the goods in question had already been transferred, on high seas, to the alleged real importer. Obviously, on the facts of the present case, the effect of dealings of the appellant before the customs authorities at Visakhapatnamwith filing the bill of entry for home consumption need to
B be examined.

Filing of bill of entry for home consumption by the appellant: Implication

27. As noticed, the High Court examined the contention of the
C appellant that while filing the bills of entry, the appellant had acted merely as an agent of the end-buyers and rejected the same, with reference to the contents of the bills of entry where the name of appellant was shown as the importer and there was no reference to the end-buyers; as also with reference to the facts that the appellant alone was the importer who filed the bills of entry for home consumption and was assessed to
D the customs duty and that the IGM did not contain the name of end-buyers.

27.1. The High Court has observed that the inclusive definition of "importer" in Section 2(26) of the Customs Act cannot be used to usurp the identity of an importer from the person who filed the bill of
E entry; and the person in whose name the bill of entry is filed, does not cease to be an importer.In this case, the name of the appellant was reflected as importer in the Import General Manifest of the vessel/s that brought the goods in question to the port at Visakhapatnam.The High Court has meticulously examined the entire process relating to the arrival
F of goods as cargo in a vessel; and filing of IGM as also the contents of the bill of entry and has pointed out that the cargo declaration form,an essential part of IGM, was required to carry, amongst others, the particulars of bill of lading and the name of consignee/importer. After finding that the name of the appellant was reflected as importer in IGM, the High Court has observed that if the alleged second high seas sale
G had taken place, the IGM would have reflected the name of the last high seas sale purchaser as the importer and if there was any bonafide omission, the IGM would have necessitated amendment because only the last purchaser of the goods on high seas could have been the importer/ consignee. The High Court has also observed that there was no material

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on record to show that either the IGM contained the name of end-buyer as the importer/consignee or that the same was subsequently amended in terms of Section 30(3) of the Customs Act. These had been the pivotal reasons for which the High Court rejected the suggestion of second high seas sales in favour of the end-buyers and held that the only attempt of the appellant had been to avoid inter-State sales under the CST Act. In the given facts, the High Court specifically recorded the findings that the sale of goods by appellant to the end-buyers had not been high seas sales; and such sales could have been effected only after the appellant was assessed to customs duty and had cleared the goods for home consumption.

28. To get over the aforesaid findings of the High Court, learned counsel for the appellant has argued, with strong reliance on the decision of this Court in the case of ***Sampat Raj Dugar*** (supra), that the definition of importer in the Customs Act only indicates the person who is in possession of goods at the time of filing of bill of entry but does not indicate the title to the goods; and that the questions as to when does the sale take place and who is the owner of goods would be determined only under the Sale of Goods Act and not under the Customs Act.

29. For dealing with this part of submissions, we may usefully take note of the relevant definitions in Clauses (23), (24), (25) and (26) of Section 2 as also the other provisions in Sections 30 and 47 (1) of the Customs Act,as applicable and effective at the relevant point of time,as follows: -

> "(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
>
> (24) "import manifest"[16] or "import report" means the manifest or reportrequired to be delivered under section 30;
>
> (25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
>
> (26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home

[16] The words "arrival manifest or import manifest" were substituted in place of the words "import manifest" by Act 13 of 2018.

A consumption, includes any owner[17] or any person holding himself out to be the importer;

30. Delivery of import manifest or import report.-

(1) The person-in-charge of-

B (i) a vessel; or

(ii) an aircraft; or

(iii) a vehicle,

carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees.

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.[18]

47. Clearance of goods for home consumption.- (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable

[17] The words "any owner, beneficial owner" were substituted in place of the words "any owner" by Act 7 of 2017.

[18] This Section 30 has undergone several amendments over the course of time. In its present form, it reads as under:-

under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

xxx xxx xxx"[19]

30. It is but apparent that that while bringing anything into India from a place outside India is generally regarded as "import" and the imported goods are those goods which are brought into India from a place outside but, when the goods are cleared for home consumption, they are no longer imported goods for the purpose of the Customs Act. Significantly, in the process of importation, the importer, in relation to any goods, includes any owner or any other person holding himself to be the importer but, only between the time of their importation and their clearance for home consumption. In other words, the net result of the

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"30. Delivery of arrival manifest or import manifest or import report.-
(1) The person-in-charge of-
(i) a vessel; or
(ii) an aircraft; or
(iii) a vehicle,
carrying imported goods or export goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in such form and manner as may be prescribed and if the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.

(2) The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

[19] The provisos to sub-section (1) which came to be inserted and amended later on as also sub section (2) and its proviso, which were also amended several times are not reproduced for being not directly relevant for the purpose of the present case.

A expanded definition of the expression "importer" is that while any person who imports goods into India would be an importer but, the owner of the goods or a person holding himself to be an importer would also be regarded as an importer during the period between importation of goods and their clearance for home consumption. This crucial period would generally be that period when the goods have been warehoused after
B importation and are cleared from warehouse by a person other than the person who actually imported the goods. That being the position, in our view, the High Court has rightly said that this definition of importer cannot be used to usurp the identity of an importer from the person who filed the bill of entry. In other words, the person in whose name the bill of
C entry is filed does not cease to be an importer and, if that person claims to be not the owner or importer, the ouns would be heavy on him to establish that someone else is the owner or importer of goods.

31. As noticed, on the connotation of the term "importer" for the purpose of the Customs Act, learned counsel for the appellant has placed
D reliance upon the decision in ***Sampat Raj Dugar*** (supra). We may examine the facts and the ratio of the case of ***Sampat Raj Dugar***, to appreciate the implication, if any, of the observations occurring therein on the questions involved in the present case.

31.1. In the case of ***Sampat Raj Dugar*** (supra), the relevant
E factual aspects had been that the second respondent Ms. Renu Pahilaj was doing business at Delhi in the name and style of "Acquarius." whereas the first respondent, an Indian national resident abroad, was doing business at Hong Kong in the name and style of UNISILK. The second respondent obtained an advance import licence on 20.05.1985 for importing raw silk that was valid for 18 months. The import licence
F was granted subject to the condition that raw silk imported should be utilised for manufacturing garments which ought to be exported. Sometime prior to the month of October, 1985, the second respondent received three consignments sent by the first respondent from Hong Kong but did not fulfil the said condition of import licence. Then, during the months of
G October-November, 1985 the first respondent sent to India certain quantities of raw silk in four lots, to be delivered to the second respondent. The requisite documents were sent to the banker of the second respondent with instructions to deliver the same on receiving the payment. However, by the time the consignments arrived at Bombay, the customs authorities had come to know about the non-compliance of the aforesaid condition
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of licence with respect to the three earlier consignments and also of the alleged misrepresentation while obtaining the advance import licence. Accordingly, the proceedings were initiated against the second respondent by the Collector of Customs. On the other hand, the second respondent failed to make the payment and receive the documents of title and did not clear the goods. While the proceedings were pending before the Collector of Customs, the said advance import licence was cancelled but no orders were passed with respect to the said goods. The first respondent, who appeared in the proceedings of his own, contended before the Collector that title to the goods had not passed to second respondent; that he was still the owner of the goods; and that therefore, the said goods could not be confiscated or proceeded against for the violations, if any, by the second respondent. He submitted that he was not a party to the misuse of the earlier imports nor was he aware of the alleged fraud practised by the second respondent in obtaining the advance import licence and prayed that he may be permitted to re-export the goods to Hong Kong. The Collector of Customs took the view that permission for re-export could not be granted for the reasons that the advance import licence having been cancelled, there was no valid licence for clearance of those goods; that for re-exporting the goods, a valid import licence was necessary which was not there; and also because the second respondent had abandoned the goods. On that basis, the Collector of Customs rejected the claims of the first respondent and imposed a penalty of Rs. 5 lakhs on him.

31.2. In the aforesaid background, the first respondent, who had sent the goods from Hong Kong, filed a writ petition before the High Court. The case of the Collector of Customs and the Union of India was that the second respondent must be deemed to be the owner of the consignments by virtue of the definition of "importer" in Section 2 (26) of the Customs Act read with Clause 5(3)(*ii*) of the Imports (Control) Order, 1955. Reliance was also placed upon Para 26(*iv*) of the Imports and Exports Policy issued for the year 1985-86 and it was submitted that the goods were liable to be confiscated for the acts and defaults of respondent. It was also submitted that in view of non-compliance with the condition relating to export of garments manufactured out of the imported raw silk yarn, the second respondent had rendered all the goods covered by the import licence liable to confiscation. The High Court, however, allowed the writ petition and directed re-export of the goods to first respondent. Hence, the matter was in appeal before this Court.

A 31.3. A bare look at the relevant background aspects of the said case makes it clear that essentially, the effect of the conditions in the import licence and non-compliance thereof had been the subject matter of consideration therein; and particularly Clause 5(3)(*ii*) of the import licence, deeming the imported goods as being the property of licensee, was under consideration in view of the facts that the imported goods were abandoned by the importer and were not cleared from customs by making payments and receiving documents of title sent by the seller. While examining such a condition of licence and its impact, this Court observed that the definition of "importer" in Section 2(26) of the Customs Act was not really relevant to the question of title. The Court also examined the object of the said Clause 5(3)(*ii*) of the import licence and observed that the idea had been to hold the licensee responsible for anything and everything that would happen from the time of import till the goods were cleared through customs. The Court found that when the goods were imported into the country at the instance of the licensee, the Imports (Control) Order created a fiction that such licensee shall be deemed to be the owner of such goods from the time of their import till they were cleared through customs; and observed that this fiction, meant for proper and effective implementation of Imports and Exports (Control) Act, could not be carried beyond that; and it could not have been employed to attribute ownership of the imported goods to the importer even in a case where he abandons them. This Court also indicated that holding otherwise would be putting the exporter in a position of losing goods without receiving payment with only remedy to sue the importer for price and damages which would not be conducive to international trade. The relevant parts of observations and consideration in paragraph 19 of the said decision could be usefully reproduced as under: –

> "19. We may first consider the question of title to the said goods. If we keep aside the provisions of law relied upon by the appellants viz., definition of 'importer' in Section 2(26) of the Customs Act, clause 5(3)(*ii*) of the Imports (Control) Order as well as para 26(*iv*) of the Import-Export Policy, the position is quite simple. Since respondent 2 did not pay for and receive the documents of the title she did not become the owner of the said goods, which means that respondent 1 continued to be the owner. How do the aforesaid provisions make any difference to this position? The definition of 'importer' in Section 2(26) of the Customs Act is not really relevant to the question of title. It only

defines the expression 'importer'. Respondent 1 does not claim to be the importer. The provision upon which strong reliance is placed by the appellants in this behalf is the one contained in clause 5(3)(*ii*) of the Imports (Control) Order. Sub-clause (1) of clause 5 specifies conditions which can be attached to an import licence at the time of its grant. Sub-clause (2) says that a licence granted under the Order shall be subject to the conditions specified in Fifth Schedule to the Order. Sub-clause (3) sets out three other conditions mentioned as (*i*), (*ii*), and (*iii*) which shall attach to every import licence granted under the Order. First of these conditions says that the import licence shall be non-transferable except under the written permission of the licensing authority or other competent authority. Condition (*ii*)-which is the provision relevant herein-says that the goods for the import of which a licence is granted "shall be the property of the licensee at the time of import and thereafter upto the time of clearance through customs." This condition, however, does not apply to STC, MMTC and other similar institutions entrusted with canalisation of imports. It also does not apply to certain eligible export houses, trading houses and public sector agencies mentioned in the second proviso. Condition (*iii*) says that the goods for which the import licence is granted shall be new goods unless otherwise mentioned in the licence. Now coming back to condition (*ii*), the question is what does it mean and what is the object underlying it when it says that the imported goods shall be the property of the licensee from the time of import till they are cleared through customs. It is necessary to notice the language of the sub-clause. It says "it shall be deemed to be a condition of every such licence that-the goods for the import of which a licence is granted shall be the property of the licensee at the time of import and thereafter upto the time of clearance through customs." The rule-making authority (Central Government), which issued the order, must be presumed to be aware of the fact that in many cases, the importer is not the owner of the goods imported at the time of their import and that he becomes their owner only at a later stage, i.e., when he pays for and obtains the relevant documents. Why did the Central Government declare that such goods shall be the property of the licensee from the time of import? For appreciating this, one has to ascertain the object underlying the said provision. The interpretation

A to be placed upon the provision should be consistent with and should be designed to achieve such object. In this context, it should also be remembered that expressions like 'property of' and 'vest' do not have a single universal meaning. Their content varies with the context. The aphorism that a word is not a crystal and that it takes its colour from the context is no less true in the case of these words. In our opinion the object underlying condition (*ii*) in clause 5(3) is to ensure a proper implementation of the Imports (Control) Order and the Imports and Exports (Control) Act, 1947. The idea is to hold the licensee responsible for anything and everything that happens from the time of import till they are cleared through customs. The exporter is outside the country, while the importer, i.e., the licensee is in India. It is at the instance of the licensee that the goods are imported into this country. Whether or not he is the owner of such goods in law, the Imports (Control) Order creates a fiction that he shall be deemed to be the owner of the such goods from the time of their import till they are cleared through customs. This fiction is created for the proper and effective implementation of the said order and the Imports and Exports (Control) Act. The fiction however cannot be carried beyond that. It cannot be employed to attribute ownership of the imported goods to the importer even in a case where he abandons them, that is, in a situation where he does not pay for and receive the documents of title. It may be that for such act of abandonment, action may be taken against him for suspension/cancellation of licence. May be, some other proceedings can also be taken against him. But certainly he cannot be treated as the owner of the goods even in such a case. Holding otherwise would place the exporter in a very difficult position; he loses the goods without receiving the payment and his only remedy is to sue the importer for the price of goods and for such damage as he may have suffered. This would not be conducive to international trade. We can well imagine situations where for one or other reason, an importer chooses or fails to pay for and take delivery of the imported goods. He just abandons them. (We may reiterate that we are speaking of a case where the import is not contrary to law). It is only with such a situation that we are concerned in this case and our decision is also confined only to such a situation. Condition (*ii*) in sub-clause (3) of clause 5, in our opinion, does not operate to deprive the exporter of his title to said goods in such a situation."

31.4. A close look at the discussion and observations above-quoted makes it clear that basically, the fiction created under the Imports (Control) Order, to the effect that the licensee shall be deemed to be the owner of goods from the time of their import till they were cleared through customs, was under consideration in that case; and having examined the object behind such a fiction, this Court observed that the same was meant for proper and effective implementation of Imports and Exports (Control) Act and could not be carried beyond that, so as to attribute ownership of the imported goods to the importer even when the importer abandons them. The observations of this Court, when read and understood in their context, make it clear that they are of no bearing on the facts of the present case as also the questions involved herein. It has not been laid down that in ***Sampat Raj Dugar*** (supra) that a person who is shown to be the importer by virtue of his filing bills of entry for warehousing and for home consumption, as also for his having been assessed to customs duty, would yet fall outside the definition of "importer" in Section 2 (26) of the Customs Act. The said decision in ***Sampat Raj Dugar*** does not advance the cause of the appellant in any manner.

32. As noticed, the definition of "importer" in Section 2(26) of the Customs Act, even if not directly decisive of the question of title, has its implications on the facts of the present case for the reason that the appellant alone filed the bills of entry for warehousing as also for home consumption. Yet further, the requirements of filing import manifest, as per Section 30 of the Customs Act, have their own bearing on the present case. It remains indisputable that the name of the appellant was reflected as importer in IGM. If, as asserted by the appellant, the goods had been sold on the high seas, the cargo declaration of IGM[20] would have reflected the name of last high seas purchaser as importer and in other event, the IGM would have necessitated amendment because only the last purchaser of the goods on high seas would have been declared as consignee/importer in IGM. The fact that the name of Radha (and other end-buyers) was not mentioned in IGM as the importer/consignee nor the relevant IGM was amended, the suggestion about second high seas sale in favour of Radha (and other end-buyers) turns out to be only a self-serving suggestion of the appellant, which has no corroboration on

[20] As per the requirements of Regulation 3 (c) (iii) of Import Manifest (Vessels) Regulations, 1971, the import manifest has to consist, inter alia, of a 'cargo declaration' in Form No. III. Such 'cargo declaration' is required to carry, amongst others, particulars of 'bill of lading' and 'the name of consignee/importer, if different'.

A the record; rather the official records totally belie the suggestion of the appellant.

32.1. The fact of the matter remains that even though the appellant has suggested that the bills of lading were endorsed in favour of Radha (and other end-buyers) when goods were on high seas but this bald B assertionis not corroborated by any of the official documents which form the part of the process of importation, warehousing and clearance of goods. On the contrary, the High Court has pointed out as illustration the details of one of the bills of entry, which distinctively gave out all the particulars of IGM, the invoice, the value of cargo, etc. and the High Court has found that in the bill of entry, the name of appellant alone was C shown as the importer who cleared the goods from customs with the assistance of the Customs House Agent.In the given set of facts, if the goods were at all sold to Radha (and other end-buyers)on high seas, the name of such end-buyer would have appeared as importer and not that of the appellant.

D 33. The same considerations operate against the assertion that the appellant was only acting as an agent of the end-buyers. The High Court has rightly pointed out that the Customs House Agent is an entirely different person who acts only to present papers for clearance of the imported goods under a bill of entry. Of course, under Section 147 of the E Customs Act, a person could act on behalf of importer or owner but such a person cannot be treated as owner of the goods nor could be made liable for customs duty. If the appellant was merely acting as an agent, then bill of entry would have reflected the name of end-buyer as the importer and the appellant as an agent of the importer; and further to that, the said end-buyer would have been assessed for customs duty. It F were not so.

34. The discussion foregoing leads to the position that though the definition of importer includes owner or any person holding out himself as the importer; and this definition of importer is not really relevant to the question of title but, that does not mean that a person who holds out G himself to be the importer; and who files the bill of entry for home consumption; and who is assessed for customs duty; and whose suggestion about transfer of title to a third person is not established by any reference to any official record, the transfer on high seas may be presumed on mere suggestion about the alleged endorsement of bill of H lading.

34.1. When all other official documents as also dealings of the appellant clearly establish that the appellant had been the importer, the consequences are bound to follow. It gets perforce reiterated that when the bills of entry recorded the name of the appellant as importer and the appellant alone was assessed to customs duty, the so called second high seas sale agreementsnever came into operation.

Whether sale in question occasioned import of goods:

35. As noticed, the CTO specifically observed that it had not been the case of the appellant that the sale in question occasioned the import of goods into the country. However, an attempt was made before the High Court to suggest that the entire import was occasioned by ultimate sale in favour of Radha and, therefore, the matter would also be covered in the first part of sub-section (2) of Section 5 of the CST Act. The High Court noticed that such a plea could not have been raised for the first time in the writ petition for being a mixed question of facts and law. The High Court also observed that even such suggestion was belied by the fact that only the name of the appellant was reflected in the bill of entry as importer and not of Radha. It has been argued before us too that the quadripartite agreement triggered the movement of goods from foreign country to India and not merely from Andhra Pradesh to other States; that, in fact, the sales in question had not been inter-State sales but these sales had occasioned the movement of goods from outside India into India; and that the Indian leg of the integrated transaction cannot be segregated so as to be taxed as inter-State sale under the CST Act. These suggestions also remain totally baseless as noticed *infra*.

36. We had indicated in the earlier part of the judgment that the decision in the case of ***K.Gopinathan Nair*** (supra) shall be referred at a later stage. We are impelled to refer to the said decision now to deal with the aforesaid suggestions of the appellant. We may, however, observe that this suggestion, that the sales in question had occasioned import of goods into the country, is incompatible with the other assertion that the sales were effected by transfer of documents of title when the goods were on high seas. The two alternative parts of sub-section (2) of Section 5 cannot ordinarily go together.

36.1. Be that as it may, the submissions made by the appellant about the inter-linked nature of transactions under the quadripartite agreements and the suggestion about the sales in question occasioning

A import stand effectively repelled by the decision of this Court in ***K.Gopinathan Nair*** (supra). In the said case, this Court dealt with the set of appeals arising from the decisions of Kerala High Court and Karnataka High Court. The background aspects had been that the appellants before Kerala High Court were the persons importing cashew nuts from African countries directly but after issuance of a Import Trade B (Control) Order on 31.08.1970, cashew nuts could be imported only through a canalising agency namely, the Cashew Corporation of India (CCI). Consequently, the said appellants imported cashew nuts from African countries through CCI. The CCI used to collect the information regarding requirement of actual users but was thereafter importing C cashew nuts on its own by entering into independent contracts with the foreign exporters and then, the goods were obtained by local users. In the appeal arising from the decision of Karnataka High Court, CCI itself was the appellant. The principal contention of the appellants before the taxing authorities had been that transaction of sale by CCI to actual users was in the course of import and, therefore, the State Sales Tax D Act could not encompass such a transaction. The contentions were rejected by the respective Tax Tribunals as also by the respective High Courts. The common question for determination before this Court was as to whether the import of raw cashew nuts by CCI from African exporters was in the course of import and, therefore, eligible for E exemption under Sections 5(2) of the CST Act. As noticed, the learned Judges of this Court differed in their views. In the majority decision, after delineating the determinative factors, the Court examined the facts of the case and the nature of transactions and dealings of the parties andobserved that clearly, there were two transactions: one being of the import of raw cashew by CCI from foreign exporters; and the second F being back-to-back sale by the canalising agency like CCI in favour of the local users for whom the goods were indented. The Court held that independent sale which may be based even on a prior agreement of sale by CCI to local users would remain an independent transaction between the importer CCI and the local purchaser but there was noprivity of G contract between the local users and the foreign exporter. Hence, this Court rejected the contention of the appellants that transaction of sale by CCI to actual users was in the course of import in the following passage:-

> "19…..All the aforesaid features which are well established H on record leave no room for doubt that it is on account of the sale

to CCI by foreign exporter that the raw cashew get imported in India and the importer is CCI and not the local user. It is the demand of the local users which prompted the canalising agency like CCI to place orders for import of the quantities concerned. But CCI deals with foreign exporter on its own and gets bulk imports of cashewnuts. It is the sale to the CCI by the foreign exporter or conversely the purchase by the CCI of the raw cashew from the foreign exporter that occasions the movement of raw cashew from African countries to India. The imported cashew remains of the ownership of the importer CCI and only on retirement of documents on payment of value of the allotted cashew by the local users and on their getting the goods cleared from customs that the property in the imported goods concerned would pass from CCI to the local users. Thus there are two clear transactions. One transaction is the import of raw cashew by CCI from foreign exporters. The second transaction which is a back-to-back transaction is of sale by the canalising agency like CCI which is the wholesale importer in favour of the local users for whom the goods are indented. That independent sale which may be based even on a prior agreement of sale by CCI to local users would remain an independent transaction between importer CCI and the local purchaser, namely, the local user. There is no privity of contract between the local users on the one hand and the foreign exporter on the other. These two transactions cannot be said to be so integrally interconnected as to represent one composite transaction in the course of import of raw cashewnuts as tried to be submitted by the learned Senior Counsel for the appellants…."

36.2. For yet further clarity, we may refer to the relevant parts of the minority view, wherein the import of goods and sale to the local purchasers were taken to be inextricably linked hence, the contentions of the said appellants were proposed to be accepted with the following observations:-

"48. This seldom happens in the case of imports whenever the local seller imports the goods as per the specifications of a specific local buyer and on the mutual understanding between the local buyer and the local seller that the goods so imported by the local seller will be purchased by the local buyer. There is in such cases,

A a direct link between the local sale and the import. In fact it is this mutual understanding between the local buyer and the local seller which occasions the import. That is why the cases dealing with imports have not resorted to differentiating between one sale or two sales. They have applied the test as prescribed by Section 5: Whether the import is a result of understanding/contract between
B the local buyer and local seller? If it is, the local sale falls under Section 5. If it is not — as may well happen if the importer sells his goods after they arrive to the best available offeror in the market, then the sale is not covered by Section 5. That is why there has been no need to amend Section 5 to expressly cover a
C local sale following import.

49. Now, if we apply this test of inseverable link between the local sale and import to the transaction in the present case, it is clear that the local sale which is between the assessees and the Cashew Corporation of India is inextricably linked with the import
D of cashewnuts by the Cashew Corporation of India….

… … …

56. However, since there is a direct and inseverable link between the transaction of sale and the import of goods on account of the nature of the understanding between the parties as also by reason
E of the canalising scheme pertaining to the import of cashewnuts, the sales in question cannot be taxed under the Kerala General Sales Tax Act or the Karnataka General Sales Tax Act, as the case may be….”

36.3. The case of the present appellant, as regards the effect of
F quadripartite agreement and the suggestion about the sale having occasioned import is, at best, the one as would appear in the minority view in the case of ***K.Gopinathan Nair*** (supra). The said minority view being not the dictum of this Court and rather, the contra view being the law declared, the contentions of the appellant must fail.

G **<u>These had been inter-State sales</u>**

37. The effect of raising of debit notes by the appellant on the end-buyers has its own bearing in the present case. The appellant had admittedly raised such debit notes on the end-buyers but only after having cleared the goods by filing the bill of entry for home consumption. Once

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the suggestion about the second high seas sales is not accepted and it is found that the appellant had been the importer of goods and had cleared them for home consumption, the natural consequence of raising of such debit notes on the end-buyers situated in different States and movement of goods to such end-buyers would be to take these transactions in the category of inter-State sales in terms of Section 3(a) of the CST Act. The appellant was not entitled to the exemption of Section 5(2) of the CST Actand has rightly been held liable for tax over inter-State sales.

38. After the appellant got the goods released by filing bill of entry for home consumption, indisputably, the goods were ultimately received by Radha at Lucknow in the State of Uttar Pradesh (and other end-buyers in different States) and appellant raised debit notes from the State of Andhra Pradesh. These facts are sufficient to establish that the movement of goods inside the country from one State to another had been on account of the sale by appellant to the end-buyers; and such sales took place only after the appellant obtained the goods from the bonded warehouse for home consumption.

39. In our view, the High Court was right in observing that once the appellant got released the goods after filing the bill of entry for home consumption, the import stream dried up and the goods got mixed in the local goods. Any movement of the goods thereafter was bound to be a sale under Section 3(a) of the CST Act; and such movement being from the State of Andhra Pradesh to other State, it had been a matter of inter-State sale. The principle that actual sale may not necessarily precede the movement of goods, in its true effect, operates rather against the appellant in relation to the sale to end-buyers after the goods were cleared for home consumption.

If any case for relegating the appellant to the remedy of appeal made out

40. This takes us to the alternative submission on behalf of the appellant that in view of the disputed questions of fact involved, the appellant may be relegated to the remedy of appeal. These submissions fail to impress even a bit.

40.1. The appellant, despite being aware of the availability of remedy of statutory appeal, consciously chose to file writ petitions against the assessment orders aforesaid and consciously contested theentire matter in the High Court. The High Court, even after noticing the

framework of certiorari jurisdiction, examined the merits of the case thoroughly and even examined the submission made for the first time in writ petitions that the import of goods was occasioned by the sales in question. Of course, in that regard, the High Court pointed out that it was not a pure question of law but in any case, such submission was belied by the fact that the name of the appellant was reflected in the bill of entry as the importer and not that of the end-buyer. We are unable to find any error or fault in the approach of High Court in this case.

40.2. The prayer that the appellant may now be allowed to contest the matter in statutory appeal has only been noted to be rejected. After having consciously invoked the writ jurisdiction of the High Court and having contested the matter on merits, the appellant cannot now be allowed to re-open the matter in appeal. Reference to the decision of this Court in the case of ***Star Paper Mills Ltd.*** (supra) is entirely inapposite. In that case, by a format order dated 23.11.1987, the High Court of Delhi remitted the matter pending before it in a writ petition to the Assistant Collector who, accordingly, made an adjudication on 30.05.1988. This order of the Assistant Collector was permitted to be brought on record in the pending writ petition and the petition was ultimately disposed of on 05.07.1993. The contentions in the writ petition by the petitioner related to the deductions as post-manufacturing expenses towards freight subsidies, additional trade discounts and cost of special packing.Though the High Court observed that the claims involved investigation into disputed question of fact but, in effect, declined the relief claimed under those heads of the alleged post-manufacturing costs on the ground that sufficient material was not placed by the petitioner in support of the claims for deductions. In those circumstances, this Court extended liberty of appeal to the petitionerwhile observing as under:-

> "4. On a consideration of the matter, we are of the view that against the adjudication made by the Assistant Collector, the petitioner should have one effective opportunity of an appeal. The High Court could have declined to interfere with the matter under Article 226 if, in its view, the matter involved investigation of disputed facts and relegated the petitioner to the statutory records. But it rejected the claim on the ground of insufficiency of material- a situation which might be susceptible of an irreconcilability with its view that disputed questions of fact could not be investigated in these proceedings.

5. We, therefore, permit the petitioner to lodge an appeal against the order of the Assistant Collector dated 30-5-1988 with the CEGAT insofar as and confined to the three 'Heads' of the deductions for the alleged post-manufacturing expenses, namely: (*a*) freight subsidy; (*b*) additional trade discount; and (*c*) cost of special packing."

40.3. The observations aforesaid and the course permitted in the given set of facts of the case of ***Star Paper Mills Ltd.*** (supra) cannot be employed in the present case because the findings against the appellant are not on the ground of insufficiency of material but are essentially the result of analysis of the material placed on record with reference to the law applicable. In our view, the extraordinary writ jurisdiction cannot be utilised by a litigant only to take chance and then to seek recourse to the other remedy after failing in its attempt on the basic merits of the case before the High Court. A litigation cannot be allowed to be unendinglykept alive at the choice of a litigant.

Another feature of the case

41. Before parting, we may also point out that suggestions of the appellant about such transactions with involvement of multiple parties had undergone thorough scrutiny by the concerned CTO and significantly, the suggestions about such quadripartite agreements and arrangements were found to be rather false in relation to at least two of the alleged end-buyers, where one of the end-buyer firm[21] denied having received the goods in question or even knowing the appellant; and the other end-buyer firm[22] was not even found at the given address. As noticed hereinbefore, the overall dealings indicate that the attempt on the part of the appellant had only been to distort the facts and by alleging multiple transactions, to somehow avoid the operation of law relating to Central Sales Tax. Such attempt has rightly met with its disapproval at the hands of the CTO and the High Court. We have no hesitation in endorsing their views.

[21] M/s. Pine Exporters, New Delhi, the alleged end-buyer in third and fourth transactions in the assessment order dated 18.05.2010 (*vide* paragraphs 10.3, 11.1 and 11.2 supra)
[22] M/s. Esskay Impex, New Delhi, the alleged end-buyer in fifth and sixth transactions in the assessment order dated 18.05.2010 (*vide* paragraphs 10.4, 11.1 and 11.2 supra)

A **Conclusion and directions**

42. For what has been discussed hereinabove, we are clearly of the view that the claimed exemption under Section 5(2) of the CST Act has rightly been denied to the appellant and the High Court has been justified in dismissing the writ petitions filed by the appellant. The High
B Court has yet been considerate and gave time to the appellant to submit C-Forms for availing the benefit of concessional rate of tax. No case for interference is made out.

43. Lastly, we may observe that in terms of the orders passed in these appeals, the appellant has deposited an amount of Rs. 7,07,325/-
C (rupees seven lakhs seven thousand three hundred and twentyfive) with the respondent.As these appeals are being dismissed, the respondent shall be entitled to adjust the same against the dues of the appellant.

44. In the result, these appeals fail and are dismissed with costs and with the observations foregoing.

Devika Gujral Appeals dismissed.