Supreme Court of India
The Deputy Commissioner Of ... vs M/S. Kotak & Co., Bombay, Etc. Etc on 3 April, 1973
Equivalent citations: 1973 AIR 2491, 1973 SCR (3) 883
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
THE DEPUTY COMMISSIONER OF AGRICULTURAL INCOME TAX AND SALES

Vs.

RESPONDENT:
M/S. KOTAK & CO., BOMBAY, ETC. ETC.

DATE OF JUDGMENT03/04/1973

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
KHANNA, HANS RAJ

CITATION:
1973 AIR 2491 1973 SCR (3) 883
1974 SCC (3) 118

ACT:
Central Sales Tax Act 1956-S. 5(2) read with Art. 286 of the Constitution. Assessee Company sold to buyer in the course of import Whether an inter-State sale.

HEADNOTE:
The respondent was engaged in the supply of foreign cotton to textile mills in South India on the basis of import licences issued to the mills authorising: import of foreign cotton by them. The, firm supplied cotton to the mills on the basis of specific written contracts. One of the conditions in the contract is that the goods imported should not under any circumstances, be diverted from its determined destination, i.e. the mills. Secondly, the relative shipping documents were issued by the foreign seller in the names of the respective mills and not in the name of the assessee-firm. Again, the import licences issued to the mill& authorise the mills to import the goods; and on the reverse of these licences is stated that the goods for the import of which the licences were granted should be the property of the licensees at the time of clearance through the customs. Still further, the letters of authorisation issued by the Government authorising the assessee-firm to import the cotton show that the assessee had to do it purely

as an agent of the licensees both at the time of the clearance through the customs and' subsequent thereto. The firm entered into a contract with M/s. Mahalaxmi Cotton Mills on 20-3-1964. According to the respondent, by the contract entered into with the mills, the quantity of cotton agreed to be supplied to the mills was specified as also its quality and places from where it has to be imported. The price was fixed on C.I.F. Cochin term. Payment was to be made by the mills to the firm against the document. The other conditions governing the contract were laid down on the reverse of the contract form, the most important clauses in the contract were that the contract was C.I.F. in nature notwithstanding anything to the contrary mentioned in the contract. The price was subject to variation depending upon the import duty, freight rate,. insurance premium and exchange rate. It was further provided by the Mills that the contract was irrevocable and that any differences between the parties had to be resolved through arbitration etc. The question was, whether the sales made to the mills affected in this country occasioned the import. The Sales Tax Officer, as well as the Appellate Assistant Commissioner, held that the sales in question were intrastate sales and therefore, the assessee was liable to tax.

On appeal, the Sales Tax Tribunal held that the assessee's case fell within s. 5(2) of the Central Sales Tax Act, read with Art. 286 of the Constitution and the High Court on revision, affirmed the decision of the Tribunal. Before this Court it was contended by the appellant that the sales were intrastate sales and as such, the assessee was liable to tax. Dismissing the appeals,

HELD : The present case falls within the rule laid down by this Court in K. G. Khosla & Co. v. Deputy Commissioner of Commercial

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Taxes, [1966] 3 S.C R. 352, wherein it was held that the sales in question occasioned the : import and as such it was exempt under s. 5 (2) of the Central Sales Tax Act, 1956 which says, "A sale or purchase of goods shall be deemed to take place in the course of the import of 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." [887G]

Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras and Another [1970] 3 S.C.R. 147, referred to and distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1889 to 1891 of 1970.

Appeals by certificates from the judgment and order dated 'October 28, 1969 of the Kerala High Court at. Ernakulam in T.R.C. Nos. 40, 41 and 42 of 1968.

Civil Appeals Nos. 1892 to, 1896, of 1970 Appeals by certificates from the judgment and order dated October 28, 1969 of the Kerala High Court at Ernakulam in T.R.C. Nos. 43, 44, 45, 47 and 48 of 1968.

Civil Appeal No. 1897 of 1970.

Appeals by certificates from the judgment and order dated October 28, 1969 of the Kerala High Court at Ernakulam in T.R.C. No. 46 of 1968.

Civil Appeals Nos. 1898 to 1900 of 1970.

Appeals by certificates from the judgment and order dated October 28, 1969 of the Kerala High Court at Ernakulam in T.R.C. Nos. 52, 53 and 54 of 1968.

V. A. Sayed Mohammed and A. G. Pudissery, for the appellants (in all the appeals).

G. B. Pai P C. Bhartari, O. C. Mathur and Ravinder Narain, for the respondent (in C.A. Nos. 1889-1891 and 1897/70). T. A. Ramachandran and K. Jayaram, for the respondent (in ,C.A. Nos. 1892-1896/70).

Ram Phal Bansal, S. P. Pande and Ganpat Rai, for the res- pondent (in C.A. Nos. 1898-1900/70.

The judgment of the Court was delivered by HEGDE, J.-In these appeals by certificate a common question of law arises for decision and that question is whether the sales effected by the respondent with which we are concerned in these cases occasioned import of Egyptian cotton. The Sales Tax Officer as well as the Appellate Assistant Commissioner, rejecting the contention of the assessee came to the conclusion that the sales in question were intrastate sales. But, on appeal, the Sales Tax Tribunal held that the assessee's case fall within S. 5 (2) of the Central Sales Tax Act 1956 read with Article 286 of the, Constitution. The High Court on revision affirmed the decision of the Tribunal. In support of its conclusion the high Court observed thus "One of the conditions in the contract is that the goods im- ported should not under any circumstances, be diverted from its, determined destination, i.e., the mills. Secondly, the relative, shipping documents were, issued by the foreign seller in the names of the respective mills and not in the name of the assessee-firm. Again, the import licences issued to the mills authorise the mills, to import the goods; and on the reverse of these licences is stated that the goods for the import of which the licences were granted. should be the property of the licensees at the time of clearance through the customs. Still further, the letters of authorisation, issued by the Government authorising the assessee-firm to import, the cotton show that the assessee had to do it purely as an agent of the licensees and the imported goods would be the property of' the licensees both at the time of the clearance through the customs. and subsequent thereto."

The material facts of the case are fully set out in the judgment of the Appellate Tribunal and are as follows "The facts of the case here are not in dispute and the only point that has to be considered here is as to whether the sales arc in the course of import. The assessee firm submitted before the, Sales Tax Officer a detailed note in regard to the procedure in this matter. According to them the firm is engaged in the supply of foreign cotton to textile mills among other places in South India on the basis of the import licences issued to the nulls authorising import of foreign' cotton by them. The details in regard to the. procedure contained in the note submitted by the firm are found; from page 37 onwards in the assessment files. It is stated that the firm supplies cotton to the mills on the basis of specific written contracts. Under the import control regulations, import licences are necessary for import of foreign cotton and they are issued to only actual users like the mills. The appellant firm and the similar concerns are not given import licences. The mills make enquiries with the firm as regards the quality of cotton they required, , the period during which they would be supplied, the price and other particulars and on getting these enquiries the appellant firm contacts the foreign suppliers in Egypt, Sudan or America for ascer--

taining whether they could supply the cotton required. It the ,offers received are found acceptable the appellant firm enters into contract with the various mills concerned and immediately thereafter accept the offer made by the foreign suppliers. The supply ,of such foreign cotton to M/s. Mahalakshmi Textiles Mills Ltd., one of the mills to whom supply was made by the firm is detailed in the said note and it is stated that the supply made to the other mills also are under similar circumstances. According to the appellant, after receiving enquiries from the mills the firm contacts the American Suppliers in New York. The foreign suppler agreed to supply the quantity at the price, agreed upon. Thereafter the firm entered into a contract with the mills dated 20-3-1964, that the import licence issued in favour of the mills was made available to the firm for utilisation of the contract that the letter authority issued, authorising the firm to import cotton was also issued, that the bill of lading obtained by the foreign supplier on shipment of the goods was also obtained by the firm and the cotton is thus sent on to India. The contention of the appellant is that under the contract entered into with the mills the quantity of cotton agreed to be supplied to the mills is specified as also its quality and places from where it was to be imported. The price was fixed on C.I.F. Cochin terms. Payment was to be made by the mills to the firm against the document. The other conditions governing the contract are laid down on the reverse of the contract form. The most important clauses in the contract -ire that the contract was C.I.F. in nature, notwithstanding anything to the contrary mentioned in the contract, the price was subject to variation depending upon the import duty, freight rate, insurance premium and exchange rate, that it was specifically provided that the sale was subject to import licence to be provided by the mills that the contract was irrevocable and that any difference between the parties had to be resolved through the arbitration machinery provided in the contract itself, that under the import control regulations, the importer is the mill, the auhorisation and ,he import licence are issued to the mills only, that even under the letter of authority although the firm was authorised to import the goods the mills remained the importer and they were liable as importer, ,that the particulars necessary for inclusion in the bill of lading are furnished by the firm to the foreign suppliers before the shipment is effected, that after the goods were shipped at the foreign Port the bill of lading is forwarded along with the invoice and other connected documents of title through their Bank to India, that these documents are received by the firm after due payment of the value to the Agent Bank, that after receiving this document, information is given to the mill when they made the payment in accordance with the contract, that thereafter the goods were cleared and delivered to the mills by clearing agents at Cochin and forwarded to the mills".

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

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

From the facts set out above it is clear that this case clearly falls within the rule laid down by this Court in K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes(1). The appellant therein, imported certain goods from Belgium in order to fulfil contracts with certain buyers in India. The question arose whether the, sales effected in this country occasioned the import. This Court came to the conclusion that the sales in question occasioned the import and as such it is exempt under Sec. 5(2) of the Central Sales Tax Act, 1956, which says** "A sale or purchase of goods shall 'be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India".

(1) [1966] 3 S. C. R. 3 52.

8 88 Dr. Sayed Mohammed tried to distinguish Khosla's case from the present case on the plea that in Khosla's case there was only one sale whereas in the present case there were two sales. We are unable to accept this contention as correct. From the facts set out above, it is clear that the facts of this case are similar to those found in Khosla's case. Reliance was placed by Dr. Sayed Mohammed on the decision of this Court in Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras and Another(1). The facts of that case briefly stated, are as follows :

The Coffee Board auctioned certain quantities of coffee for the purpose of being sold in foreign countries. The purchasers of those lots were required to export that quantity of coffee to one or the other of the foreign countries mentioned in the sale notice. They were precluded from selling the same inside India. The question arose whether the purchases made by, them occasioned export. This Court came to the conclusion that the purchases in question were purchases for the purpose of export and the same did not occasion export. This Court did not differ from the view taken in Khosla's case. On the, other hand it distinguished that decision. Hence the rule laid down in the Coffee Board's case is inapplicable to the present case. For the reasons mentioned above these appeals fail and they are dismissed with costs. There are four sets of respondents. Hence four hearing fees--One set of hearing fee for each set of respondents.

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S.C.                                        Appeals dismissed.
(1) [1970] 3 S. C. R. 147.
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