

PETITIONER:
MINERALS AND METALS TRADING CORPORATION OF INDIA LTD.

Vs.

RESPONDENT:
SALES TAX OFFICER & ORS.

DATE OF JUDGMENT: 25/09/1998

BENCH:
S.P.BHARUCHA. & V.N.KHARE.

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

The following Judgment of the Court was delivered:
The appeal impugns the correctness of a judgment of a Division Bench of the High court of Orissa dismissing the writ petitions filed by the appellant.
The appellant is a Government of India undertaking. It functions as a canalising agent for the purpose of import and export of minerals and metals. It had, for this purpose, issued guidelines to actual users in the matter of applications for the import of iron and steel items to be canalised through it. Thereby the actual user was informed that the formal purchase order on the foreign exporter would be released by the appellant after the actual user had made financial arrangements to cover the purchase. The actual user had the option to open either a domestic letter of credit in favour of the appellant or a direct letter of credit in favour of the exporter, but the facility of opening a direct letter of credit was to be given only on the merits of the case and provided an undertaking in the stated proforma was given. In other cases a back-to-back letter of credit favouring the appellant had to be established. On 31st March, 1991, the Steel Authority of India Limited (hereinafter referred to as 'SAIL') requested the appellant to register the import of 15,000 MT of tin mill black plate (TMBP) coils. An application was enclosed. The applicants stated that the said coils were required for production by them of electrolytic tin plates. The said coils would be utilised in their factory for their purposes and no portion thereof would be sold to or be permitted to be used by any other party or for any other purpose. On 14th July, 1991, SAIL opened a letter of credit directly in favour of the exporter, M/s. Samsung Co. Ltd., Seoul, South Korea, in the sum of US \$ 1,895,475.00. The consignee therein was shown as SAIL. On 2nd August, 1991, the appellant placed a purchase order with the exporter for on behalf of SAIL. On 16th August, 1991, the appellant wrote to SAIL enclosing a copy of its purchase order. The letter stated:

"We shall arrange delivery of the material to you on 'high-seas' basis by endorsement and transfer of

shipping documents in your favour after the documents have been paid for by your banker against L/C established by you."

SAIL was requested to make arrangements for clearing the cargo, including arrangements for clearance thereof from customs. The letter stated that the responsibility for "payment of Import duties, Port charges and other expenses subsequent to sale on 'high seas' also will be to your account." On 23rd October, 1991, the appellant sent to SAIL its invoice, adjusting the amount that had already been paid by SAIL through its bankers. On 28th October, 1991, the appellant wrote to SAIL stating that it had decided to make a high seas sale of the said coils to SAIL. Accordingly, documents with due endorsement thereon were sent to SAIL to get the said coils cleared. The documents that were enclosed included the original bill of lading dated 30th September, 1991, for the said coils, duly endorsed in favour of SAIL. On the same day the appellant wrote to Assistant Collector of Customs, Paradeep Port, Cuttack, where the consignment of the said coils would arrive on the vessel M.V. State of Tripura. The letter stated that the said coils had been imported by the appellant and had been sold to SAIL on high seas basis and SAIL would process the bill of entry and the pay the customs duty. The vessel arrived at Paradeep Port on 11th November, 1991 and breathed on 30th November, 1991. On 18th November, 1991, the bill of entry in respect of the said coils was submitted and processed by SAIL.

On 31st December, 1994, the Sales Tax Officer levied sales tax on the aforesaid sale. He rejected the appellants case that no sales tax was payable, this being a sale in the course of import covered by Section 5(2) of the Central Sales Tax Act, 1956. He held that there had been two sales, one between the exporter and the appellant and the other between the appellant and SAIL and that the sale to SAIL had not occasioned the import.

In regard to the sale made by the appellant to Paradeep Phosphates Ltd., the facts are similar. The appellant filed writ petitions in the High Court of Orissa challenging the levy of sales tax on the aforesaid sales. The High Court noted the argument that the aforesaid sales on high seas basis had been effected prior to the imported goods "crossing the customs frontier of India", which expression was defined in Section 2 (ab) of the Central Sales Tax Act by an amendment which had taken place prior to the aforesaid sales. The High Court, however, relying upon the judgment of the Karnataka High Court in the case of cashew Corporation of India vs. State of Karnataka, (1986) 63 STC 90, held that the appellant was liable to sales tax and dismissed the writ petitions.

By reason of the provisions of Article 286(1)(b) no law of a State shall impose, or authorised the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of the territory of India. Section 5 of the Central Sales Tax Act deals with this: "When is sale or purchase of goods said to take place in the course of import or export." Sub-section (1) thereof deals with exports and sub-section (2) with imports. Sub-section (2) reads thus:

"A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before

the goods have crossed the customs frontiers of India.

The definition in Section 2 (ab) of the phrase "crossing the customs frontiers of India" reads thus: "crossing the customs frontiers of India means crossing the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities." It was inserted by an amendment in 1976. The Objects and reasons of the amendment were that the phrase had been interpreted to mean, coterminous with the extent of the territorial waters. This had given rise to practical difficulties as it was difficult to determine whether, at the time of the sale or purchase, the goods had entered or crossed the territorial waters. The actual checking of the goods took place in the customs station and not at the edge of the territorial waters. It was, therefore, necessary to so define the expression. A customs station has, by reason of the Explanation to Section 2 (ab), the same meaning as in the Customs Act, 1962, and that is: "any customs port, customs airport or land customs station". A customs port is any port appointed under Clause (a) of Section 7 of the Customs Act to be a customs port. (That Paradeep Port is a customs port is not in dispute.)

Section 5, sub-section 2 has two parts. 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 if the sale or purchase either (i) occasions such import or (ii) it is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India, that is to say, before the goods have crossed the limits of the area of the customs station in which they are kept before clearance by the customs authorities.

The judgment of a Constitution Bench of this Court in J.V. Gokal & Co. (Private) Ltd. vs. The Assistant Collector of Sales Tax (Inspection) & Ors. 1960(2) SCR 852, has set out the legal position of import sales thus:

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

The facts afforested, based upon documents, show that the bill of lading had been endorsed in favour of SAIL while the consignment of the said coils was still upon the high seas. The sale, therefore, was a sale in the course of the import of the said coils into the territory of India; it was effected by transfer of the documents to the said coils before they had crossed the limits of the customs station at

Paradeep Port. The position would be the same in respect of the goods sold to Paradeep Phosphates Ltd., The High Court noticed the argument based on the latter part of Section 5 but did not address it. It relied upon the judgment of the Karnataka High Court in the case of Cashew Corporation of India. That was a case where notice was taken of the amendment introducing Section 2 (ab) into the Central Sales Tax Act in 1976. It was held to be prospective in operation and, therefore, of no assistance in constructing the meaning of the expression 'customs frontier of India' prior thereto. The High Court failed to notice that in the case in hand the aforesaid sales had taken place long after the introduction of Section 2 (ab) and, therefore, the question whether they were sales in the course of import had to be judged on the basis of its provisions.

The aforesaid sales being covered by the provisions of the latter part of Section 5(2) read with Section 2(ab) of Central Sales Tax Act, they are sales in the course of import and not liable to sales tax.

It is now not necessary to consider the argument that, in any event the provisions of the earlier part of Section 5(2) apply.

The appeals are allowed. The judgment under appeal is set aside. The writ petitions filed by the appellants in the High Court are made absolute.

No order as to costs.