

Coffee Board, Bangalore

Vs

Joint Commercial Tax Officer, Madras and Another

Writ Petition Nos. 216-217 of 1969

(CJI M. Hidayatullah, S.M. Sikri, G.K. Mitter, A.N. Ray, P. Jagmohan Reddy JJ)

29.10.1969

JUDGMENT

HIDAYATULLAH, C. J. -

1. These are petitions under Article 32 of the Constitution by the Coffee Board, Bangalore, directed against the Joint Commercial Tax Officer, Madras and the State of Tamil Naidu questioning the demand of Sales Tax on certain transactions of sales which the Board claims are sales in the course of export of Coffee out of India and thus not liable to Sales Tax. A preliminary objection was taken at the hearing that the petitions do not lie since no question of a fundamental right is involved. We shall deal with the preliminary objection later as the main petition and the preliminary objection are interlinked. But before we mention the points in controversy it is necessary to state the facts more fully.

2. The petitioner is a statutorily constituted body and functions under the Coffee Act, 1942 (VII of 1942). This Act was passed to provide for the development under the control of the Union of the Coffee Industry. Its main function is to constitute a Coffee Board. Previously there was an Ordinance entitled the Indian Coffee Market Expansion Ordinance, 1940 (13 of 1940). A Board called the Indian Coffee Market Expansion Board was constituted under the Ordinance. The same Board now continues under the name 'Coffee Board'. On this Board, all interests are represented and some Members of Parliament and Officers of Government have also places. Sections 4 to 10 of the Act are concerned with the setting up of the Board. As nothing turns upon the constitution of the Board, it is not necessary to give the gist of those sections here. The Act imposes duties of Customs and Excise-the former on all Coffee produced in India and exported from India and the latter on coffee released by the Board for sale in India from its surplus pool. The Act compels the registration of all owners of Coffee Estates and licensing of curers and dealers. The Act next imposes a control on the sale, export and re-import of coffee into India. In respect of sale, it fixes prices for sale of coffee either wholesale or retail by registered owners and licensed curers for the purpose of sale in the Indian Market. The Board fixes internal sale quota for each Estate owner and the owner has to observe this quota and also the price fixed. The registered owner may not sell coffee unless it has been cured by a licensed establishment or it is sold uncured under a special licence. The Act next prohibits the export of coffee from India otherwise than by the Board or under the authorization granted by the Board. To this restriction, there are a few minor exceptions such as coffee in specified quantities may be exported by taking on board ships or aircrafts intended for consumption of the crew and the passengers or carried by a passenger for his own use or exported for special purposes specified by the Central Government. The Government is authorised to specify the total quantity of coffee to be exported during any year. Coffee once exported cannot be re-imported into India except under a permit. The registered owners are required to furnish periodical returns and to

furnish such information as may be prescribed. Every registered owner after dealing with the coffee for sale in Indian markets up to the internal quota fixed for him must hand over to the Board all surplus coffee to be included in the Board's Surplus Pool. Similarly, curing establishments are required to surrender to the Board all surplus coffee. Small producers may, however, be exempted from the operation of this condition. After the coffee is delivered to the Board, the control of the Board begins. The Board classifies the coffee and assesses its value based on its quantity, kind and quality. Once the coffee is delivered to the Board, the registered owner or the licensed curer has no rights over the coffee except to receive its price in accordance with Section 34 of the Act.

3. We are not concerned in this petition with any internal sales. The Board has elected to make monthly returns and in these petitions taxes on sales made in March and April, 1969 are challenged. Provisional assessments have been made and demand for taxes held due after allowing credit for taxes already paid, has been made by the respondents under the Madras General Sales Tax Act, 1959. Of these, certain sales are claimed to be exempted from Sales Tax under the Madras Act by reason of those being in the course of export of coffee out of India. The taxing authorities held that those sales took place within Tamil Nadu State and were thus liable to sales tax under the Tamil Nadu Act. The point of difference arises thus :

4. The Coffee Board follows a procedure for selling coffee which is to be exported out of India. Coffee for export is specially screened and selected. It is then exported in auctions specially held for the purpose. These auctions are known as 'Export Auctions'. To be able to bid on these occasions, exporters have to get themselves registered. The Board maintains a list of registered exporters and gives to each of them a permit which authorises him to take part in the export auction. A specimen of the permit granted with the conditions attaching to it is exhibited as Annexure I. The conditions which are imposed by the permit require a security deposit and a standing deposit from the registered exporter. The security may be in cash or by guarantee from a bank or Life Insurance Corporation of India. It is provided that the permit is liable to be withdrawn and cancelled by the Chief Coffee Marketing Officer if it is found that the permit holder has sold or attempted to sell coffee, bought by him at the export auctions, within the internal market without the written permission of the Chief Coffee Marketing Officer. Similar cancellation is liable to take place if some of the other conditions of the permit are not followed.

5. The Coffee Board has also prepared a set of rules which incorporate the terms and conditions of sale of coffee in the course of export. These rules have been exhibited as Annexure II and they deal with the conduct of auctions and the procedure to be followed therein. They also provide for additional conditions. Rule 4 provides that only dealers who have registered themselves as exporters of coffee with the Coffee Board and who hold permits from the Chief Coffee Marketing Officer in that behalf will be permitted to participate in the auctions. Agents may, however, participate on behalf of exporters but only for one principal at a time. Before the auction, the registered dealer or the agent must show the permit issued to him or have it in his custody for production, if so desired. Before the auction is held, a catalogue of lots of coffee to be put up for auction is issued with the reserve price fixed by the Chief Coffee Marketing Officer in his discretion. Samples of coffee are available for prospective buyers. An auction in the usual way takes place but no one is allowed to retract a bid once made. The highest bid is ordinarily accepted but if there are reasons to believe that the highest or any particular bid is not bona fide or genuine or is the outcome of concerted action for the purpose of controlling or manipulating prices or for other improper purposes or that the bidder is not likely to fulfil his contract or is otherwise undesirable, the bid may be rejected. After the bidding comes to an end and the bids have been accepted, the payment of price takes place in a particular way. We are not concerned with other provisions dealing with failure to fulfil the obligation as to

payment of price etc., objections to quality and so on. We are concerned with Condition 26 which is headed 'Export Guarantee'. This condition is vital in the consideration of the questions involved in this case and may be quoted :

"26. It is an essential condition of this auction that the coffee sold thereat shall be exported to the destination stipulated in the catalogue of lots, or to any other foreign country outside India as may be approved by the Chief Coffee Marketing Officer, within three months from the date of Notice of Tender issued by the Agent and that it shall not under any circumstances be diverted to another destination sold, or be disposed of, or otherwise released in India.

The aforesaid period may, on application by the buyer, be extended by the Chief Coffee Marketing Officer in his discretion if he is satisfied that there is good ground to do so, subject nevertheless to the condition that as consideration for such extension, the buyer shall pay the following additional amounts to the Board

The buyer is free to export the coffee either by himself or through any forwarding agent but the coffee must not be sold to the Forwarding Agents. In other words, the buyer himself arranges for the export of the coffee he has purchased at the auction and Condition 29 imposes an obligation on the buyer to produce immediately after shipping evidence of the export of the coffee to the Chief Marketing Officer. If such evidence is not produced within a period of 60 days, after the time allowed to make the export, the registered exporter is deemed to have committed a default and the provisions of Conditions 30 and 31 then apply to him. These conditions are as follows :

"30. If the buyer fails or neglects to export the coffee as aforesaid within the prescribed time or within the period of extension, if any, granted to him, he shall be liable to pay a penalty calculated at Rs. 50/- per 50 kilos which shall be deductible from out of the amount payable to him as per Clause 31."

"31. On default by the buyer to export the coffee aforesaid within the prescribed time or such extension thereof as may be granted, it shall be lawful for the Chief Coffee Marketing Officer, without reference to the buyer, to seize the unexported coffee and for that purpose to make entry into any building, godown or warehouse, where the said coffee may be stored, and take possession of the same and deal with it as if it were part and parcel of Board's coffee held by them in their Pool Stock.

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6. Conditions 33 and 34 provide for inspection of coffee stocks and accounts and the buyer is required to send weekly returns. Other conditions need not be noticed here because they have no bearing upon the rival cases.

7. The case of the petitioners is that the purchases at the export auctions are really sales by the coffee Board in the course of export of coffee out of the territory of India since the sales themselves occasion the export of coffee and coffee so sold is not intended for use in India or for sale in the Indian markets. The case of the Sales Tax Authorities is that these sales are not inextricably bound up with the export of coffee and that the sales must be treated as sales taking place within the State

of Tamil Nadu which are liable to sales tax under the Madras General Sales Tax Act. The dispute is confined to this aspect of the matter on merits. The preliminary objection to which we referred earlier is only this that the petitions do not show a breach of a fundamental right. The petitioners only claim the benefit of the exemptions incorporated in the Constitution or the statute dealing with the levy and collection of sales-tax, and their grievance can be investigated and righted by taking recourse to the appellate, revisional and other remedies under the relevant statute. We shall begin by considering the preliminary objection.

8. The preliminary objection consists of two parts. The first part questions the standing of the petitioner to move this Court for the enforcement of its so-called fundamental rights. It is argued that the petitioner being a Corporation, has no right to move this Court for the enforcement of fundamental right to hold, acquire and dispose of property since this right is available only to individuals who are citizens and a corporation is not a citizen. Reliance is placed upon, *The State Trading Corporation of India Ltd. and Others v. The Commercial Tax Officer, Visakhapatnam and Others* ((1964) 4 SCR 99.). The second part is that there is ample provision for remedies under the Sales Tax Act to question the assessment and a petition under Article 32 ignoring those provisions should not be entertained. The case of the State Trading Corporation considered the application of Article 19(1)(f) and (g) in relation to Corporations. It was held that Corporations could not be regarded as citizens for the purpose of Article 19 since that article is concerned with citizens and corporations have not been declared citizens by the Constitution. The question was not considered in relation to Article 31(1). Some other petitions by corporations complaining of breach of Article 31(1) were entertained by this Court and the petitioner before us relies on those cases as precedents. The true position may therefore be stated.

9. Property as a fundamental right is mentioned in the Constitution in Articles 19(1)(f) , 31, 31(a) and 31(b). In Article 19(1)(f) it is provided :

"19. Protection of certain rights regarding freedom of speech, etc :

(1) All citizens shall have the right

X X X X

X X X X

(f) to acquire, hold and dispose of property and

X X X X."

To this sub-clause there is a proviso in clause (5) which states that nothing in clause.(f) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of the right conferred, either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. The main clause of the article recognises the institution of private property with all the concomitants of that institution, namely, the acquisition, holding and disposal of property. The proviso recognises, in the public interest, restrictions on the right in existing law or hereafter to be imposed by law. The institution of property thus recognised leaves freedom to acquire any kind of property except the one in relation to which there is a restrictive law. Thus it is that certain kinds of properties such as Narcotic drugs, explosives, property in excess of ceiling placed by law, etc. cannot be acquired or held. This restriction curtails the general right and the curtailment must justify itself as a law in the public.

interest. Next we have Articles 31, 31 (a) and 31(b). They occur in a section of Part III entitled "Rights to Property". The first of these three articles deals with compulsory acquisition of property. The second and third deal with saving of laws providing for acquisition of Estates, etc. and validation of certain Acts and Regulations declared void by Courts. Two fundamental concepts in Article 31 are : (a) that no person shall be deprived of his property save by authority of law, and (b) no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which itself fixes the amount of compensation or specifies the principles on which compensation is to be determined and given and the manner thereof. Other provisions either restrict or amplify the operation of these two fundamental concepts. In Smt. Ujjam Bai's case(Smt. Ujjam Bai v. State of Uttar Pradesh, 1963 SCR 778.) the question was whether assessment of Sales Tax under a valid Act was open to challenge under Article 32 on the ground of misconstruction of the Act or a notification under it. It was held that the answer was in the negative. That case has given some trouble in view of the different opinions expressed in it. It is therefore necessary to state simply the propositions which are settled by this Court. The ruling recognizes the existence of a right to move this Court under Article 32 where the action is taken under an ultra vires statute, or where, although the statute is intra vires, the action is without jurisdiction or the principles of natural justice are violated. Errors of law or fact committed in the exercise of jurisdiction founded on a valid law do not entitle a person to have them corrected by way of petitions under Article 32. It is also pointed out that the proper way to correct them is to proceed under the provisions for appeal, etc. or by way of proceedings under Article 226 before the High Court.

10. In *Ramjilal v. I.T.O., Mohindragarh*(1951) SCR 127) and in *Laxmanappa Hanumantappa v. Union of India* (1955 SCR 769.), taxation laws were unsuccessfully challenged with the aid of Article 31(1) read with Article 265 in petitions purporting to be under Article 32. In the former case it was observed as follows :

"In our opinion, the protection against the imposition and collection of taxes save by authority of the law directly comes from Article 265 and is not secured by clause (1) of Article 31. Article 265 not being in Chapter III of the Constitution, its protection is not a fundamental right which can be imposed by an application to this Court under Article 32. It is not our purpose to say that the right secured by Article 265 may not be enforced. It may certainly be enforced by adopting proper proceedings. All that we wish to state is that this application in so far as it purports to be founded on Article 32, read with Article 31 (1) to this Court is misconceived and must fail."

11. These propositions were not accepted by the majority in *Ujjam Bai's* case. It was observed at p. 941 as follows :

"If by these observations it is meant to convey that the protection under Article 265 cannot be sought by a petition under Article 32, I entirely agree. But if it is meant to convey that a taxing law which is opposed to fundamental rights must be tested only under Article 265, I find it difficult to agree. Articles 31 (1) and 265 speak of the same condition. A comparison of these two articles shows this :

Article 32(1). - "No person shall be deprived of his property save by authority of law".

Article 265 - No tax shall be levied or collected except by authority of law.

"The Chapter on Fundamental Rights hardly stands in need of support from Article 265. If the law is void under that Chapter, and property is seized to recover a tax which is void, I do not see why Article 32 cannot be invoked It is not possible to circumscribe Article 32 by making the remedy depend only upon Article 265."

The position was summed up thus :

"From this, it is clear that laws which do not offend Part III and are not otherwise ultra vires are protected from any challenge whether under Article 265 or under the Chapter on Fundamental Rights. Where the laws are ultra vires but do not per se offend fundamental rights (to distinguish the two kinds of defects), they are capable of a challenge under Article 32. Where they are intra vires otherwise but void being opposed to Fundamental Rights, they can be challenged under Article 265 and also Article 32."

12. Das, J., (Sarkar, J., concurring) put the same thing differently. He observed that "If a quasi-judicial authority acts without jurisdiction or wrongly assumes jurisdiction by committing an error as to a collateral fact and the resultant action threatens or violates a fundamental right, the question of enforcement of that right arises and a petition under Article 32 will lie". He added that "where a statute is intra vires but the action taken is without jurisdiction, then a petition under Article 32 would be competent". Similar observations are to be found in the opinion of Kapur, J. Therefore, the majority view considered that a breach of fundamental right guaranteed by Article 32 (1) is involved in a demand for tax which is not leviable under a valid law. The application of these principles finds ample recognition in the following cases of the Supreme Court :

- (1) State Trading Corporation of India v. The Commercial Tax Officer;(1964 SCR 99.)
- (2) State Trading Corporation of India v. The State of Mysore; (14 STC 416.)
- (3) Firm A. T. B. Mehtab Majid & Co. v. State of Madras.(14 STC 355)

13. It will be noticed that they are all cases of Corporations and have been considered under Article 32. The ruling in the State Trading Corporation case referred to earlier did not render these petitions incompetent because Article 31(1) is not limited in its operation to citizens. It mentions "persons" who may be corporations and group of persons.

14. In Indo-China Steam Navigation Co. v. Fajit Singh((1964) 6 SCR 594.), there are some observations that in petitions under Article 32, no claim of a fundamental right can be made under Article 31(1) if the statute under which action is taken is valid for then Article 19(1)(f) does not apply. These observations run counter to Ujjam Bai's case which is binding on us. The first part of the preliminary objection fails.

15. The second part need not detain us. We have already held that demand of a tax., not backed by a valid law, is a threat to property and thus gives rise to a right to move this Court under Article 32. The petitioner in such circumstances is not compelled to wait or go through the lengthy procedure of appeals, references, etc. He may move the Supreme Court for the enforcement of the fundamental rights so threatened. This, however, is not an absolute right. This Court will limit the petitioner to establishing a breach of fundamental right. It will not allow a petitioner to use the provisions of Article 32 to do duty as an appeal. A clear enough case as laid down in Ujjam Bai's case, analysed by us here, must be made out. A threat to property unbacked by a valid law or a want of jurisdiction

or a breach of the principles of natural justice must be clearly made out, to entitle one to the assistance of this Court. If that is successfully done then the provisions for other remedies do not stand in the way. We accordingly allowed the petitioner to raise the point of jurisdiction before us.

16. We are concerned in these petitions with the exemption granted by Article 286(1)(b) of the Constitution which reads

"286. Restrictions as to imposition of tax on the sale or purchase of goods:

(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 -

(a) X X X X

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

17. Before the sixth Amendment, the Constitution did not contain any definition of the phrase 'in the course of export'. By that amendment Parliament has been given the power to indicate the principles on which that phrase is to be construed. In Section 5(1) of the Central Sales Tax Act, 1956, Parliament has given a legislative meaning of the phrase 'in the course of export' of goods out, of the territory of India. It runs thus,

"5(1). 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."

The word 'only' in the sub-section shows that there are only two transactions: which can come within the exception. In the case of sales to registered exporters, the second part does not apply and the matter must, therefore, be judged under the first part. Before the enactment of the Central Sales Tax Act, two rulings of this Court had construed the expression and as, the legislative definition gives effect to what was laid down in those two cases a reference to them appears necessary.

18. In the State of Travancore-Cochin and Others v. The Bombay Co. Ltd.((1952) SCR 1112) four meanings, were considered and sales in the course of export were equated to sales which occasioned the export. This Court said :

"A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other."

Again,

"We are not much impressed with the contention that no sale or purchase can be said to take place 'in the course of' export or import unless the property in the goods is

transferred to the buyer during their actual movement, as for instance, where the shipping documents are indorsed and delivered within the State by the seller to a local agent of the foreign buyer after the goods have been actually shipped, or where such documents are cleared on payment, or on acceptance, by the Indian buyer before the arrival of the goods within the State. This view, which lays undue stress on the etymology of the word 'course' and formulates a mechanical, test for the application of clause (b), places, in our opinion, too narrow a construction upon that clause, in so far as it seeks to limit its operation only to sales and purchases effected during the transit of the goods, and Would, if accepted, rob the exemption of much of its usefulness.

19. In the State of Travancore-Cochin & Others v. Shanmugha Vilas Cashew Nut Factory and Others.,(1954 (1) SCR 53.) it was again emphasised that sales and purchases which themselves occasion the export of the goods came within the exemption of Article 286(1)(b). Purchases in the State by the exporter for purposes of export were not within the exemption but sales in the State by the exporter by transfer of shipping documents while the goods were beyond the customs barrier were held exempted. It was pointed out that the word 'course' denoted movement from one point to another and the expression 'in the course of' implied not only a period of time during which the movement was, in progress but postulated also a connected relation. An act preparatory to export could not be regarded as done in the course of the export of the goods. It was like a purchase for production or manufacture. Therefore a sale in the course of export out of the territory of India should be understood as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities. Das, J., (as he then was) wished to add one more meaning which apparently was not accepted. It was that the expression indicated the last purchase by the exporter with a view to export. The meaning given in these two cases is well-established. Indeed in the State of Mysore v. Mysore Spinning and Manufacturing Co. Ltd.,(AIR 1958 SC 1002.) this Court said that the point could not be said to be at large.

20. Parliament having accepted the construction placed by this Court on the expression, we are now required to find out what is meant by the phrase sale which occasions the export. In *Burmah-Shell Oil Storage and Distributing Company v. U. G. T. O.*((1961) 1 SCR 902.) it was pointed out that word 'export' did not mean a mere 'taking out of the country' but that the goods must be sent to a destination at which they could be said to be imported. The same meaning must obviously be given to the phrase 'in the course of export' or in the phrase 'occasions the export'.

21. We have thus to see whether the sale is one which is connected with the export of the goods from this country to an importer in another country. The course of export can only begin if there is movement from an exporter to an importer as the result of the sale, and then only the sale can be said to occasion the export. In *Fast India Tobacco Co. v. State of Andhra Pradesh*((1962) 13 STC 529.), purchases made for executing specific orders received from foreign customers were held not to fall within the exemption. It is not enough that the sale is followed by an export or is made for the purpose or with a view to export, the sale must be integrally connected with the export. On the other hand in *B. K. Wadar v. Daulatram Rameshwarlal*((1961) 1 SCR 924.), it was held that if property in the goods passed to the buyer after the crossing of the customs frontier for export out of India the sale was in the course of export. This is because the course of export had already begun and therefore the sale followed the commencement of the export operation.

22. Transactions of the type of the one in *Wadeyar's* case do not cause difficulty. There the course of

export is quite clear and it is easy to see that the sale is integrally connected with export. Difficulty is likely to be felt when the sale is not so apparently connected. In *K. G. Khosla & Co. v. Dy. Commissioner of Commercial Taxes*((1966) 17 STC 473.), the phrase 'in the course of import' was considered. It was held that in Section 3 of the Central Sales Tax Act the phrases 'occasions the movement of goods from one State to another' and 'occasions the import' mean the same thing. The movement, it was pointed out, must be the result of an agreement or an incident of the contract of sale, although it was not necessary that the sale should precede the import.

23. A more direct authority is in *Ben Gorm Nilgiri Plantations Company, Coonoor v. Sales Tax Officer*(1964) 7 SCR 706.). In that case sales of the tea-chests at auctions held at Fort Cochin were claimed to be exempt from the levy of Sales-tax by virtue of Article 286(1)(b).

24. The Tea Act, like the Coffee Act, was passed to control tea industry. Under it also an export allotment for each year is declared and each tea Estate receives an export quota allotment. The tea Estate owner can obtain an export licence. The export quota licence is transferable. A manufacturer obtains from the Tea Board allotment of export quota. The manufacturer then puts the tea in chests which are sold in public auctions. Bids are made by agents or intermediaries of foreign buyers. Agents and intermediaries then obtain licences from the Central Government for export. The question was whether the sale to the agent or the intermediary was a sale in the course of export out of India.

25. This Court found nothing in the transaction from which a bond could be said to spring between the sale and the intended export linking them as part of the same transaction. The sellers had no concern with the export, the sale imposed or involved no obligation to export and there was possibility that the goods might be diverted for internal consumption.

26. The Court considered the sales as sales for export and not in the course of export. In laying this down the court observed :

"..... to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India."

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

27. The case however did not attempt to lay down any tests, observing that each case will depend on its own facts. We agree that the facts must always play their due part. We think it is possible to state some tests which can be applied in all cases.

28. The phrase 'sale in the course of export' comprises in itself three essentials : (1) that there must be a sale, (ii) that goods must actually be exported, and (iii) the sale must be a part and parcel of the export. Therefore either the sale must take place when, the goods are already in the process of being

exported which is established by their having already crossed the Customs frontiers, or the sale must occasion the export. The word 'occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is round up with it. The word 'cause' in the expression 'in the course of' means 'progress or process of', or shortly 'during'. The phrase expanded with this meaning reads 'in the progress or process of export' or 'during export'. Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer.

29. Therefore the tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer.

30. The course of export may be established by agreement or by force of law. To be the former the agreement between the seller and the buyer must envisage an export out of India who then become exporter and importer respectively. By force of law a person selling the goods may be compelled to sell them only in an export sale but that too is not essentially different from the first. In either case there is a seller and a buyer who by reason of the sale also become exporter and importer respectively. Any other buyer who is not himself the importer buys for export even if export ultimately results. It is to bring out these results that Parliament has recognised only two cases of sale in the course of import : (a) where the sale is effected by a transfer of documents of title to goods after the goods have crossed the Customs frontiers that is to say the goods are already on the way to the importer and (b) when the sale itself causes the export to take place that is to say the exporter and importer negotiate and complete a sale which without more would result in the export of the goods. No other sale can qualify for the exemption under Section 5(1), read with Article 286(1)(b).

31. The question is whether the sale to the registered exporters can be said to be exempted. In the *Indian Coffee Board v. The State of Madras* ((1956) 7 STC 135.) Rajgopalan and Rajgopala Ayyangar, JJ., held that the sale to the registered exporter was a sale for export and only the contract of sale entered into by the registered exporter with the buyer abroad that could be brought within the scope of the exemption. The test applied by the High Court is the test we have indicated and which has found approval in the two earlier cases of this Court which have received legislative recognition. The question to ask is : does the sale to the registered exporter occasion the export which ultimately takes place ? The answer is that on the rulings it must be an integral part of the precise export before it can be said to have occasioned that particular export. Here there are two independent sales involved in the export programme. The first is a sale between the Coffee Board as seller to the export promoter. Then there is the sale by the export promoter to a foreign buyer. Of the latter sale, the Coffee Board does not have any inkling when the first sale takes place. The Coffee Board's sale is not in any way related to the second sale. Therefore, the first sale has no connection with the second sale which is in the course of export, that is to say, movement of goods between an exporter and an importer.

32. Mr. Setalvad tried to argue that the first sale by the Coffee Board included in it a compulsion to export and he relied upon the observations of Shah, J., in Ben Gorm Nilgiri Plantation's case. These observations were not intended to give exemption to sales for export but to sales in the course of export. One of the indicia of a sale in the course of export is the compulsion to export because the sale which is protected must be itself inextricably bound up with the export. If this were not so a claim of sales each making a mere condition for terminal export, will be exempted and the distinction between a sale for export and a sale in the course of export will completely disappear. In Ben Gorm Nilgiri Plantation's case, even the purchases by agents of foreign importers were described as sales for export. No doubt it was said that the sale to the agents did not contain a compulsion to export to the principal but that was said so that the causal connection between the sale and the export could be established. The compulsion to export here is of a different character. It only compels persons who buy on their own to export in their own turn by entering into another agreement for sale. The first sale is, therefore, an independent sale. It is a sale for export. Even with the compulsion the sale may not result for Clauses 26, 30 and 31 visualize such happenings. It follows, therefore, that unless the sale is inextricably bound up with a particular export it cannot be said to be in its course. If no particular export is in sight the sale by the Coffee Board cannot go beyond the description of sale for export.

33. For these reasons we are of opinion that the decision of the Madras High Court in the case cited above is correct. For the same reasons we are of opinion that this case does not fall within the ruling in Ben Gorm Nilgiri Plantation's case. The petitioner cannot claim exemption from the tax and the department was right in demanding the tax.

34. The petitions fail and will be dismissed with costs.

SIKRI, J. ♦

I have had the advantage of reading the draft of the judgment prepared by the learned Chief Justice. I agree with him that the preliminary objection raised by the respondents is devoid of force, but I regret that I cannot concur with the conclusion that the sales in question were not made in the course of export. With utmost respect, in my opinion he has given an unduly limited meaning to the expression 'if the sale or purchase occasions such export'. My reasons in coming to this conclusion are, in brief, as follow :

36. In Shorter Oxford Dictionary (Illustrated) the word "occasion" when used as a verb means :

"To give occasion to (a person); to induce; to be the occasion or cause of (something); to cause, bring about, especially in an incidental or subsidiary manner."

37. It is said that in the context the word "occasion" means "to cause or to be the immediate cause". When a word bears two meanings the context must determine which is the appropriate meaning to be adopted. What then is the context with which we are dealing ? The context is the export trade and its undoubted economic importance to this country. Further each country is more and more organising the export trade and directing its flow in particular directions. The course of export is not the same what it was before the intervention of Governments or their agencies. Moreover the idea underlying Article 286(1)(a) was to restrict the powers of the State to levy taxes on sales or purchases in the course of export so that the export trade may not be hampered. As observed by Patanjali Sastri, C. J., in State Of Travancore-Cochin v. The Bombay Go. Ltd.((1952) SCR 1112; 1119.) "lest similar reasoning should lead to the imposition of such cumulative burden on the

export-import trade of this country which is of great importance to the nation's economy, the Constituent Assembly may well have thought it necessary to exempt in terms sales by export and purchases by import from sales tax by inserting Article 286(1)(b) in the Constitution". In my view, keeping in view the aforementioned considerations the wider meaning of the word "occasion", is the more appropriate to apply in the construction of Section 5(1).

38. It is said that Parliament had accepted the narrower meaning of the word "occasion" because this was the meaning ascribed to it by this Court in *State of Travancore-Cochin v. The Bombay Co. Ltd.* (supra) and *State of Travancore Cochin v. Shanmugha Vilas Cashew Nut Factory* ((1954) SCR 53.). I, with respect, am unable to appreciate this argument. In the former case this Court was concerned with export sales of certain commodities to foreign buyers on C.I.F. or f. o. b. terms. After setting out the four views presented before it, Patanjali Shastri, C. J., speaking on behalf of the Court, observed :

"We are clearly of opinion that the sales here in question which occasioned the export in each case, fall within the scope of the exemption under Article 286(1)(b).

Later he said :

"We accordingly hold that whatever else may or may not fall within Article 286(1)(b), sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India come within the exemption and that is enough to dispose of these appeals." (Emphasis supplied).

39. It seems to me that it is wrong to interpret that decision to mean that the Court held that in no other case can sales "occasion" an export. In fact the learned Chief justice says to the contrary by saying "whatever else may or may not fall".

40. In *State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory* (supra) this Court, inter alia, held that the last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business was not within the protection of clause (1)(b).

41. In the course of discussion, apart from referring to a passage from the earlier judgment in which the word "occasion" is used, the word 'occasion' is not mentioned again. No mention is made in this judgment of facts similar to which are present in the present case. What happens when there is legal certainty that the goods are headed for a foreign destination and will not be diverted to the domestic market was not considered as the question did not arise.

42. In *State of Mysore v. Mysore Spinning and Manufacturing Co.* (AIR (1958) SC 1002.), facts are somewhat closer to the present case; but it does not appear that there was legal compulsion to export and that the Mills, who sold the cloth for sale, could compel the purchasers to export. The general observations therein must be read in the light of facts.

With respect, I think it is erroneous to assume that Parliament by using the word "occasion" must be deemed to have used it in the same sense as Patanjali Sastri, C. J., did. It is an ordinary dictionary word and not a technical word. He was using it to describe the transactions in those cases, and the narrower meaning was apposite. Even there he guarded himself by saying "whatever else may or may not fall within Article 286(1)(b)." It should also be noted that Patanjali Sastri, C. J., had also qualified the word "occasion" by adding the words "by themselves". These words do not exist in the

Act.

43. Similar expression occurring in Sections 3 and 5(2) of the Act has been interpreted by this Court on a number of occasions and I cannot appreciate why the same expression bears a different meaning in Section 5(1). The earlier cases are referred to in *K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes*. (17 SCT 473.) *Shah, J.*, in *Tata Iron and Steel Co. v. S. R. Sarkar* (11 STC 655; 667.) had interpreted Section 3 of the Act as follows :

"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."

In other words it was held that a sale occasions the movement of goods when the movement "is the result of a covenant or incident of contract of sale". Applying this test this Court observed in *K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes* (supra) at pp. 488-489 :

"The next question that arises is whether the movement of axle-box bodies from Belgium into Madras was the result of a covenant in the contract of sale or an incident of such contract. It seems to us that it is quite clear from the contract that it was incidental to the contract that the axle-box bodies would be manufactured in Belgium inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place in the course of import of goods within Section 5(2) of the Act, and are, therefore, exempt from taxation."

44. It will be noticed that the sale which was sought to be taxed but was exempted was the sale to Southern Railway and the contract under which the movement resulted was with the Director-General of Supplies.

45. The heart of the matter lies in answering one question. Can two sales occasion an export ? I find no difficulty in answering this question in the affirmative. Two sales can take place in the course of export if they are effected by a transfer of documents of title to the goods after the goods have crossed the customs frontier of India, and, they both will to be protected under Section 5(1) of the Act. Therefore, it cannot be assumed that it is the intention of Section 5(1) that only one sale can enjoy the protection of Section 5(1). Accordingly, apart from any assumption, can two sales occasion an export ? As I have said, "occasion" does not necessarily mean immediately cause; it also means to "bring about especially in an incidental or subsidiary manner". If the sale by the appellant brings about the export in an incidental or subsidiary manner it can be said to occasion the export. It was in view of these considerations that *Shah, J.*, speaking for the Court, had observed in *Ben Gorm Nilgiri Plantations Co. v. The Sales Tax Officer* (15 STC 753; 759.) :

"A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising

from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export."

46. In this passage Shah, J., clearly visualised that a transaction of sale which is preliminary to export may be regarded as in the course of export if the sale occasions the export. The test postulated may be that there must be an integral relation or bond between the sale and export. Why Shah, J., held that the sales were not in the course of export was, to use his words;

"That the tea chests are sold together with export rights imputes knowledge to the seller that the goods are purchased with the intention of exporting. But there is nothing in the transaction from which springs a bond between the sale and the intended export linking them up as part of the same transaction There is no statutory obligation upon the purchaser to export the chests of tea purchased by him with the export rights. The export quota merely enables the purchaser to obtain export licence, which he may or may not obtain. There is nothing in law or in the contract between the parties, or even in the nature of the transaction which prohibits diversion of the goods for internal consumption. The sellers have no concern with the actual export of the goods, once the goods are sold. They have no control over the goods. There is therefore no direct connection between the sale and export of the goods which would make them parts of an integrated transaction of sale in the course of export."

47. The case, with respect, points out clearly what was lacking in the transaction. It is one way of laying down tests. If these incidents had not been missing the Court have surely held the sale to be in course of export.

48. It seems to me that this judgment is in effect overruling earlier decisions of this Court without saying so. The Calcutta High Court (Ray and Basu, JJ.) reviewed the Supreme Court cases exhaustively in *S. K. Roy v. Additional Member Board of Revenue*(18 STC 379.) and came to the conclusion that the mere fact that there is no contract between the seller and the foreign buyer does not conclusively establish that a transaction cannot be one 'in the course of export'. It may still be held to be such a transaction provided it is established that the contract between the seller and the third party 'occasions' the export. Basu, J., followed this decision in *Serajuddin and Company v. Commercial Tax Officer*(23 STC 258.).

49. On the facts of this case, the Coffee Board, the Sellers, have concern with the actual export of goods. They have made various provisions to see that the purchasers must export. Condition 26, quoted by the learned Chief Justice, clearly provides that the coffee shall be exported to stipulated or approved destinations and it shall not under any circumstances be diverted to another destination, sold or be disposed of or otherwise released in India. If the purchaser commits a default, apart from penalty, it is provided that unexported coffee may be seized. Thus the Coffee Board retains control over the goods. These conditions create a bond between the sale and eventual export. The possibility

that in a particular case a purchaser might commit a breach of contract or law and not export does not change the nature of the transaction.

50. I would accordingly allow the petition and declare that the sales held by the Coffee Board at the export auctions were in the course of export and exempt under Article 286(1)(b) of the Constitution, read with Section 5 of the Central Sales Tax Act, 1965 and quash the impugned assessments in so far as they assess such sales.

51. Order. - In accordance with the majority judgment, the petitions fail and are dismissed with costs.

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