State of Punjab (now Haryana) and Another

Vs

M/s. New Rajasthan Mineral Syndicate

Civil Appeal Nos. 1883-1885 of 1970

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

29.04.1975

JUDGMENT

SARKARIA, J. -

1. The common question of law that arises in these appeals by the same assessee, is : Whether the sales in question made by the assessee were sales effected in the course of export of goods out of the territory of India and as such were exempt from imposition of sales-tax under Article 286(1)(b) of the Constitution.

2. The relevant assessment years are 1957-58, 1958-59 and 1959-1960. The assessee, the New Rajasthan Mineral Syndicate, is registered as a dealer under Punjab General Sales-tax Act, 1948. It is not registered under the Central Sales-tax Act, 1956, (for short, called Act). The assassee carries on the business of quarry contractors. In the relevant years, it held a licence from the then Punjab State to quarry iron ore at Nizampur, district Mohindergarh.

3. During the assessment years in question, the Sales-tax officer assessed the assessee-firm to tax under Section 9 of the Act on a turn-over of Rs. 3,18,757.06, Rs. 3,99,948.93 and Rs. 5 lakhs, respectively. The last assessment was made on the best-judgment basis.

4. To impugn these assessment orders, the assessee filed three writ petitions in the High Court of Punjab under Article 226 of the Constitution. It was averted in the petitions that the export of iron ore had been nationalised by the Central Government and no such export could be made by any private dealer like the assassee. The Government of India had Authorised the State Trading Corporation (to be hereinafter referred to as S.T.C.) as the sole authority for the purpose of exporting iron ore to other countries, including Japan. The S. T. C. had further nominated Sri Narayan & Co. (to be called for short, N. & Co.) to procure the iron ore for the purpose of export. N. & Co. accordingly entered into the agreements with the assassee firm for procuring the iron ore from the assessee. Excepting the quantity to be supplied, the basic terms of the agreements were the same. The material part of one such agreement, read as follows :

> Agreement made on this day, the 1st April, 1957, between Messrs. Shri Narayan Company, Mine owners, exporters and importers, 174, Mahatma Gandhi Road, Calcutta-7, hereinafter called Buyers and Messrs. Rajasthan Minerals Syndicate, Maonda, Rajasthan, hereinafter called Sellers, on the following terms and conditions :
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> # * * * *##

Quantity : 25,000 (twenty five thousand) tons of haematite Iron Ore of their Dhanota Dhancholi Mines Railway Station, Nizampur.

Specification * * * * : Price : Rs. 14/8/- plus actual Rly Freight from Nizampur to Kandla port, per ton of 2240 lbs. F.O.R. Kandla Port.

Delivery * * * * : Sampling and analysis : The sellers agree to stock the ore at the Railway siding or sidings and buyers have the right to reject any ore or cancel at any stage before the same is loaded into wagons, the Buyers have options to appoint any good analytical and consulting Chemist and their findings shall be binding on the both the buyers and sellers. payment : Rs. 25,000 (twenty five thousand) will be arranged for payment to the sellers after the acceptance of Re. 1 (Rupee one) per ton for the aggregate quantity of 25,000 tons for supply. The balance amount shall be paid to the sellers against actual weight of Iron Ore loaded by the sellers when Iron Ore is either weighed at Kandla port or by draft weight of the ship at the time of shipment to the foreign countries as per bargain by the Buyer or by the State Trading Corporation of India.

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3. The amount of Railway Freight shall be paid directly by the buyer at Kandla Port on the To Pay R/Rs. and the sellers shall be held responsible for shortage and excess weight if any.

4. The account shall be finally settled when the shipment is made and satisfactory report is received from the Foreign Buyers, or the State Trading Corporation approves the material for foreign countries where Iron is extracted out of it.

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5. Then there is a letter, dated September 2, 1957 from N. & Co. addressed to the assessee-firm. It reads as under :

> We are in receipt of your latter and noted your comments regarding the price schedule mentioned in your agreement referred to above, which runs as under :
>
> Rs. 14/8/- plus actual railway freight from Nizampur to Kandla Port per ton of 2240 lbs F.O.R Kandla Port. In this connection we have to clear our position as under :
>
> 1. It is clear to all and you, that the Government of India is dealing with foreign countries on Government Of India is dealing with foreign countries on Government level in the export of Iron Ore;
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> 2. The State trading corporation of India, New Delhi, is the business organisation on Government level and we work as the brokers :
>
> 3. Whatever term or terms they dictate to us we pass on to you
>
> 4. Your Iron Ore is to be shipped to Japan and you are solely responsible for the quantity and quality till the material is delivered to Japanese firms;
>
> 5. They test the material for extracting of iron, before they pass the pay orders;

> 6. As such we get approximately Re. 1 (Rupee one) per ton, which is in fact our brokerage, otherwise in fact you are the sellers and Japanese firms are the buyers, through State Trading Corporation. The following details will clear your doubt :
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> Selling Price to S.T.C. Rs. 47 per ton F.O.B.T. Kandla Port :
>
> Our approximate price per ton :
>
> 1. Cost of iron ore payable to you 14-8-0
>
> 2. Railway Freight Nizampur to Kandla port 24-8-0
>
> 3. Port charges, unloading or wagons, plot rent Agents Commission, Shipment .. 1-0-0
>
> 4. Our Brokerage and Misc. expenses .. 1-0-0

Hope you are satisfied that the price fixed is in your interest. Please continue railment without any hesitation.

6. Before the assessing authority, it was contended by the assessee that he was exporting the iron ore outside India and is not liable to tax under the Central Sales-tax Act, 1956. He also produced copies of the agreement and other letters in support of his contention.

It was further contended that no inter-State tax was leviable in view of the exemption in Section 5(1) of the Act and Article 286(1)(b) of the Constitution as the sale was in the course of export of goods outside the territory of India; the sale having occasioned the export. The assessing authority negatived the assessee's claim to the exemption, in these terms :

> The dealer has no privity of contract between the foreign buyers and plea taken by him that he exported the goods outside the State of Punjab holds no ground. It appears to me that the State Trading Corporation of India enters into contact with the foreign buyers for the suppliers of iron ore. In order to meet their obligations, the State Trading Corporation of India appoints certain procuring agents such as M/s. Shri Narayan & Co. as intermediaries. These intermediaries enter into contract with the quarries who extract iron, charge their commission and pass on this commission and pass on this iron ore to the State Trading Corporation. The agreement entered into the New Rajasthan Mineral Syndicate and M/s. Shri Narayan & Co. leaves no doubt that the former is the seller and the latter is the buyer. In view of the ambiguous position stipulated in the agreement, the dealer is sold iron ore in the course of inter-State trade and commerce. It is further evident that M/s. Rajasthan Mineral Syndicate are not the direct exporters of iron ore because they did not enter into contract between the foreign buyers.

The inter-State tax is therefore, leviable on the dealer viz., M/s. New Rajasthan Mineral Syndicate.

7. The learned Single Judge of the High Court allowed the writ petitions and quashed the assessment orders holding that

The petitioners was engaged in the export of the iron ore to Japan through the S.T.C. which, in turn,

for its facility, had appointed N. & Co. a broker,

and that " at no point of time the property in the goods passed either to N. & Co., or to S.T.C.".

8. The Letters Parent Bench, observed :

> These facts prove beyond controversy that the sale of iron ore by the assessee firm to the Japanese buyers through the State Trading Corporation and with aid of nominee of that Corporation leading to export of the iron ore from the country, and this export, is a single unbroken transaction or activity. Between the sale or supply of iron ore, its transportation to the port of shipment, its shipment at that port, and its export to Japan, there intervenes no independent transaction not directly connected with the export of iron ore from this country to Japan. No completed and independent transaction of sale occurs between the assessee-firm and any other party before the iron ore leaves the port of this country. The whole is one and the same transaction.... The intervention of the State Trading Corporation or its nominee, as Shree Narayan and company, is not as buyers of iron ore from the assessee-firm, but merely as intermediaries facilitating the export of iron ore by the assessee-firm so that in regard to foreign exchange earned by such export what earned is available to the nation without any questionable handling of same. This manner and method of export of iron ore through the State Trading corporation as an intermediary does not bring about any contractual relation between the assessee firm and the Corporation so that a conclusion can be drawn that there has first been a sale of iron ore by the assessee - firm to the Corporation and thereafter the latter has been responsible for the export of the same.

9. Article 286 of the Constitution, so far as it is material for our purpose, reads thus :

> 286. (1) No. law of 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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> (a) outside the State, or
>
> (b) in the course of 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)

10. Pursuant to clause (2) of Article 286, Parliament has enacted Section 5 in the Central Sales-Tax Act, 1956, sub-section (1) of which runs thus :

> A sale or purchase a 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 is effected by a transfer of documents of title to the goods have crossed the customs of India.

11. In the view of the tests prescribed by this sub-section, the points to be considered are : Did the sales in question made by the assessee occasion the export ? Were these sales effected by a transfer of documents of title to the goods after the goods had crossed the customs frontiers of India ? If the

answer to either of these two questions is in the affirmative, the sales would be deemed to have taken place in the course of export of the goods out of the territory of India. If neither of these tests is satisfied the sales would be sales in the course of inter-State trade and taxable as such.

12. Learned Counsel for the appellant has pressed these points into argument :

> (1) The sales in question neither occasioned the export nor were they effected by transfer of documents of title after the goods had crossed the customs frontiers of India. These sales, at best, could be said to be for export and not in the course of export;
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> (2) The sales in question did not occasion the export because :
>
> (a) the movement of the goods was the result of the agreement between the assessee and N. & Co., and was not caused by any agreement entered into by the assessee with the foreign buyer, and
>
> (b) there was no privity of contract between the assessee and the foreign buyers.
>
> (3) There is no room for two or more sales "in the course of export" within the contemplation of Article 256(1)(b). That constitutional provision is not attracted in the present case because there have been more than one sale, namely, one by the assessee in favour of N. & Co. /S.T.C. and another by the S.T.C. by the assessee in favour of the foreign buyer.

13. Reference has been made to this Court's decisions in Coffee Board, Banglore v. Joint Commercial Tax Officer, Madras ((1970) 3 SCR 147 : (1969) 3 SCC 349); Binani Bros. v. Union of India ((1974) 1 SCC 459 : 1974 SCC (Tax) 183); Dalmia Cement (Bharat) Ltd. v. Commissioner of Commercial Taxes, Banglore ((1974) 34 STC 553 (Karnataka)); Sales-tax Officer, jodhpur v. M/s. Shiv Ratan G. Mohatta ((1965) 3 SCR 71 : AIR 1966 SC 142 : (1965) 16 STC 599).

14. At the outset the learned Counsel tried to contend that the authenticity of the agreement and the letter, dated September 2, 1957, was doubtful and that the High Court was in error in basing its findings on these documents, but subsequently he did not press this contention.

15. Mr. Sharma, learned Counsel for the assessee, has advanced these contentions :

> (1) That the property in the goods, never passed to the buyer before goods had crossed the customs frontiers of India. It is stressed that the contract between the assessee and the nominee of the S.T.C. was an F.O.B.T. (free on board trim). The point sought to be made out is that the sales in question were effected by transfer of documents of title to the goods after the goods had crossed the customs frontiers of India, and therefore, they had taken place " in the course of export" within the meaning of sub-section 5(1). Reliance has been placed on this Court's decisions in National Tractors, Hubli v. Commissioner of Commercial Taxes, Banglore ((1971) 3 SCC 143) and B. K. Wadeyar, Sales-tax Officer, IV Divn., Licence Circle, Bombay v. M/s. Daulatram Rameshwarlal ((1960) 11 STC 757 : (1961) 1 SCR 924 : AIR 1961 SC 311).
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> (2) The sales in question had directly occasioned the movements of the goods for export. The whole process that is the despatch of the iron ore from the quarry till it was handed over

to the common carrier, i.e. the shipper, constituted one integrated transaction, N. & Co. and S.T.C. being merely conduits in this course of export. Reference has also been made to Serajuddin & Co. v. Commercial Tax Officer, Sealdha Charge ((1969) 23 STC 258); J. V. Gokal & Co. (Pvt.) Ltd. v. Asstt. Collector of Sales-tax (Inspection) ((1960) 11 STC 186 : AIR 1960 SC 595 : (1960) 2 SCR 852) and Ben Gorm Niligiri Plantations Co. v. Sales-tax Officer, Special Circle, Ernakulam ((1964) 15 STC 753 : (1964) 7 SCR 706 AIR 1964 SC 1752).

16. Mr. Sharma, furhter tried to distinguish the decision of this Court in Coffee Board's case (supra) on the ground that there, the auction sale by itself did not occasion the export. It is maintained that privity of contract beetween the indigenous seller and the foreign buyer is not an indespensable aspect to bring the sale within the ratio of Nilgiri Plantations' case (supra).

17. As factual premises for his contentions, Mr. Sharma relied on these facts which are apparent from the agreement beetween the assessee and N. & Co. and the said letter, dated September 2, 1957 :

(a) The iron ore was meant for export.

(b) The assessee was a licence from the Goverment authorised to quarry the ore.

(c) The Government of India had appointed S. T. C. as the only authority competent to export iron ore out of India.

(d) The goods were liable to be rejected even by the foreign importer and shortage or loss according to the agreement had to be recovered from the assessee.

(e) N. & Co. were merely brokers nominated by S.T.C. They were entiled only to brokerage.

(f) The bulk of the price was to be paid aginst actual weight of the ore sold by the assessee when either it was weighed at Kandla or weighed on ship.

(g) The documents of title of the goods were prepared after the ore was tested at the port and thereafter the price was colledcted by N & Co. from S.T.C. and passed on to the assessee.

18. Towards the fag end of the arguments, it was brought to our notice that these very points which are in use before us, were pending consideration by the Constitution Bench of this Court in Civil Appeals Nos. 697-703 of 1973 (Mohd. Searjuddin v. State of Orissa). Judgment in Civil Appeals Nos. 697-703 of 1973 has been delivered. (Reported at (1975) 2 SCC 47 : 1975 SCC (Tax) 269) The facts of that case were very similar, if not on all fours, with the one before us. There, the assessee had entered into two contracts with S.T.C. for the suplly of mineral ore (chrome concentrates). The S.T.C. entered into contract with the foreign buyers for the sale of identical goods purchased by it from the assessee. Counscil for the assessee, in this Court, contended as follows : [SCC (TAX) p. 274 para 5]

The contract in each case bertween the appellant and Corporation is inextricably bound up with the export. The sale between the appellant and the Corporation and the export by the Corporation to foreign buyer constituted one integrated transaction. Second the Corporation has been interposed by

the statue for a limited purpose between the appellant and the foreign buyer. Export cannot be made except by the corporation. The inextricable link is not broken by the Corporation. The Corporation could not have diverted the goods to a buyer in India without violating export and import control order. Therefore, the sale is in the course of export. Third, the conrtract between the appellant and the Corporation being on F.O.B. basis, the property in goods passed only on shipment when the goods are in the stream of export. There is thus no sale in the texable territory. Fourth, even if it is held that the appellant did not have any contract with the foreign buyer and that privity is essential the rigid rule of privity of conrtract should be relexed in the consideration of equity and justice and a realistic approach should be adopted. The nature entering into the contracts through the channel of the Corporation raises in reality a presumption of the Corporation being an agent of the appellant in the integrated transaction.

19. The clauses of the agreement executed between the assessee and the S.T.C. were similar to the terms of the agreement between the assessee and N. & Co. in the present case. The price was expressed in U.S. Dollars per long ton F.O.B. ocean liner vessel, Calcutta. Under that agreement sampling and moistrue determination had to be made at the time of unloading at the port of discharge by Far East Superintendence Company or U.S. Consultants and their certificate was to be final, binding on both the buyer and the seller. Final weights as ascertained by Far East Suprintendence Co. Ltd. or U.S. Consultants at the port of discharge was to be final and binding on both parties. The terms as to payment were these : [SCC p. 53 : SCC (TAX) p. 275 para 7)

90 per cent against shipping documents as described in buyer corresponding sale contract. Buyers will assign the relevant foreign letter of credit which is to be opened in their name by their foreign buyer. Messrs. Associated Metals and Minerals Corporation on receipt from sellers of a bank draft for difference between buyers F.O.B. purchase value and F.O.B. sale value, i.e. $ 1.00 (Rs. 4.75) per try long ton for a bank gurantee from a scheduled bank guranteeing that sellers will pay buyers F.O.B. purchase value as shown in the contract and buyers F.O.B. sale value as shown in the foreign letter of credit and the buyers will endorse the bills of lading and deliver the same to sellers to negotiate against the abovementioned letter of credit. Balance after destinational weight and analysis on the basis of documents mentioned in the Corporation's corresponding sale contract with the buyers. If the balance 10 per cent is insufficient to cover shortfall in weight and analysis at destination or any penalty imposed by the Corporation's foreign buyer the additional amount shall be payble by sellers to buyers on demand.

20. There were two (sic three) other clauses of contract : [SCC p. 53 : SCC (TAX) p. 275 para 8]

> (i) Unless otherwise agreed upon, the sellers agree that the contract shall be deemed as cancelled if for any reasons whatsoever M/s. Associated Metals and Minerals Corporation, cancel their corresponding purchase contract with the buyers for the supply of the chrome ore.
>
> (ii) The terms and conditions of the buyers corresponding sale contracts with M/s. Associated Metals and Minerals Corporation will apply to this contract also extent specified in this purchase contract.
>
> (iii) A true copy of buyers sale contract with M/s. Associated Metals and Minerals Corporation is attached

21. It was further argued on behalf of the assessee that the commodity could not be exported directly

by him in view of the restrictions imposed by the law; that he entered into negotiations with the foreign purchasers and settled all the conditions of the contract; the Corporation thereafter entered into a F. O.B. contract with the assessee and with the foreign buyers on identical terms; that the Corporation was interested only in the commission of one dollar per long ton from the assessee; that all the necessary steps including payment of customs duty for the shipment and export had been taken by the assessee and that the contract between the assessee and the Corporation being on F.O.B. basis, the property in the goods passed only on shipment when the goods were in the course of export.

22. Almost all the relevant rulings which have been cited before us were notices in that case. Following the of the Coffee Board's case (supra) and Binani Brothers' case (supra), the learned Chief Justice who delivered the opinion of the majority, negatived the contentions of the assessee in these terms : [SCC p. 60 : SCC (TAX) p. 282, paras 25-26]

The coffee Board case (supra) as well as the case of Binani Brothers (supra) clearly indicates that the distinction between the sales for export and sales in the course of export is never to be lost sight of. The features which point with unerring accuracy to the contract between the appellant and the Corporation and the foreign buyer on the other as two separate and independent contracts of sale within the ruling in the Coffee Board case (supra) and the Binani Brothers case, are these. The Corporation entered on the scene and entered into a direct contract with the foreign buyer to export the goods. The Corporation alone agreed to sell the goods to the foreign buyer. The Corporation was the exporter of the goods. There was no privity of contract between the appellant and the foreign buyer. The privity of contract is between the Corporation and the foreign buyer. The immediate cause of the movement of goods and export was the contract between the foreign buyer who was the importer and the Corporation who was the exporter and shipper of the goods. All relevant documents were in the name of the Corporation whose contract of sale was the occasion of the export. The expression "occasions" in section 5 of the Act means the immediate and direct cause. But for the contract between the Corporation and the foreign buyer, There was no occasion for export. Therefore, the export was occasioned by the contract of sale between the Corporation and the foreign buyer and not by the contract of sale between the Corporation and the appellant.

The appellant sold the goods directly to the Corporation. The circumstance that the appellant did so to facilitate the performance of the contract between the Corporation and the foreign buyer on terms which were similar did not make the contract between the appellant and the Corporation the immediate cause of the export. The Corporation in regard to its contract with the foreign buyer entered into a contract with the appellant to procure the goods. Such contracts for procurement of goods for export are described in commercial parlance as back to back contracts. In export trade it is not unnatural to find a string of contracts for export of goods. It is only the contract which occasions the export of goods which will be entitled to exemption. The appellant was under no contractual obligation to the foreign buyer either directly or indirectly. The fights of the appellant were against the Corporation. Similarly the obligations of the appellant were to the Corporation. The foreign buyer could not claim any right against the appellant nor did the appellant have any obligation to the foreign buyer. All acts done by the appellant were in performance of the appellant's obligation under the contract with the Corporation and not in performance of the obligation of the Corporation to the foreign buyer.

23. With regard to the contention that the contracts between the assessee and the Corporation were F. O. B. contracts, the learned Chief Justice said : [SCC pp. 63-64 : SCC (TAX) pp. 285-286, paras 34-36]

In the present case, the mention of F. O. B. price in the contracts between the appellant and the Corporation does not render the contracts F.O.B. contracts with the foreign buyer. The corporation entered into independent contracts with the foreign buyer on F.O.B. basis. The appellants were required under the contracts between the appellant and the Corporation to bring the goods to the ship named by the Corporation. The shipment of the goods by the Corporation to the foreign buyer is the F.O.B. contract to which the appellants are not the parties. The course of export in the export stream is possible in direct contracts between the Indian seller and the foreign buyer. The Corporation purchased goods from the appellants in order to fulfill the contracts with the foreign buyer. The only scope of the deeming provision in the Act is to find out the contract of sale which is the direct cause or which occasions the export.

The directions given by the Corporation to the appellant to place the goods on board the ship are pursuant to the contract of sale between the appellant and the Corporation. These directions are not in the course of export, because the export sale is an independent one between the Corporation and the foreign buyer. The taking of the goods from the appellant's place to the ship is completely separate from the transit pursuant to the export sale.

The fact that the exports can be made only through the State Trading Corporation does not have the effect of making the appellants the exporters where there is direct contract between the Corporation and the foreign buyer.

24. The above observations, reproduced in extenso, furnish a complete and effective answer to all the arguments advanced on behalf of the assessee, in the instant case, to support the judgment of the High Court. Indeed, the factual premises on which Mr. Sharma's contentions are based, are weaker and less favourable to the assessee than those in Serajuddin's case (supra). Here there is no direct agreement between the assessee and the S.T.C. The argument is between the assessee and N. & Co. Here is thus room for argument that the export sale made by the S.T.C. to the foreign buyer was preceded by two separate sales, namely, the first made by the assessee to N. & Co. and the second made by N. & Co. to S.T.C. Further, in the case before us, the assessee was entitled to payment even before shipment, if the goods were weighed and approved by S.T.C. at Kandla port.

25. Be that as it may, the basic features of the case in hand are the same as those in Serajuddin's case (supra). Respectfully following the ratio and reasoning of this Court in the above-quoted observations in Serajuddin's case - by which we are bound - we accept the contentions canvassed on behalf of the appellant and negative those advanced by the assessee.

26. In the result, we allow these appeals, set aside the judgment of the High Court, and dismiss the writ petitions filed by the assessee. We further direct that in the circumstances of the case, the parties do bear their own costs.

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