Binani Bros. (P). Ltd vs Union Of India & Ors on 11 December, 1973

Equivalent citations: 1974 AIR 1510, 1974 SCR (2) 619

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew, A.N. Ray, Hans Raj Khanna, A. Alagiriswami, P.N. Bhagwati

PETITIONER:
BINANI BROS. (P). LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT11/12/1973

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)
KHANNA, HANS RAJ
ALAGIRISWAMI, A.
BHAGWATI, P.N.

CITATION:
1974 AIR 1510 1974 SCR (2) 619
1974 SCC (1) 459
CITATOR INFO :
RF 1975 SC1564 (17,24,25,54)
RF 1975 SC1652 (12,21)
F 1977 SC 247 (5)
D 1985 SC1689 (6)

ACT:
Constitution of India, Art. 286-The meaning of the expression, sale or purchase of goods in the course of the imports' into India

HEADNOTE:
In W. P. No. 92 of 1969, the Petitioner Company prayed for issue of appropriate direction or order for the enforcement

of its fundamental rights guaranteed under Art. 31(1) of the Constitution. The facts are as follows:

The petitioner company was a dealer in non-ferrous metals and was a registered supplier to the Directorate General of Supplies and Disposals. The company was also a registered dealer in the State of West Bengal. The petitioner used to procure non-ferrous metals from various countries and also from within the country for fulfilling its contracts with D.G.S. & D. The import of non-ferrous metals was under open General licence till June, 30, 1957. Thereafter, a licensing system was introduced by the Government of India and the petitioner was asked to get their quotas fixed on the basis of their past imports. On April 2, 1958, the Government of India promulgated the Non-ferrous Metals Control Order, 1958 by virtue of which free sale of copper was banned. Any import of copper by the licence holders was to be distributed under the directions of the Controller of Non-ferrous metals.

Under the Non-ferrous Metals Control Order, 1958, and also under the Import Trade Regulations, the established importers were not free to sell the metals imported by them against their quota licences even to D.G.S.& D. The petitioner, in order to effect supplies to D.G.S. & D. had to obtain additional import licence.

The petitioner obtained quota licences for import of non-ferrous metals for the licensing periods upto April 1964, March 1965; but the imports were to be distributed only under the directions of the Controller.

On Sept. 14, 1965, the Govt. of India promulgated the Scarce Industrial Materials Control Order 1965, under the Defence of India Rules. Stocks of non-ferrous metals including incoming imports were thus frozen. The Non-ferrous Metals Control Order 1958 and the Scarce Industrial Materials Control Order 1965 were both repealed. The Government of India in placing orders with the petitioner used to grant import licences in terms of the contract.

The petitioner had been importing and supplying non-ferrous metals to respondents 1,2 and 3 during the last 19 years. Respondent No. 2 had agreed to pay and was paying the Central Sales Tax and/or West Bengal Sales Tax, whichever was applicable-to the petitioners in terms of the contract.

In 1966, the Supreme Court held in K. G. khosla and Co. v. Deputy Commissioner of Commercial tax [1966] 3 S.C.R. 352 that the sale by Khosla & Co. to DGS & D in India of axle-box bodies manufactured in Belgium by their principal, occasioned the movement of goods in the course of import and sales tax was not exigible on the transaction in view of Sec. 5(2) of the Central Sales Tax Act 1956, and Art. 286 of the Constitution.

Thereafter, respondent No. 2 issued an order to respondent-No. 4 that Sales Tax should not be allowed in respect of supply of stores which had been specifically

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imported against contracts placed by D.G.S. & D. Respondent No. 4, acting in terms of the order, deducted Rs. 60,780/ being the Sales Tax already paid from the pending bills of the petitioner and also threatened to recover more than Rs. 2 lakhs being the amount paid by respondent No. 2 as Sales Tax in respect of contracts which had already been executed. The petitioner, thereafter, approached the Sales Tax Authorities in W. Bengal and filed revised returns in the pending assessments and claimed refund of taxes paid on the sales, treating the sales as having been made in the course of import on the basis of the judgment in Khosla's case.

The West Bengal Sales Tax Authorities took the view that there were two sales one, to the petitioner by the foreign seller and the other, by the petitioner to D.G.S. & D. and that there was no privity of contract between D.G.S. & D. and the foreign sellers, that the petitioner under the import licences granted to it, was entitled to import the goods from any person or country and that the import licences issued as against the contracts with the Directorate General of Supplies & Disposals imposed ,no obligation on the petitioner to supply the goods to the D.G.S. & D after they had been imported, they therefore, held that tax was exigible on the sales by. the petitioner to the D.G.S. & D. The questions which arose for consideration were: (i) whether on the basis of the order, respondent No.4 was entitled to deduct Rs. 60,780 from the amount due to the petitioner and (ii) Whether the claim of the respondent to recover a further sum of more than Rs. 2 lakhs from the petitioner was justified.

The petitioner contended that the sales which the Company made to D.G.S. & D. were not the sales which occasioned movement of any goods in the course of import as those sales were separate and distinct from the contracts of purchase made by the Company with the foreign sellers which alone occasioned the movement of goods in the course of import, tax was exigible upon the sales by the petitioner to D.G.S & D. and therefore, the decision in Khosla's Case has no application to the facts here.

Allowing the writ petitions,

HELD : (i) Art. 286(1) (b) provided that no law of a State shall impose a tax on the sale or purchase of goods where such sale or purchase takes place in the course of the import or export of the goods in India. A sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea and that such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale or resultant export from parts of a single transaction of these two integrated activities which together constituted an export sale, whichever occurs first can well be regarded as taking place in the course of the other. [623H]

State of Travancore Cochin and Ors. v. The Bombay Co. Ltd. [1952] S.C.R. 11 12, referred to

(ii) The words, 'Integrated activities' were used in the earlier case to denote that such a sale' (i.e. a sale which occasions the export)' cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export form parts of a single transaction', and in that case the sale and the export were said to be integrated. [624B]

per Patanjali Sastri C.J. in State of Travancore Cochin and Ors. v. Shamugha Vilas Cashew Nut Factory and Ors. [1954] S.C.R. 53 referred to .

(iii) There was no definition of the expression 'in the course of import' before the Sixth Amendment of the Constitution. Later Parliament gave legislative meaning to the expression in s. 5(2, of the Central Sales Tax Act 1956 which provides that a sale or purchase of goods in the course of the import into India, shall be deemed to take place if the sale or purchase either occasions such import or is effected by a transfer of documents of title before the goods have crossed the customs frontiers of India. [624C]

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(iv) In the present case, the petitioner as principal made the sale to the D.G.S. & D. 'For effecting the sales, the petitioner had to purchase goods from foreign sellers and it was these purchases from the foreign sellers which occasioned the movement of goods in the course of imports. In other words, the movement of goods was occasioned by the contracts for the purchase, which the petitioner entered into with the foreign sellers. No movement of goods in the course of import took place in pursuance to the contracts of sales made by the petitioner with the D.G.S. & D. The petitioner's sales to D.G.S. & D. were distinct and separate from his purchases from foreign sellers. There was no privity of contract between the D.G.S. & D. and the foreign sellers. The foreign sellers did not enter into a contract by themselves or through the agency of the petitioner to the D.G.S.& D. and the movement of goods through foreign countries was not occasioned on account of the sales by the petitioner to D.G.S. & D. Even if the contracts between the petitioner and the D.G.S. & D. envisaged the import of goods, and their supply to the D.G.S. & D. from out of the goods imported, it did not follow that the movement of the goods in the course of import was occasioned by the contracts of sale by the petitioner with the D.G.S. & D. The present case, therefore, cannot be distinguished from the decision in the Coffee Board's case though that case was concerned with the question when a sale occasioned the movement of goods in the course of export. The order issued by respondent No. 2, was, therefore, quashed., [627E-628E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 39 & 92 of 1969. Under Article 32 of the Constitution of India for the enforcement of Fundamental rights.

V.M. Tarkunde, G.R. Chopra and C.M. Kohli for the petitioners.

Gobind Das and S. K. Nayar, for the respondents (in W.P.No. 39/69) and respondents Nos. 1-4 (in W.P. No. 92/69). P.K. Chatterjee and G.S. Chatterjee, for respondents Nos. 5- Judgment of the Court was delivered by MATHEW, J. These are petitions filed under article 32 of the Constitution praying for issue of appropriate direction or order for the enforcement of the fundamental right of the petitioners under article 31(1) of the Constitution. The question raised in the petitions is that we propose to deal with Writ Petition No. 39 of 1969 decision there will govern and dispose of Writ No. 92 of 1969.

The petitioner is a company incorporated under the Indian Companies Act, 1913. It has its registered office in Calcutta and a branch office at Binani House, Khundi Katra, Mirzapur, U.P. The petitioner is an importer and a dealer in non-ferrous metals like zinc, lead, copper, tin, etc. and is on the approved list of registered suppliers to the Directorate General of Supplies and Disposals, hereinafter referred to as DGS&D. It is also a registered dealer in the State of West Bengal under the Bengal Finance Act, 1941 and the Central Sales Tax Act, 1956. The petitioner used to procure nonferrous metals from various countries and also from within the country for fulfilling its contracts with the Government of India through _the DGS&D. The import of non-ferrous metals was under Open General Licence till June 30, 1957. Thereafter, a licensing systems was introduced by the Government of India and the established traders including M 602 Sup CI/74 the petitioner were asked to get their quotas fixed on the basis of their past imports. On April 2, 1958, the Government of India promulgated the Non-Ferrous Metals Control Order, 1958 under the Essential Commodities Act, 1951 by virtue of which free sale of copper was banned. Any import of copper by the established licence holders was to be distributed under the directions of the Controller of Nonferrous Metals. Under the Non-Ferrous Metals Control Order, 1958. and also under the Import Trade Regulations, the established importers were not free to sell the metals imported by them against their quota licences even to the DGS&D. The petitioner, in order to effect supplies to the DGS&D had to obtain additional import licence. Under the Import Trade Control Policy, the established importers including the petitioner obtained quota licences for import of non-ferrous metals for the licensing period upto April, 1964-March, 1965, but the imports mentioned here were to be distributed only under the directions of the Controller of Non-Ferrous Metals or the Import Trade Control Authority. On September 14, 1965, the Government of India promulgated the Scarce Industrial Materials Control Order, 1965, under the Defence of India Rules. Stocks of non-ferrous metals including incoming imports were thus frozen. The Non- Ferrous Metals Control Order, 1958, was repealed. The Scarce Industrial Materials Control Order, 1965 was also repealed on June 6, 1966. The Government of India, in placing orders with the petitioner used to grant import licences in terms of the contract. The petitioner had been importing and supplying non-ferrous metals to respondents 1, 2 and 3 during the last 19 years. Respondent No. 2 had agreed to pay and was paying the Central Sales Tax and/or West Bengal Sales Tax whichever was applicable to the petitioner in terms of the

contract. In 1966, this Court held in K.G. Khosla and Co. v. Deputy Commissioner of Commercial Taxes(1) hereinafter. referred to as the Khosla Case, that the sale by Khosla & Co. to DGS&D in India of axle-box bodies manufactured in Belgium by their principal occasioned the movement of goods in course of import and sales tax was not exigible on the transaction in view of s. 5(2) of the Central Sales Tax Act, 1956. On the basis of this judgment, respondent No. 2 issued an order. (Annexure P-1) to all the authorities concerned including respondent No. 4, namely, the Pay and Accounts Officer, Ministry of Works, Housing and Supply directing that sales tax should not be allowed in respect of supply of stores which has been specifically imported against licences issued by the Chief Controller of Imports and Exports on the basis of Import Recommendation Certificates issued by the DGS&D or other authorities like the State Trading Corporation for supplies against contracts placed by the DGS&D. The Pay and Accounts Officer, acting on Annexure P-1 deducted the amounts of sales tax paid by the respondents under all the old contracts from the current bills which were submitted by the petit ioner to him. Respondent No. 4 actually deducted a sum of Rs. 60,780/- from the bills which were pending payment and also threatened to recover Rs. 2,35,130-01 being the amount paid by respondent No. 2 as sales tax in respect of (1) [1966] 3 S.C.R. 352.

contracts which had, already been executed. The assessments on the petitioner upto the year ending October, 27, 1962, were completed prior to the date of judgment in Khosla Case and the issue of the order at Annexure P-1. The petitioner, when it came to know of Annexure P-1 Order, approached the Sales Tax authorities in West Bengal and filed revised returns in the pending assessments and claimed refund of taxes paid on the sales, treating the sales as having been made in the course of import on the basis of the judgment in Khosla Case. The West Bengal Sales Tax authorities took the view that there were two sales involved in the transactions in question, namely, sale to the petitioner by the foreign sellers and sale by the petitioner to the DGS&D, that there was no privity of contract between the DGS&D and the foreign sellers, that the petitioner, under the import licences granted to it, was entitled to import the goods from any person or country and that the import licences issued as against the contracts with the DGS&D imposed no obligation on the petitioner to supply the goods to the DGS&D after they had been imported. They, therefore, held that tax was exigible on the sales by the petitioner to the DGS&D. The questions which arise for consideration are, whether, on the basis of Annexure P-1 Order, respondent No. 4 was entitled to deduct Rs. 60 780/- from the amount due to the petitioner in respect of pending bills and whether the claim of the respondents to recover a further sum of Rs. 2,35,130.01 from the petitioner is justified. It was contended on behalf of the petitioner that the transactions in question, namely, the sales which the petitioner made to DGS&D were not the sales which occasioned the movement of the goods in the course of import and as those sales were separate and distinct from the contracts of purchase made by the petitioners with the foreign sellers which alone occasioned the movement of goods in the course of import, tax was exigible upon the transactions of sale by the petitioner to DGS&D and, therefore, the decision in Khosla Case has no application to facts here. Article 286(1)(b) provides:

> "286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-
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> (b) in the course of import of the goods into, or export of the goods out of, the territory of India".

In State of Travancore Cochin & Others v. The Bombay Co. Ltd. (1) Patanjali Sastri, C.J. said that a sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea and that such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities which together (1) [1952] S.C.R. 1112.

constitute an expert sale, whichever first occurs can well be regarded as taking place in the course of the other. In State of Travancore Cochin & Others v. Shanmugha Vilas Cashew Nut Factory and Others (1), it was observed by the same learned Chief Justice that the phrase 'integrated activities' was used in the previous decision to denote that 'such a sale' (i.e. a sale which occasions the export)"cannot be dissociated from the export without which it cannot be effectuated', and the sale and the resultant export form parts of a single transaction" and that it is in that sense that the two activities the sale and the export- were said to be integrated.

There was no definition of the expression 'in the course of import' before the Sixth Amendment of the Constitution. By that Amendment, Parliament was given power to formulate the principles for construing the expression. And, in s.5(2) of the Central Sales Tax Act, 1956, Parliament has given a legislative meaning to the expression "5(2) 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."

In Ben Gorm Nilgiri Plantations Company V. Sales Tax Officer(2), the question was whether the sales of the tea chests at auctions held at Fort Cochin were exempt from levy of sales tax by virtue of article 286(1)(b). The nature of the transaction was as follows: A manufacture obtains from the Tea Board allotment of export quota, the manufacturer then puts the tea in chests which are sold in public auctions; bids are made by agents or intermediaries of foreign buyers; agents and intermediaries then obtain licences from the Central Government for export. This Court found nothing in the transaction from which a bond could be said to spring between the sale and the. intended export linking them as parts of the same transaction. The sellers had no concern with the export, the sale imposed or involved no obligation to export and there was possibility that the goods might be diverted for internal consumption. The Court considered the sales as sales for export and not in the course of export. The Court observed that-to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is in extricably connected with the one immediately preceding it and that without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the 'territory of India. The Court further said that in general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale for export and where the export is the result of the sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising (1) [1954] S.C.R, 53,63.

(2) [1964] 7 S.C.R. 706.

by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export.

In the Khosla Case, the assessee entered into a contract with the DGS&D, New Delhi, for the supply of axle-box bodies. The goods were to be manufactured in Belgium according to specifications and 'the DGISD, London or his representative had to inspect the goods at the works of the manufacturers and issue an inspection certificate. Another inspection was provided for at Madras. The assessee was entitled to be paid 90 per cent. after inspection and delivery of the stores to the consignee and the balance of 10 per cent. was payable on final acceptance by the consignee. In the case of deliveries on f.o.r. basis the assessee was entitled to 90 per cent. payment after ins- pection on proof of despatch and balance of 10 per cent. after receipt of stores by the consignee in good condition. The assessee was entirely responsible for the execution of the contract and for the safe arrival of the goods at the destination. The contract provided that notwithstanding any approval or acceptance given by an Inspector, the consignee was entitled to reject the goods, if it was found that the goods were not in conformity with the terms and conditions of the contract in all respects. The manufacturers consigned the goods to the assessee by ship under bills of lading and the goods were cleared at the Madras Harbour by the Assessee's Clearing Agents and despatched for delivery to the Southern Railway in Madras and Mysore. The question was whether the sales by the assessee to the Government departments were in the course of import and export from taxation under s.5(2) of the Central Sales Tax Act, 1956. Sikri, J. (as he then was), delivering the judgment of the Court said after referring to s.5(2) of the Central Sales Tax Act that the movement of goods to India was occasioned by the contract of sale between the appellant (Khosla & Co.) and the DGS&D, that if the movement of goods is the result of a covenant or incidental to the contract of sale, it is quite immaterial that the actual sale took place after the import was over.

In Coffee Board v. Joint Commercial Tax Officer (1), hereinafter referred to as Coffee Board Case, the Coffee Board claimed that as certain sales of coffee to registered exporters in March and April, 1963 were sales made 'in the course of export',it could not be taxed under the Madras General Sales Tax Act, 1959. The rules framed by the Coffee Board provided that only dealers who had registered themselves as exporters of coffee with the Coffee Board or their agents and who held permits from the Chief Coffee Marketing Officer in that behalf would be permitted to participate in the auction , and after the bidding comes to an end, the payment of price would take place in a particular way. Condition No.26 he added "export guarantee"

> provided that it was an essential condition of the auction that the coffee sold thereat shall be exported to the destination stipulated in the Catalog of lots, or to any other foreign country outside. India as may be approved by the Chief Coffee Marketing Officer, within three (1) [1970] 3 S.C.R. 147.

months from the date of Notice of Tender issued by the Agent and that it shall not under any circumstances be diverted to another destination, sold, or be disposed of, or otherwise released in India. Condition 30 stated that if the buyer failed or neglected to export the coffee as aforesaid within the prescribed time or within the period of extension, if any granted to him, he shall be liable to pay a penalty calculated a Rs. 50 per 50 kilos which shall be deductible from out of the amount

payable to him as per condition 31. And Condition 31 provided that no default by the buyer to export the coffee aforesaid Within the prescribed time or such extension thereof as may be granted, it shall be lawful for the Chief Coffee Marketing Officer, without reference. to the buyer, to seize the un-exported coffee and take possession of the same and deal with it as if it were part and parcel of Board's coffee held by them in their Pool stock. The case of the petitioners before this Court was that the purchases at the export auctions were really sales by the Coffee Board in the course of export of coffee out of the territory of India since the sales themselves occasioned the export of Coffee and that the coffee so sold was not intended for use in India or for sale in the Indian markets. The case of the Sales Tax Authorities, oil the other hand, was that these sales were not inextricably bound up with the export of coffee and that the sales must therefore be treated as sales taking place within the State of Tamil Nadu liable to sales tax under the Madras General Sales Tax Act. This Court held that the Board was not entitled to the exemption claimed. The Court said that the phrase 'sale in the course of export' comprises three essentials, namely, that there must be a sale, that goods must actually be exported and that the sale must be a part and parcel of the export. The Court further said that the sale must occasion the export and that the word 'occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. The Court was of the view that the sale which is to be regarded as exempt from tax is a sale which causes the export to take place or is the immediate cause of the export, that the introduction of an intermediary between the seller and the importing buyer breaks the link, for, then there are two sales, one to the intermediary and the other to the importer, and that the first sale is not in the course of export, for the export begins from the intermediary and ends with the importer. According to the Court the test was that there must be a single sale which itself causes the export and that there is no room for two or more sales in the course of export, The Court, therefore, held that though the sales by the Coffee Board were sales for export, they were not sales in the course of export, that there were two independent sales involved in the export programme: the first sale by the Coffee Board to the export promoter, and the second sale by the export promoter to a foreign buyer which occasioned the movement of goods and that the latter sale alone could earn the exemption from sales tax as being a sale the in the course of export.

Khosla Case, it might be recalled that Khosla and Co. entered into. the contract of sale with the DGS&D for the Supply of axle bodies manufactured by its Principal. in Belgium and the goods were to be inspected by the buyer in Belgium but under the contract of sale the goods were liable to be rejected after a further inspection by the buyer in India. It was in pursuance to this contract that the goods were imported into the country and supplied to the buyer at Perambur and Mysore. From the statement of facts of the case as given in the judgment of the High Court it is not clear that there was a sale by the manufacturers in Belgium to Khosla & Co., their agent in India. it would seem that the only sale was the sale by Khosla & Co. as agent of the manufacturer in Belgium In the concluding portion of the judgment of this Court it was observed as follows :

> ". . . It seems to us that it is quite clear from the contract that it was incidental to the contract that the axle-box bodies would be manufactured in Belgium, inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place

> in the course of import of goods within s.5(2) of the Act, and are, therefore, exempt from taxation."

As already stated, there was to be an inspection of the goods in Belgium by the representative of the DGS&D but there was no completed sale in Belgium as, under the contract, the DGS&D reserved a further right of inspection of the goods on their arrival in India.

Be that as it may, in the case under consideration we are concerned with the sales made by the petitioner as principal to the DGS&D. No doubt, for effecting these sales, the petitioner had to purchase goods from foreign sellers and it was these purchases from the foreign sellers which occasioned the movement of goods in the course of import. In other words, the movement of goods was occasioned by the contracts for purchase which the petitioner entered into with the foreign sellers. No movement of goods in the course of import took place in pursuance to the contracts of sale made by the petitioner with the DGS&D. The petitioner's sales to DGS&D were distinct and separate from his purchases from foreign sellers. To put it differently, the sales by the petitioner to the DGS&D did not occasion the import. It was purchases made by the petitioner from the foreign sellers which occasioned the import of the goods. The purchases of the goods and import of the goods in pursuance to the contracts of purchases were, no doubt, for sale to the DGS&D. But it would not follow that the sales or contracts of sales to DGS&D occasioned the movement of the goods Into this country. There was no privity of contract between DGS&D and the foreign sellers. The foreign sellers did not enter into any contract by themselves or through the agency of the petitioner to the DGS&D and the movement of goods from the foreign countries was not occasioned on account of the sales by the petitioner to DGS&D. It was contended on behalf of the Central Government that the contracts of sale between the petitioner and the DGS&D envisaged the import of goods for fulfilling the contracts and it was for that reason that there was first the recommendation for issue of import licences by DGS&D and then the actual issue of import licences and, as the contracts of sale visualised the import of goods for fulfilling them, the movement of goods in the course of import was occasioned by the contracts of sale to the DGS&D, and, therefore, the sales to the DGS&D were the sales which occasioned the movement of goods in the course of import.

There was no obligation under the contracts on the part of the DGS&D to procure import licences for the petitioner. On the other hand, the recommendation for import licence made by DGS&D did not carry with it any imperative obligation upon the Chief Controller of Imports and Exports to issue the import licence. Though under the contract DGS&D undertook to provide all facilities for the import of the goods for fulfilling the contracts including an Import Recommendation Certificate, there was no absolute obligation on the DGS&D to procure these facilities. And, it was the obligation of the petitioner to obtain the import licence. Therefore,even if the contracts envisaged the import of goods and their supply to the DGS&D from out of the goods imported, it did not follow that the movement of the goods in the course of import was occasioned by the contracts of sale by the petitioner with DGS&D. We see no reason in principle to distinguish this case from the decision in the Coffee Board Case though that case was concerned with the question when a sale occasions the movement of goods in the course of export.

In the result, we quash Annexure P-1 order so far as the petitioners are concerned and allow the writ petitions with costs.

S.C. Petitions allowed.