

J. V. Gokal & Co. (Private) Ltd.

Vs

The Assistant Collector of Sales-Tax (Inspection) and Others

Petition No. 38 of 1959

(P. B. Gajendragdkar, K. Subha Rao, K. C. Das Gupta JJ)

25.01.1960

JUDGMENT

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SUBBA RAO, J. -

This is a petition under Art. 32 of the Constitution for quashing the order of the first respondent dated February 9, 1959, setting aside the order of the second respondent allowing a deduction of an amount of Rs. 1,86,42,730-15-0 from the petitioner's sales tax turn-over on the ground that the said amount was not liable to tax by virtue of s. 46 of the Bombay Sales Tax Act, 1953 (Act III of 1953), (hereinafter called the Act).

The material facts are not in dispute and they may be briefly stated : The petitioner is a private company within the meaning of the Companies Act, 1956, and has its registered office at Kasturi Buildings, Bombay-1. On March 24, 1954 and April 15, 1954, the petitioner entered into two contracts with the Government of India for selling to the latter two consignments of sugar - one of 9500 Long Tons of sugar of Peruvian origin and the other of 25000 Metric Tons of sugar of continental origin. To fulfil the terms of the contracts, the petitioner placed order with dealers in foreign countries. The following are the particulars relating to the first contract dated March 24, 1954, for the supply of 9500 Long Tons of sugar :

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- i. 3rd April, 1954 Letter of Credit opened by the petitioner.
- ii. 3rd May, 1954 S. S. Alba sails from Salaverry (Peru) carrying 9782.01688 Long Tons of sugar.
- iii. 26th May, 1954 The petitioner delivered to its Bankers, the Central Bank of India Limited, Bombay, along with the invoice for Rs. 50,35,405-11-0 the Documents of Title (viz. the Bills of Lading duly endorsed in favour of the Government of India, Ministry of Food & Agriculture (Agriculture) to the above goods) together with other papers (such as Certificates) and instructed the said Bankers to present the same to the Government of India, and to collect the said amount of Rs. 50,35,405-11-0 from the Deputy Accountant General (Food & Rehabilitation), New Delhi
- iv. 7th June, 1954 Payment made to petitioner's Bankers by the Government of India against delivery of Invoice and Bills of Lading.
- v. 26th June, 1954 Date of arrival of S. S. Alba at Bombay Harbour.

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The corresponding details pertaining to the second contract are as follows :

#Vessel	Vessel	Vessel
S. S. Eleni	S. S. S. S.	Inger

Stathatos Giovanni Marie Amendola I. II. III. IV.

- i. 9910-858 9919-7158 4464-315 Total 24292-8888 Tons. Tons. Tons. Tons.
- ii. 15/6th 15/6th 15/6th Letter of Credit June, 1954. June, 1954. June, 1954. opened by petitioner.(iii) 10th 31st July, 31st July, Date of sailing of July, 1954. 1954. 1954. Vessel.Vessel Vessel VesselS. S. Eleni S. S. S. S. IngerStathatos Giovanni Marie Amendola (iv) 22nd July, 12th August, 16th August, The petitioner 1954. 1954. 1954. delivered to its Bankers, the Bank of Baroda Limited, Bombay,along with its invoices for Rs. 50,43,501-8-0, Rs. 22,69,800-13-0, Rs. 50,38,997-14-0 respectively the Documents of Title (viz. the Bills of Lading) duly endorsed in favour of the Government of India, Ministry of Food & Agriculture (Agriculture) to the above goods together with other papers (such as Certificates) and instructed the said Bankers to present the same to the Government of India and collect the said amounts of Rs. 50,43,501-8-0, Rs. 22,69,800-13-0 and Rs.50,38,997-14-0, from the Deputy Accountant General (Food & Rehabilitation) New Delhi.(v) 26th 18th August, 19th August, Payment made to the July, 1954. 1954. 1954. petitioner's Bankers by the Government of India against delivery of Invoices and Bills of Lading.(vi) 12th 3rd September 9th September Date of arrival August 1954. 1954. 1954. of vessel at Bombay Harbour.##

The foregoing particulars disclose that some weeks before the vessel 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. Indeed 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 to the authorities concerned.

For the assessment year 1954-55, i.e., April 1, 1954 to March 31, 1955, the petitioner was assessed to sales-tax by the Sales Tax Officer, Licence Circle, Division 1, Bombay. In calculating the turn-over of the petitioner, the Sales Tax Officer deducted the price of the said two sales from the petitioner's turn-over. On January 31, 1958, the first respondent, the Assistant Collector of Sales Tax, issued a notice to the petitioner under s. 31 of the Act proposing to review the said assessment order passed by the Sales Tax Officer. In due course the petitioner filed objections and made his representations. The petitioner contended before the first respondent that the notice should have been issued, if at all, under s.15 and not under s.31 of the Act inasmuch as the sales had been disclosed to the Sales Tax Officer and the deduction of the same had been allowed by him. It was also pleaded that in any event the sales had taken place in the course of import and therefore they were not liable to sales tax. The first respondent rejected both the contentions and held that sales tax was payable in respect of the said two transactions. He reassessed the petitioner to a total amount of sales tax and general tax of Rs. 10,22,850-12-0 less Rs.315-3-0 already paid by the petitioner, i.e., a sum of Rs. 10,22,535-9-0 and directed the second respondent, the Sales Tax Officer, to issue a

notice of demand for the said amount. Pursuant to that order, the second respondent issued a notice dated February 14, 1959. The petitioner has filed the present petition for the issue of a writ of certiorari cancelling the demand notice issued by the second respondent.

The learned Solicitor-General intervened on behalf of the Union Government and Mr. Palkhivala intervened for interveners 1 to 3, and both of them supported the petitioner.

Mr. Purshottam Tricumdas, appearing for the petitioner, raised before us the following contentions : (1) Under Art. 286(1) (b) of the Constitution, as it stood before the Constitution (Sixth Amendment) Act, 1956, the sales in question were not liable to sales tax inasmuch as they took place in the course of import of the goods into the territory of India; (2) the said sales were exempted from sales tax by the Bombay State under the explanation to Art. 286(1) of the Constitution, as the goods were delivered for the purpose of consumption in States other than Bombay; (3) the sales were effected outside the State of Bombay i.e., New Delhi, and therefore they were also exempted under Art. 286(1)(a) of the Constitution; and (4) the first respondent could have only interfered with the earlier order of assessment under s.15 of the Act within three years from the end of the assessment year 1954-55, i.e., March 31, 1955, and that the said period having elapsed, he had no power to interfere in revision under s. 31 of the Act.

The first point is the most substantial one in the case and if the petitioner succeeds on that point, no other question would arise for consideration.

The first question turns upon the interpretation of Art. 286(1)(b) of the Constitution before it was amended by the Constitution (Sixth Amendment) Act, 1956. The said Article read;

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

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(b) in the course of the import of goods into, or export of the goods out of, the territory of India."

Under this Article, if the sales by the petitioner to the Government of India took place in the course of the import of the goods into the territory of India, the Bombay State would have no power to impose sales tax on the said sales.

What does the phrase "in the course of the import of the goods into the territory of India" convey ? The crucial words of the phrase are "import" and "in the course of". The term "import" signifies etymologically "to bring in". To import goods into the territory of India therefore means to bring into the territory of India goods from abroad. The words "course" means "progress from point to point". The course of import, therefore, starts from one point and ends at another. It starts when the goods cross the customs barrier in foreign country and ends when they cross the customs barrier in the importing country. These words were subject of judicial scrutiny by this Court in State of Travancore-Cochin v. Shunmugha Vilas Cashew Nut Factory ([1954] S.C.R. 53). Construing these words, Patanjali Sastri C.J., observed at p. 62 :

"The word "course" etymologically denotes movement from one point to another, and the expression "in the course of" not only implies a period of time during which the movement is in progress but postulates also a connected relation."

As regards the limits of the course, the learned Chief Justice observed at p. 68 :

"It would seem, therefore, logical to hold that the course or the export, out of, or of the import into the territory of India does not commence or terminate until the goods cross the customs barrier."

Das, J., as he then was, in his dissenting judgment practically agreed with Patanjali Sastri, C.J., on the interpretation of the said words. The learned Judge expressed his view at p. 92 thus :

"The word "course" conveys to my mind the idea of a gradual and continuous flow, an advance, a journey, a passage or progress from one place to another. Etymologically it means and implies motion, a forward movement. The phrase "in the course of" clearly has reference to a period of time during which the movement is in progress. Therefore, the words "in the course of the import of the goods into and the export of the goods out of the territory of India" obviously cover the period of time during which the goods are on their import or export journey".

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.

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-Cochin v. The Bombay Co. Ltd.* ([1954] S.C.R. 53) 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-Cochin v. Shunmugha Vilas Cashew Nut Factory* ([1954] S.C.R. 53) 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 market; (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 assessee 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 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 purchase 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 recognized species of transaction 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 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."

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 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.

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 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 a sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents of title against payment or otherwise, to a third party by a similar process is also a sale in the course of import.

The next question is whether the sales by the petitioner to the Government of India are sales in the course of import. From the facts narrated supra, it is seen that the petitioner, pursuant to the earlier contracts entered into with the Government of India, delivered the shipping documents, including the bill of lading to the Government against payment when the goods were on the high seas. In view of the foregoing discussion, it should be held that the sales fall under the fourth principle and therefore they were sales that took place in the course of import of the goods into India. A bill of lading is "a writing, signed on behalf of the owner of the ship in which goods are embarked,

acknowledging the receipt of the goods, and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading'. It is well settled in commercial world that a bill of lading represents the goods and the transfer of it operates as a transfer of the goods. The legal effect of the transfer of a bill of lading has been enunciated by Bowen, L. J., in *Sanders Brothers v. Maclean & Co.* ((1883) 11 Q.B.D. 327) thus at p. 341 :

"The law as to the indorsement of bills of lading is as clear as in my opinion the practice of all European merchants is thoroughly understood. A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading this period of transit and voyage, the bill of lading by the law merchant is universally recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the indorsee to full possession thereof, the bill of lading, until complete delivery of the cargo has been made on shore to some one rightfully claiming under it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the ship owner. It is a key which in the hands of rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be."

We have quoted the passage in extenso as it clearly and fully states the law on the subject. It is not disputed that the law in India is also similar to that in England. The delivery of the bill of lading while the goods are afloat is equivalent to the delivery of the goods themselves. The learned counsel concedes that ordinarily that will be so, but contends that in the present case, the contract clearly indicates that the intention of the parties was that till actual delivery was made the property in the goods would not pass to the buyer. Both the contracts are similar in terms and they follow the standard terms prescribed by the Government. The main terms of the contracts may be summarized thus :

The First clause defines the term "sellers" to mean the party selling the sugar and the term "the Government" to mean the President of India. Clause 2 prescribes that suitable gunny bags approved by the Government should be used for importing sugar. Clause 3 provides for inspection of quality, weight and packing of sugar by the Government at the time of shipment. Clause 4 says that sugar shall be shipped to particular ports. Clause 5 compels the sellers to engage steamers on charter terms, empowers the Government to take delivery of the goods at the port of discharge from the ship's rail and imposes the burden on the sellers to meet the expenses of stevedoring, lighterage where necessary, hiring of cranes, dock dues and pilotage. Clause 6 deals with the mode of payment for supplies made; under that clause the sellers are to submit a bill for full payment of cost and freight value to the Government in the Ministry of Food and Agriculture, New Delhi, duly supported by a complete set of clean on board bills of lading consisting of three negotiable and three non-negotiable copies, a certificate of origin of sugar, a certificate of quality, weight and packing, a certificate from the ship-owners that the freight has been paid in full and that the ship owners retain no lien whatsoever on the cargo on that account. Under clause 6 (c) letter of credit shall be opened by the sellers at their cost, and the Government of India agree to arrange for the foreign exchange as necessary to the extent of the cost-and-freight-value of the quantity of sugar purchased on the production of an import licence which will be issued on application to the proper authority on their

prescribed form. Clause 8 confers on the Government a right, in the event of the sellers' failure to supply the sugar in accordance with the terms of the contract, to recover any sum as liquidated damages, and/or by way of penalty upto a prescribed amount. Clause 9 authorizes the Government, in the event of the sellers failing to observe or perform any provisions of the contract, to terminate the contract forthwith. Clause II under the heading "Force Majeure" confers on the Government, in case delivery in whole or in part is prevented or delayed directly or indirectly by any cause of Force Majeure, war, strikes, rebellion, insurrection, political disturbances, civil commotion, fire or flood, on account of plague or other epidemics, the right to cancel the contract for the quantities so prevented or delayed. After the sellers entered into the contracts, they obtained the requisite licences from the Government, opened letters of credit, placed orders with foreign companies, engaged a steamer on charter terms, took delivery of the goods from the foreign firms and, when the goods were on the high seas, delivered the documents of title to the high seas, delivered the documents of title to the Central Government against payment and the said Government, taking the licence from the sellers, cleared the goods at the Bombay harbour.

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 not 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. The liability undertaken by the sellers to meet the expenses relating to stevedorage, lighterage where necessary, hiring of cranes, dock dues and pilotage, at the time of delivery of the goods on which reliance is placed to indicate a contrary intention, in our view, has nothing to do with question raised, for that liability can rest with the sellers even after the property in the goods has passed to the buyers; nor clauses 9 to 11 on which strong reliance is placed by the learned counsel are inconsistent with the property in the goods passing to the buyer; they could legitimately be made applicable to a point of time when the property in the goods has not passed to the buyer. If the sellers fail to observe the performance of any provisions of the contracts before the property in the goods passed to buyer, under clause 9 of the contracts the buyer can cancel the contract. So too, under cl. II, if any contemplated mishap takes place on the high seas by force majeure, the seller shall send a cablegram to that effect and the buyer is empowered to cancel the whole of the contract or a part of it. This also applies to a point of time before the property in the goods has passed to the buyer. If, on the other hand, the seller delivers the shipping documents against payment and thereafter if he does not deliver the goods at the port, the buyer may have other remedies for the recovery of damages etc. But that right is not covered by either cl. (9) or cl. (11) of the contract. A scrutiny of all the terms of the contract does not indicate the intention that the property in the goods shall not pass to the buyer notwithstanding delivery of shipping documents against payment.

Apart from the terms of the contract, reliance is also placed by the learned counsel for the

respondents on the following circumstances : (i) the seller himself chartered the ship; and (ii) the licence issued by the 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 Government. The fact that the licence was non-transferable has no relation to the property in the goods passing to the Government. The licence issued by the Government is an exercise of the statutory power under the relevant Act. Whether the petitioner sold the goods to the Government or to a third party, he had to obtain a licence. Indeed in the present case, the licence was given to the seller with the express object of fulfilling the contracts with the Government and was issued several days after the contracts were executed, and indeed the Government took the licence from the seller and cleared the goods through their officer.

For all the foregoing reasons we hold that the property in the goods passed to the Government of India when the shipping 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.

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

In this view, no other question would arise for consideration. In the result the order of the Assistant Collector of Sales Tax is set aside and that of the Sales Tax Officer is restored. The respondents will pay the costs of the petitioner.

Petition allowed.

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