Madras Marine & Co vs State Of Madras on 16 July, 1986

Equivalent citations: 1986 AIR 1760, 1986 SCR (3) 236, AIR 1986 SUPREME COURT 1760, 1986 TAX. L. R. 2403, 1986 STI 63, (1992) 61 ELT 161, 1986 (18) STL 65, 1986 SCC (TAX) 686, 1986 UPTC 1119, (1986) 63 STC 169, 1986 (3) SCC 552, (1987) 11 ECC 4, (1986) 9 ECR 165

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:
MADRAS MARINE & CO.

Vs.

RESPONDENT:
STATE OF MADRAS

DATE OF JUDGMENT16/07/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1760 1986 SCR (3) 236
1986 SCC (3) 552 1986 SCALE (2)126

ACT:
Tamil Nadu General Sales Tax Act, 1959-Goods-Segregated in bonded ware houses-Sale of goods for consumption on board foreign going ships-Liability for sales tax.
Central Sales Tax Act 1956, s. 4(2) (a) and (b)-Goods-Segregated in bonded ware houses for delivery to foreign going vessels-Sale of such goods for consumption on board the ships-Whether case of export of goods-Whether liable to levy of State Sales Tax.
Constitution of India, Art. 286(1)(b)-Concept of export-Definition of.

HEADNOTE:
The appellant-company in Civil Appeal No.642 of 1974 was doing the business as ship chandler. It imported the

goods from foreign countries and after receipt of the goods, kept them in a bonded warehouse under the relevant provisions of the Customs Act, 1962. The ware-house was under dual control of the Customs Department and the importers like the appellant so that it could not be opened by one without the presence of the other. On receipt of order from the Captain of the Ship requiring ship stores, the appellant supplied the goods on board after observing certain formalities imposed by the Customs Act, the rules and regulations made thereunder.

For the Assessment year 1964-65 a question arose whether Rs.3,51,438.08 which was the taxable turnover, determined by the assessing authority, was subject to the tax under the Tamil Nadu General Sales Tax Act, 1959. The appellant objected to the assessment on such turnover on the ground that the goods relating to such turnover were imported from abroad, stored in the customs ware house and were not brought to the country across the customs frontiers. The Sales Tax Officer assessed the turnover and the Appellate Assistant Commissioner confirmed the assessment on the basis that sales were effected
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within the State of Tamil Nadu. However, the Tribunal, in appeal by the appellant, held that the sales did not take place within the State of Tamil Nadu since the import of goods in question had not become complete and as the goods were sold to the foreign going vessels, the sales in question could not be deemed to be within the State of Madras. On revision, the High Court relying on the decision of the Supreme Court in the State of Madras v. Davar and Co., 24 STC 481, held that the sales took place in the State of Madras and assessment to tax was valid. The facts in all the other connected appeals, writ petitions and the special leave petitions being identical, a similar question of law also arose in them.

In appeal to the Supreme Court by the appellant/petitioners, it was contended on their behalf: (i) that the property in the goods, did not pass in the territory of Tamil Nadu and the sales were therefore, in the course of export because goods were to be on board the ship and were exported outside the country and could not be consumed before they reached the high seas; (ii) that the sale of goods took place in the territorial water of India and not within the State of Tamil Nadu; (iii) that the legislative competence of the State of Tamil Nadu as regards levying of the sales-tax was confined to the territories of the State as specified in item No. 7 of the First Schedule to the Constitution. That legislative competence did not extend to any territorial waters simply because these were abutting the land mass of the State of Tamil Nadu; (iv) that the Sovereignty over the limits of territorial waters extended and always extended to the entire territorial waters of India. The limits and extent of the said

territorial waters had not been altered by any notification of the Central Government. The territorial waters extended to a distance of 12 nautical miles from the sea shore adjacent to the land mass of the State; and (v) that there was no definition at all of "Customs Frontiers" in the Central Sales Tax Act, 1956. The definition inserted in the Act in s. 2(ab) by the Amending Act 103 of 1976 must be read as declaratory or explanatory and no questions of prospective operations would arise. On the other hand, it was argued on behalf of the respondent-State that the appellant's godowns and bonded ware-houses were within the State of Tamil Nadu. When orders were received, the appellants/petitioners supplied the required quantity from the stock either in the godown or in the bonded ware-houses and delivered these or set these apart in fulfilment of the orders placed by the concerned officer of the foreign bond ship and that at that time only appropriation was made towards the contract of sale and such appropriation took place within the State of Tamil Nadu. It was, therefore, on such ap-

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propriation that the sale took place; and (ii) that it was not correct to say that the transactions of sale were completed only when the masters of the vessels acknowledged delivery of the goods on board the vessels.

Dismissing the Appeals and the Petitions,

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Held: 1.1 The concept of export in Article 286(1)(b) of the Constitution postulates the existence of two termini as those between which the goods were intended to move or between which they were intended to be transported and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port. Goods might be consumed within the meaning of the Explanation to Article 286(1) (a) either by destruction or by way of use depending on the nature of the goods. Therefore, the sales were not sales "in the course of export" within the meaning of Article 286(1) (b) and were not exempt under that Article but they fell within the Explanation to Article 286(1) (a). [247C-D; G]

1.2 Mere movement of goods out of the country following a sale would not render the sale, one in the course of export within Article 286(1) (b) of the Constitution of India. Before a sale can be said to be a sale in the course of export, the existence of two termini between which the goods are intended to move or to be transported is necessary. [249F-G]

In the instant case the appropriation of goods took place in the State of Tamil Nadu when the goods were segregated in the bonded ware-house to be delivered to the foreign going vessels. Therefore, under sub-s. (2), sub-cl. (a) and (b) of s. 4 of the Central Sales Tax Act, 1956, the sale of goods in question shall be deemed to have taken

place inside the State because the contract of sale of ascertained goods was made within the territory of Tamil Nadu and furthermore in case of unascertained goods approrpriation had taken palce in that State in terms of cl. (b) of sub-s. (2) of s. 4 of the Central Sales Tax Act, 1956. There is no question of sale taking place in course of export or import under s. 5. From that point of view, the amendment introduced by Act 103 of 1976 by incorporating in cl. (ab) of s. 2 of the Central Sales Tax Act, 1956 does not affect the position. It was not a case of export as there was no destination for the goods to a foreign country. The sale was for the purpose of consumption on board the ship. It was not as if only on delivery on board, the vessel that the sale took place. The mere fact that shipping bill was prepared for sending it for custom formalities which were designed to effectively control smuggling activities could not

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determine the nature of the transaction for the purpose of sales tax nor does the circumstances that delivery was to the captain on board the ship within the territorial waters make it a sale outside the State of Tamil Nadu.[252E-H; 247A-B]

Burmah Shell Oil Storage and Distributing Co. of India Ltd., and Anr. v. Commercial Tax Officer & Ors., 11 STC 764; Deputy Commissioner of Commercial Taxes v. Caltex India Ltd., Madras, 13 STC 163; The State of Madras v. Davar & Co., 24 STC 481; Fairmacs Trading Co. v. The State of Tamil Nadu, 41 STC 157; Tata Iron and Steel Co. Ltd. Bombay v. S.R. Sarkar & Ors., 11 STC 655; and The State of Kerala & Ors. v. The Cochin Coal Co., Ltd., 12 STC 1 relied upon.

Fairmacs Trading Co. v. The State of Tamil Nadu, 41 STC 157 and Fairmacs Trading Co. v. The State of Andhra Pradesh, 36 STC 260 approved.

3. Customs barrier does not set a terminal limit to the territory of the State for sales tax purposes. Sale, therefore, beyond the customs barrier is still a sale within the State. The amendment introduced in s.2 by the Act 103 of 1976 does not affect the position because the custom station is within the State of Tamil Nadu. [253A-B]

4. In the facts and circumstances of the case, it is not necessary to express any opinion on the arguments whether introduction of cl.(ab) of s.2 of the Central Sales Tax Act by Act 103 of 1976 is prospective or not. [253C-D]

Deputy Commissioner of Commercial Taxes v. Caltx India Ltd., Madras, 13 STC 163; Tata Iron and Steel Co. Ltd. Bombay v. S.R. Sarkar & Ors., 11 STC 655; Furby v. Hoey [1947] 1 All England Report 236; The Central Bank of India v. Their Workmen [1960] 1 SCR 200; and Chanan Singh & Anr. v. Jai Kaur, [1970] 1 SCR 803 at 804-807 referred to.

R.v. Kent Justices Ex Parte LYE & Ors., [1967] 1 All England Report 560 at 564-65 held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 642 (NT) of 1974. etc. From the Judgment and Order dated 25.4.1973 of the Madras High Court in T.C. No. 243 of 1969.

S.T. Desai, Inbarajan and A.T.M. Sampath for the Appellant.

M.M. Abdul Khader, V.C. Nagarajan and A.V. Rangam for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. We are concerned with Civil Appeal No.642(NT) of 1974, Civil Appeal Nos. 1798-1800 of 1981 and the Writ Petition No. 196 of 1974 along with Special Leave Petitions Nos. 12943-44 of 1985. All these will have to be disposed of on the main question stated hereinafter and these raise a common question, facts in all these matters are more or less identical except that certain assumptions of facts have been made in Special Leave Petitions Nos. 12943-44 of 1985 because in these there were no investigation of facts by the revenue authorities.

The question involved in all these, is, whether the sales in question were within the State of Tamil Nadu and as such subject to tax under the Tamil Nadu General Sales Tax Act, 1959, hereinafter called the 'Act'.

The dealers who are the petitioners in the writ petitions and are the appellants in the appeals and the petitioners in Special Leave Petitions are dealers in stores and were doing business as ship chandlers in the relevant years. The appellants/petitioners used to supply the goods imported as stores to foreign going vessels and other diplomatic personnel. The appellants/petitioners imported these goods from foreign countries. At the time of import they complied with the statutory provisions of the Customs Act and other enactments relating to import of goods. They had given an undertaking to the concerned authorities to supply the imported goods to foreign going vessels and/or to diplomatic personnel and to receive the goods in custom bonded ware-house. Under section 59 of the Customs Act, 1962 the importer of any dutiable goods which had been entered for warehousing and assessed to duty under section 17 or section 18 should execute a bond binding himself for a sum equal to twice the amount of the duty assessed on such goods

(a) to observe all the provisions of the Act and the rules

(b) to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under the Act, and (c) to discharge all penalties incurred for violation of the provisions of the Customs Act and relevant statutes. For the above purpose, the Assistant Collector of Customs might permit an importer to enter into a general bond for such amount as the Assistant Collector of Customs might approve in respect of the warehousing of goods to be imported by him within a specified period.

Sections 60, 61 and 62 of the Customs Act, 1962 provide for ancillary purposes. In substance these provide for control by the proper officer of the goods warehoused. It is not necessary for the determination of the issue involved to deal with other relevant provision of the Customs Act, 1962.

The appellants/petitioners after receipt of the goods kept these in a bonded ware-house under the relevant provisions. The ware-house was under dual control of the Customs Department and the importers like the appellants/petitioners so that it could not be opened by one without the presence of the other. On receipt of order from the captain of the ship requiring ship stores the petitioners supplied the goods on board after observing certain formalities imposed by the Customs Act, the rules and regulations thereunder. These were the broad features of the way the appellants/petitioners operated. We will, however, deal with the facts as found in Civil Appeal No. 642 of 1974.

The case of the appellants/petitioners was that all these goods were intended for re-export only and were at all relevant time in a bonded warehouse. The delivery was on board the ship to foreign going ship. The goods were consumed only on the high seas. The property in the goods had passed only after the goods had crossed the custom frontiers. The contention was that the property in the goods did not pass in the territory of Tamil Nadu. The sales were therefore (i) in the course of export because goods were to be on board the ship and were exported outside the country and could not be consumed before they reached the high seas;

(ii) the sale of the goods took place in the territorial waters of India and not within the State of Tamil Nadu, "Indian Customs Water" is defined in the Customs Act under section 2(28) as follows:

> "Indian customs waters" means the waters extending into the sea up to the limit of continguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river."

Under article 297 of the Constitution, all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and are held for the purposes of the Union.

It is the contention of the appellants/petitioners that sales there-fore took place outside the State as territorial waters vested in the Union Government and not in the State of Tamil Nadu. The turnover in question was not exigible according to the appellant/petitioners, to sales tax under the provisions of the Act. It is this plea which the petitioners/appellants sought to raise as an additional ground before the High Court in the appeal out of which Civil Appeal No. 642 of 1974 arose. But it was not permitted by the High Court.

The Taxing Authorities' plea on the other hand was that the various goods sold to foreign bound vessels were within the State of Tamil Nadu when the concerned officer of the foreign bond vessels placed indents for the supply of goods. Further, the appellants' godowns and bonded warehouses were within the State of Tamil Nadu. When orders were received the appellants/petitioners supplied

the required quantity from the stock either in the godown or in the bonded warehouses and delivered these or set these apart in fulfilment of the orders placed by the concerned officer of the foreign bond ship. It is the case of the respondents that at that time only appropriation was made towards the contract of sale and such appropriation took place within the State of Tamil Nadu. It is the further case of the respondents that it was on such appropriation that the sale took place. In the premises it was submitted on behalf of the respondents that the contention of the appellants/petitioners, that the transactions of sale were completed only when the masters of the vessels acknowledged delivery of the goods on board the vessels was not correct. It was further urged that it was not correct to contend that the appellants/petitioners should be treated as actual exporters. The place of delivery would not alter appropriation which had already taken place.

In support of this contention, reliance was placed on the decision of this Court in the case of Burmah Shell Oil Storage and Distributing Co. of India Ltd., and Another v. Commerical Tax Officer and Others., 11 S.T.C. 764.

It is necessary in this background, to examine the facts involved in Civil Appeal No. 642 of 1974. There, the main question involved was whether Rs.3,51,438.08 which was the taxable turnover determined by the assessing authority was subject to the tax under the said Act. The appellant objected to the assessment on such turnover on the ground that the goods relating to such turnover were imported from abroad, stored in the customs warehouse and were not brought to the country across the customs frontiers. The lower appellate authority allowed some deduction in the determination of the taxable turnover in respect of sales to local diplomatic corps and determined the figure at Rs.3,51,045.68. The Appellate Assistant Commissioner confirmed the assessment on the basis that sales were effected within the State of Tamil Nadu and as such dismissed the appeal. There was an appeal before the Tribunal. The Appellate Assistant Commissioner relied on the decision of the Madras High Court in the case of Deputy Commissioner of Commerical Taxes v. Caltex India Ltd Madras, 13 S.T.C. 163. The Tribunal accepted the contentions of the dealer and held that the sales did not take place within the State of Tamil Nadu. It was pointed out that there was significant change in the Customs Act, 1962 from Sea Customs Act, 1978, and the Tribunal held that import of goods in question had not become complete and as the goods were sold to the ocean going vessels, the sales in question could not be deemed to be within the State of Madras. On revision the High Court relying on the decision of this Court in The State of Madras v. Davar and Co., 24 S.T.C. 481 held that the sales took place in the State of Madras and assessment to tax was valid. Civil Appeal No. 642 of 1974 arises from the said decision.

Civil Appeals Nos. 1798-1800 of 1981 followed the said decision and are based on the said reasons. These appeals are for the assessment years 1968-69 and 1970-71. It may be mentioned that Civil Appeal No. 642 of 1974 was concerned with the assessment to tax for the year 1964-65.

The writ petition challenges the assessment made for the assessment year 1972-73 where the taxing authorities and the appellate authorities under the Act followed the said decision which is under appeal in Civil Appeal No. 642 of 1974. Special Leave Petition Nos. 12943-44 of 1985 challenge the assessments for 1978-79 and 1979-80 where the High Court took the view upholding the revenue's contention that sales were taxable relying on the decision in the case of Madras High Court of

Fairmacs Trading Company v. The State of Tamil Nadu, 141 S.T.C. 157.

As mentioned hereinbefore, before the High Court in Civil Appeal No. 642 of 1974, the grounds urged in the writ petition were sought to be urged as additional grounds but were not permitted as these had not been taken before the taxing authorities.

On behalf of the appellants/petitioners, Mr. S.T. Desai, learned counsel, submitted that the legislative competence of the State of Tamil Nadu as regards levying of the sales-tax was confined to the territories of the State as specified in item No. 7 of the First Schedule to the Constitution. That legislative competence did not extend to any territorial waters simply because these were abutting the land mass of the State of Tamil Nadu. It was further urged that the Sovereignty over the limits of territorial waters extended and always extended to the entire territorial waters of India. The limits and extent of the said territorial waters had not been altered by any notification of the Central Government. The territorial waters extended to a distance of 12 nautical miles from the sea shore adjacent to the land mass of the State. See in this connection The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

It was further urged that there was no definition at all of 'Customs Frontiers' in the Central Sales Tax Act, 1956. The definition inserted in the Act in section 2(ab) by the Amending Act 103 of 1976 must be read as declaratory or explanatory and no questions of prospective operations would arise according to counsel for the appellants/petitioners. He submitted that that definition would also be applicable to sales prior to 1976.

This Court dealt with the history of the definition now appearing in the relevant sections of the Central Sales Tax Act in the case of Tata Iron and Steel Co. Limited, Bombay v. S.R. Sarkar and Others, 11 S.T.C. 655. In that case this Court was dealing with the relevant provisions in a petition under Artical 32 of the Constitution challenging the demand of the Sales Tax Officer of State of West Bengal under the Central Sales Tax Act, 1956 in respect of certain sales of steel goods. The petitioner company in that case had its registered office in Bombay and its head sales office in Calcutta in the State of West Bengal and factories in Jamshedpur in the State of Bihar. The company was registered as a 'dealer' under the Bihar Sales Tax Act and was also registered as 'dealer' in the State of West Bengal under the Central Sales Tax Act, 1956. For the period of asessment 1st July, 1957 to 31st March, 1958, the company submitted its return of taxable sales to the Commercial Tax Officer, Lyons Range, Calcutta. The assessment order was passed. It is not necessary to deal exhaustively with the history of the present sections 4 and 5 of the Central Sales Tax Act which has been dealt with by this Court. Interpreting the relevant provisions of the Central Sales Tax Act, 1956, it was observed that the Act by section 3 indicates as to when a sale or purchase of goods is said to take place in the course of inter-State sale or trade or commerce. Section 4 also indicates as to when a sale or purchase takes place outside the State. The majority of the judges of this Court held on the facts found 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."

Sarkar and Das Gupta JJ. in a separate judgment held that the documents of title of goods sold could pass the property in them only if the parties had agreed that that would be the result. In interpreting whether in the course of import or export, sales took place, the same principle would be applicable.

The correct position, so far as the facts of the present case are concerned, in our opinion, has been laid in the decision of Burmah Shell Oil Storage and Distributing Co. Of India Ltd. and Another v. Commercial Tax Officer and Others (supra). This Court observed at page 765 as follows:

> "While all exports involved a taking out of the country, all goods taken out of the country cannot be said to be exported. The test is that the goods must have a foreign destination where they can be said to be imported. It matters not that there is no valuable consideration from the receiver at the destination end. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. Purchases made by philanthropists of goods in the course of export to foreign countries to alleviate distress there, may still be exempted, even though the sending of the goods was not a commerical venture but a charitable one. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports."

The appellant in that case dealt in petroleum and petroleum products and carried on business at Calcutta. They had maintained supply depots at Dum Dum Airport from which aviation spirit was sold and delivered to aircraft proceeding abroad for their consumption. The question was whether these supplies to the aircraft which proceeded to foreign countries were liable to sales tax under the Bengal Motor Spirit Sales Taxation Act, 1941. The contention of the appellants in that case was that such sales were made in the course of export of such aviation spirit out of the territory of India that they took place outside the State of West Bengal, that inasmuch as aviation spirit was delivered for consumption outside West Bengal, the sales could not fall within the Explanation to clause (1) (a) of article 286 as it then stood. It was held by this Court that in order to exclude the taxation by the State of West Bengal, the appellants had to prove that there was some other State where the goods could be said to have been delivered as a direct result of the sale for the purpose of consumption in that other State and that as they failed to do so, the aviation spirit loaded on board an aircraft for consumption though taken out of India, was not exported since it had no destination, where it could be said to be imported and so long as it did not satisfy that test, it could not be said that the sale was in the course of export. It was further held that aviation spirit was sold for the use of aircraft and the sale was not even for the purpose of export and all the elements of sale including delivery and payment of price took place within the State of West Bengal and the sales were complete within the territory of that State. The customs barrier did not set a terminal limit to the territory of West Bengal for sales tax purpose. The sale beyond the customs barrier was still a sale in fact in the State

of West Bengal.

The ratio of this decision would be applicable to the facts and circumstances of this case. It was rightly urged that the appropriation of goods took place in the State of Tamil Nadu when the goods were segregated in the bonded warehouse to be delivered to the foreign going vessels. It was not a case of export as there was no destination for the goods to a foreign country. The sale was for the purpose of consumption on board the ship. It was not as if only on delivery on board the vessel that the sale took place. The mere fact that shipping bill was prepared for sending it for custom formalities which were designed to effectively control smuggling activities could not determine the nature of the transaction for the purpose of sales tax nor does the circumstances that delivery was to the captain on board the ship within the territorial waters make it a sale outside the State of Tamil Nadu.

In the case of The State of Kerala and Others v. The Cochin Coal Company Ltd., 12 S.T.C. 1, it was held that concept of export in article 286(1)(b) of the Constitution postulated the existence of two termini as those between which the goods were intended to move or between which they were intended to be transported and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port. Goods might be consumed within the meaning of the Explanation to article 286(1)(a) either by destruction or by way of use depending on the nature of the goods. In that case the respondent- company dealers in coal had their office at Fort Cochin which was formerly within the State of Madras. The company had imported and kept stocks of 'bunker coal' at certain places which at the relevant period was also within the State of Madras. Part of the activities of the said company consisted in the supply of 'bunker coal' from their depots in Candle Island for steamers arriving at the port of Cochin in the State of Travancore-Cochin for the outward voyage of the steamers from the Cochin port. In respect of these sales of coal, tax was claimed by the Travancore-Cochin State for the years 1951-52 and 1952-53 but the respondent claimed exemption under article 286(1)(b) or (2) of the Constitution and also under a Notification dated 5th February, 1954 and published in the official Gazette of 16th February, 1954. It was held that the sales of coal by the respondent were sales in the course of inter-State trade and fell within the ban of article 286(2), but the levy of tax on such sales had been validated by the Sales Tax Laws Validation Act, 1956. It was further held that the sales were not sales 'in the course of export' within the meaning of article 286(1)(b) and were therefore not exempt under that article but they fell within the Explanation to article 286(1)(a) inasmuch as the coal was delivered in the State of Travancore Cochin and the steamers were the actual consumers who were at liberty to consume the coal whenever they desired; that the Notification dated 5th February, 1954 was and must be deemed to be one issued in exercise of the power conferred on the State Government by section 6(1) of the Travancore-Cochin General Sales Tax Act, 1125 and as the transactions clearly fell within the Notification, the respondent would be entitled to the benefit of the tax exemption conferred by the Notification.

The High Court in Civil Appeal No. 642 of 1971 has based its decision on the decision of this Court in State of Madras v Davar and Co. (supra). In that case the assessee, a dealer in timber, had imported two consignments of timber from Burma and sold it to buyers in India. The ship carrying the first consignment arrived at the Madras Harbour on 17th October, 1957. The assessee obtained moneys

from the buyers on 24th October, 1957, retired the documents of title from the bank and handed over the documents on the same day to the buyers to enable them to clear the goods. All charges and expenses by way of import duty, clearance charges etc., were paid to the buyers on behalf of the assessee. The second consignment reached Madras by ship on 17th December, 1957 and the assessee obtained on 23rd December, 1957, from the buyers the value of the consignment after handing over to the buyers the necessary shipping documents. The assessee claimed that these sales were in the course of import and these were not liable to tax under the Madras General Sales Tax Act, 1959, as these were covered by article 286(1)(b) of the Constitution. It was held that the expression 'customs frontiers' in section 5(2) of the Central Sales Tax Act, 1956, did not mean 'customs barrier'. It had to be construed in accordance with Notification No. S.R.O. 1683 dated 6th August, 1955, issued by the Central Government under section 3-A of the Sea Customs Act, 1878 read with the Proclamation of the President of India dated 22nd March, 1956. 'Customs frontiers' meant the boundaries of the territory, including territorial waters, of India. The sales in this case were effected by transfer of documents of title long after the goods had crossed the customs frontiers of India; the ships carrying the goods in question were all in the respective harbours within the State of Madras when the sales were effected by the assessee by transfer of documents of title to the buyers. The sales were therefore not effected in the course of import. This Court, in construing the customs frontiers, referred to the extent of territorial waters, declaration of the President dated 22nd March, 1956, the contents of which were set out in that decision which need not be repeated here.

We have noted the further contentions which were only raised in the writ applications and not raised in Davar's case. In our opinion these further contentions have been elaborately discussed in the two decisions, one of the Andhra Pradesh High Court and another of the Madras High Court, which we shall presently notice but it may be pointed out that there is a difference between the two High Courts on the interpretation whether section 4(2)(a) or 4(2)(b) of the Central Sales Tax Act would apply or not. It may be noted that it was observed by Sarkar and Das Gupta JJ. in Tata Iron and Steel Co. Limited, Bombay v. S.R. Sarkar and others, (supra) that clauses (a) & (b) of section 3 were mutually exclusive and sale could not fall under both the clauses. We are not here directly concerned with the question whether clauses 4(2)(a) and 4(2)(b) of the Central Sales Tax Act, 1956 are mutually exclusive or not. We are concerned with the question whether either of these was applicable.

In the case before the Andhra Pradesh High Court in Fairmacs Trading Company v. The State of Andhra Pradesh, 36 S.T.C. 260, the petitioner imported ship-stores from foreign countries, kept these in bonded warehouses of the customs department without the levy of customs duty and later on sold and delivered to ships' masters for consumption abroad the ship after crossing the port boundaries. On the question whether the sales were outside the State or in the course of export and therefore not liable to tax under the Andhra Pradesh General Sales Tax Act, 1957, it was observed by the Andhra Pradesh High Court that the goods were specific and ascertained and were within the State when the contract of sale took place and therefore the requirements of section 4(2)(a) of the Central Sales Tax Act, 1956 were fully satisfied and the sales must be said to have taken place inside the State; but as the goods sold were meant for consumption during voyage and they had no destination in any foreign country where they could be received as imports, the sales were not sales in the course of exports. It was further held that mere movement of goods out of the country

following a sale would not render the sale, one in the course of export within article 286(1)(b) of the Constitution of India. Before a sale can be said to be a sale in the course of export, the existence of two termini between which the goods are intended to move or to be transported is necessary.

The Madras High Court in the case of Fairmacs Trading Company v. The State of Tamil Nadu (supra) was dealing with an assessee, who was a dealer in ship's stores and was also doing business as ship chandlers and who imported goods from abroad for the purpose of supplying them either to foreign going vessels or to diplomatic personnel. These goods were received and kept in the customs bonded ware-house and were cleared under the supervision of the customs authorities whenever these were sold by the assessee. In respect of supplies of specific goods made to certain ships located in the Madras Harbour, pursuant to orders placed by the Master of the ship or other officers working in the ship, the transportation of the goods to the ship was effected in such a manner as to ensure that the bonded goods, which had not paid any duty, did not enter the local market. The delivery receipt sent along with the goods by the assessee was signed by an officer of the ship in token of having received the goods in good condition. The question that arose for consideration was whether the sale took place within the State of Tamil Nadu and liable to be taxed under the Tamil Nadu General Sales Tax Act, 1959. It was held (i) that there was nothing to show in the communications from the ship that the goods had necessarily to be supplied only in the ship. It was open to the officers working in the ship to come and take delivery of the goods in which event the sale would be a local sale. Therefore, assuming that the territorial waters did not form part of the State of Tamil Nadu, as there was nothing in the contemplation of the contracting parties that the goods were to be moved from one State to another, it was held that it was not possible to take the view that the sales were inter- State sales; and (ii) that the assessee was not selling specific or ascertained goods, because the goods formed part of a larger stock within the bonded warehouse and had, therefore to be separated and appropriated to the contract as and when orders were placed by the officers of the ship by description. Therefore, the sales were local sales in view of the specific provision of section 4(2)(b) of the Central Sales Tax Act, 1956, read with section 2(n), explanation (3) of the Act (Tamil Nadu General Sales Tax Act, 1959), and were accordingly taxable under the Act. The Court did not find it necessary to consider the question whether the territory covered by the territorial waters formed part of the State of Tamil Nadu or not.

Attention of the Madras High Court was drawn to the decision of Andhra Pradesh High Court in Fairmacs Trading Company v. The State of Andhra Pradesh (supra). The Madras High Court did not examine the question in detail in the view it took.

In so far as the High Courts of Andhra Pradesh and Madras in the said two decisions held that sales took place within the State, we are in agreement.

On the aspect of territorial waters, we have set out hereinbefore the contention of the respondents. But inasmuch as we hold that sales took place within State of Tamil Nadu where appropriation took place it is not necessary to rest our decision in these matters on this question.

Mr. Desai drew our attention to the observations of Chief Justice Lord Parker in the case of R. v. Kent Justices Ex Parte LYE and others, [1967] 1 All England Report 560 at 564-65. But in this case it

is not necessary to consider that aspect in the view we have taken.

In any event, the sale took place when appropriation was made and appropriation was made within the State of Tamil Nadu even if the goods were not delivered. See in this connection the observations of Lord, Goddard, G.J. in Furby v. Hoey. [1947] 1 All England Report 236. There the respondent, an excise officer, filled in and sent to the appellant at his licensed premises a form of order purporting to order a variety of liquor, stating that delivery instructions would follow. Subsequently, after licensing hours and at an unlicensed club, the respondent filled up a form of delivery for one bottle of gin, which was taken by a messenger to the appellant's premises, and the gin was brought back to and paid for by the respondent at the club. The appellant was convicted at quarter sessions of selling by retail a bottle of gin at the club without having taken out a licence, contrary to section 50(c) of the Finance (1909-10) Act, 1910 of U.K. It was held that appropriation, which completed the contract, took place at the licensed premises of the appellant and not at the club, and, accordingly, though guilty of the offence of selling liquor out of permitted hours, the appellant was not guilty of selling liquor on unlicensed premises as charged. In our opinion that is the correct position and appropriation was made within the State of Tamil Nadu.

In our opinion as the goods were within the State of Tamil Nadu in case of ascertained goods at the time when the contract of sale was made and in case of unascertained goods at the time of their appropriation to the contract by the seller,-sale must be deemed to be within the State of Tamil Nadu.

In our opinion, therefore, Shri M.M. Abdul Khader, learned counsel for the respondents was right that under section 2(n) of the Act read with explanation 3, these sales were within the State.

It may be mentioned that there was an amendment in 1976 of the Central Sales Tax Act, 1956 by Act 3 of 1976. By that provision, the following was inserted in section 2 of the Central Sales Tax Act, 1956:

> "(ab) "crossing the customs frontiers of India"

meant crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Explanation-For the purposes of this clause, "customs station" and "customs authorities", shall have the same meanings as in the Customs Act, 1962."

Mr. Desai sought to urge that this was declaratory and was valid for all the relevant years. Whether a law is a declaratory or not, depends upon the Act and the language used. There was nothing in the Act or object of the Act which stated that it was further to amend the Central Sales Tax Act, 1956 that it was declaratory and not prospective in nature. Our attention was drawn to certain decisions, whether an Act is retrospective and declaratory in operation or prospective would depend upon the purpose of the Act, the object of the Act and the language used. See in this connection the observation in The Central Bank of India v. Their Workmen, [1960] 1 SCR 200; Keshavlal Jethalal

Shah v. Mohanlal Bhagwandas & Anr., [1968] 3 SCR 623 and Chanan Singh & Another v. Jai Kaur., [19701 1 SCR 803 at 804-807. But that amendent is not relevant in the view we have taken.

The short question, therefore, that arises in all these matters is whether sale of the goods in question took place within the territory of Tamil Nadu. In these cases sale took place by appropriation of goods. Such appropriation took place in bonded warehouse. Such bonded warehouses were within the territory of State of Tamil Nadu. Therefore, under sub-section (2), sub-clauses (a) and (b) of section 4 of the Central Sales-Tax Act, 1956, the sale of goods in question shall be deemed to have taken place inside the State because the contract of sale of ascertained goods was made within the territory of Tamil Nadu and furthermore in case of unascertained goods appropriation had taken place in that State in terms of clause (b) of sub-section (2) of section 4 of the Central Sales Tax Act, 1956. There is no question of sale taking place in course of export or import under section 5 in this case. From that point of view the amendment introduced by Act 103 of 1976 by incorporating in clause (ab) of section 2 of the Central Sales Tax Act, 1956 does not affect the position. In this connection reference may be made from the observations of this Court in Burmah Shell oil Storage Ltd., (supra) where it has been held that customs A barrier does not set a terminal limit to the territory of the State for sales-tax purposes. Sale, therefore, beyond the customs barrier is still a sale within the State. The amendment introduced in section 2 by the Act 103 of 1976 does not affect the position because the custom station is within the State of Tamil Nadu. That question might have been relevant if we were considering the case of sale by the transfer of documents of title to the goods as contemplated by section 5 of the Central Sales-Tax Act. In the premises we are unable to accept the contentions urged on behalf of the appellants in the Civil Appeals and also the contentions urged in the Writ Petition.

In the view we have taken, it is not necessary to express our opinion on the arguments whether introduction of clause (ab) of section Z of Central Sales Tax Act by Act 103 of 1976 is prospective or not. We have, however, noted the submissions. That question, in the light of our aforesaid views, is not material for the present controversy.

In the premises Civil Appeal No. 642 of 1974, Civil Appeal Nos. 1798-1800 of 1981 and Writ Petition No. 196 of 1974 are all dismissed with costs.

So far as Special Leave Petitions Nos. 19243-44 of 1985 are concerned, the same are also dismissed. In these cases, however, the parties will pay and bear their own costs.

M.L.A. Appeals and Petitions dismissed.