Deputy Commissioner of Agricultural Income Tax and Sales Tax, Central Zone, Ernakulam

Vs

Kotak & Co.

Civil Appeal Nos. 1888 to 1909 of 1970

(K.S. Hegde, H.R. Khanna JJ)

03.04.1973

JUDGEMENT

HEGDE, J. -

1. In these appeals by certificate a common question of law arises for decision and that question is whether the sales effected by the respondent with which we are concerned in these cases occasioned import of Egyptian cotton. The Sales Tax Officer as well as the Appellate Assistant Commissioner, rejecting the contention of the assessee, came to the conclusion that the sales in question were intra-State sales. But, on appeal, the Sales Tax Tribunal held that the assessee's case fell within section 5(2) of the Central Sales Tax Act, 1956, read with article 286 of the Constitution. The High Court on revision affirmed the decision of the Tribunal. In support of its conclusion the High Court observed thus :

> "One of the conditions in the contracts is that the goods imported should not, under any circumstances, be diverted from its determined destination, i.e., the mills. Secondly, the relative shipping documents were issued by the foreign seller in the names of the respective mills and not in name of the assessee-firm. Again, the import licences issued to the mills authorise the mills to import the goods; and on the reverse of these licences is stated that the goods for the import of which the licences were granted should be the property of the licensees at the time of clearance through the customs. Still further, the letters of authorisation issued by the Government authorising the assessee-firm to import the cotton show that the assessee had to do it purely as an agent of the licensees and the imported goods would be the property of the licensees both at the time of the clearance through the customs and subsequent thereto."

2. The material facts of the case are fully set out in the judgment of the Appellate Tribunal and are as follows :

> "The facts of the case here are not in dispute and the only point that has to be considered here is as to whether the sales are in the course of import. The assessee-firm submitted before the Sales Tax Officer a detailed note in regard to the procedure in this matter. According to them, the firm is engaged in the supply of foreign cotton to textile mills among other places in South India on the basis of the import licences issued to the mills authorising import of foreign cotton by them. The details in regard

to the procedure contained in the note submitted by the firm are found page 37 onwards in the assessment files. It is stated that the firm supplies cotton to the mills on the basis of specific written contracts. Under the import control regulations, import licences are necessary for import of foreign cotton and they are issued to only actual users like the mills. The appellant-firm and the similar concerns are not given import licences. The mills make enquiries with the firm as regards the quality of cotton they required, the period during which they would be supplied, the price and other particulars and on getting these enquiries the appellant-firm contacts the foreign suppliers in Egypt, Sudan or America for ascertaining whether they could supply the cotton required. If the offers received are found acceptable, the appellate- firm enters into contract with the various mills concerned and immediately thereafter accept the offer made by the foreign suppliers. The supply of such foreign cotton to M/s. Mahalakshmi Textiles Mills Ltd., one of the mills to whom supply was made by the firm is detailed in the said note and it is stated that the supply made to the other mills also are under similar circumstances. According to the appellant, after receiving enquiries from the mills the firm contacts the American suppliers in New York. The foreign suppliers agreed to supply the quantity at the price agreed upon. Thereafter the firm entered into a contract with the mills date March 20, 1964, that the import licence issued in favour of the mills was made available to the firm for utilisation of the contract, that the letter of authority issued authorising the firm to import cotton was also issued, that the bill of lodging obtained by the foreign supplier on shipment of the goods was also obtained by the firm and the cotton is thus sent on to India. The contention of the appellant is that under the contract entered into with the mills the quantity of cotton agreed to be supplied to the mills is specified as also its quality and places from where it was to be imported. The price was fixed on c.i.f - Cochin terms. Payment was to be made by the mills to the firm against the document. The other conditions governing the contract are laid down on the reverse of the contract form. The most important clauses in the contract are that the contract was c.i.f. in nature, notwithstanding anything to the contrary mentioned in the contract, the price was subject to variation depending upon the import duty, freight rate, insurance premium and exchange rate, that it was specifically provided that the sale was subject to import licence to be provided by the mills, that the contract was irrevocable and that any difference between the parties had to be resolved through the arbitration machinery provided in the contract itself, that under the import control regulations, the importer is the mill, the authorisation and the import licence are issued to the mills only, that even under the letter of authority although the firm was authorised to import the goods the mills remained the importer and they were liable as importer, that the particulars necessary for inclusion in the bill of the lodging are furnished by the firm to the foreign suppliers before the shipment is effected, that after the goods were shipped at the foreign port the bill of lodging is forwarded along with the invoice and other connected documents of title through their bank to India, that these documents are received by the firm after due payment of the value to the agent bank, that after receiving this, document, information is given to the mills when they made the payment in accordance with the contract, that thereafter the goods were cleared and delivered to the mills by clearing agents at Cochin and forwarded to the mills."

3. In another portion of its order the Tribunal stated that the goods could not, in any circumstances, be diverted from its determined destination, once it is shipped from the foreign country.

4. The facts set out by the Tribunal, quoted above, are stated by the Tribunal as admitted facts. Hence we cannot go into the correctness of those facts. Dr. Sayed Mohammed, the learned counsel for the department, contended that the observation of the High Court that "one of the conditions in the contract is that the goods imported should not, in any circumstance, be diverted from its determined destination, i.e., the mills" is incorrect as there is no such term in the contract entered into between the respondents and the mills. This submission, though in a technical sense may be correct, has really no substance because as could be seen from the letter of authority issued by the Government that one of the conditions of the letter of authority was, to quote the words of that letter. "The person or firm in whose favour it has been issued, will act purely as an agent of the licensee and the goods imported will be the property of the licence-holder both at the time of clearance through the customs and subsequent thereto. The licence-holder will have to ensure that the goods on importation will be delivered to him and shall not be disposed of otherwise. The licensee shall not cause or permit the holder of the letter of authority to dispose of the goods."

5. This clause must be read as a part of the contract entered into between the respondents and the mills. Even if this clause had not been there, there would have been no difficulty in coming to the conclusion that the respondents were precluded from selling the goods to anybody other than the mills to whom the user's import licence had been granted. From the facts set out above, it is obvious that the respondents could not have sold the goods to anybody other than the licence-holders.

6. From the facts set out above it is clear that this case clearly falls within the rule laid down by this court in K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes (1). The appellant therein imported certain goods from Belgium in order to fulfil a contract with certain buyers in India. The question arose whether the sale effected in this country occasioned the import. This court came to the conclusion that the sale in question occasioned the import and as such it is exempt under sec. 5(2) of the Central Sales Tax Act, 1956, which says :

> "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."

7. Dr. Sayed Mohammed tried to distinguish Khosla's case (1) from the present case on the plea that in Khosla's case (1) there was only one sale whereas in the present case there were two sales. We are unable to accept this contention as correct. From the facts set out above, it is clear that the facts of this case are similar to those found in Khosla's case.

8. Reliance was placed by Dr. Sayed Mohammed on the decision of this Court in Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras (2). The facts of that case, briefly stated, are as follows : The Coffee Board auctioned certain quantities of coffee for the purpose of being sold in foreign countries. The purchasers of those lots were required to export that quantity of coffee to one or the other of the foreign countries mentioned in the sale notice. They were precluded from selling the same inside India. The question arose whether the purchases made by them occasioned export. This court came to the conclusion that the purchases in question were purchases for the purpose of export and the same did not occasion export. This court did not differ from the view taken in Khosla's case (1). On the other hand, it distinguished that decision. Hence the rule laid down in the Coffee Board's case (2) is inapplicable to the present case.

9. For the reasons mentioned above, these appeals fail and they are dismissed with costs. There are

four sets of respondents. Hence four hearing fees - one set of hearing fee for each set of respondents.

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