Supreme Court of India
Mohd. Serajuddin Etc vs State Of Orissa on 16 April, 1975
Equivalent citations: 1975 AIR 1564, 1975 SCR 169
Author: A Ray
Bench: Ray, A.N. (Cj), Khanna, Hans Raj, Mathew, Kuttyil Kurien, Beg, M. Hameedullah, Chandrachud, Y.V.

PETITIONER:
MOHD. SERAJUDDIN ETC.

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT16/04/1975

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
KHANNA, HANS RAJ
MATHEW, KUTTYIL KURIEN
BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 1564 1975 SCR 169
1975 SCC (2) 47
CITATOR INFO :
F 1975 SC1652 (17,23,24)
R 1976 SC 410 (6)
F 1977 SC 247 (4,5,6,8,9,13,16)
F 1977 SC2008 (4)
RF 1980 SC1468 (4,13,15)
RF 1991 SC1122 (9)

ACT:
Constitution-Article 286(1)-Section 5 of Central Sales Tax Act-Meaning of in the course of export-Agency of necessity F.O.B. Contract.

HEADNOTE:
The appellants entered into two contracts with the State Trading Corporation. The S.T.C. entered into identical contracts with the foreign buyers for sale of the identical goods purchased by the S.T.C. from the appellant. the clauses as to shipment, sampling, analysis, weighment, payment are identical in both the contracts. There is a special clause in each one of the contractor providing that

if the corresponding contract of S.T.C. with the foreign buyer shall stand cancelled for any reason, the contract of the S.T.C. with the appellant will also stand cancelled. Likewise, there is a special clause in the con tract between the S.T.C. and the foreign buyer that if for any reason the contract between S.T.C. and the appellant stands cancelled the contract- between S.T.C. and the foreign buyer will stand cancelled. The letter of credit opened by the foreign buyer was to be endorsed in favour of the appellant. the prices mentioned in both the contracts are the same with a difference of on(dollar per ton.

The appellants contended that the contracts were in the course of export, and, therefore, not taxable. The High Court came to the conclusion that the sale by the appellants to the S.T.C. was not in the course of ,export and was therefore, exigible to tax under the Central Sales Tax Act.

In appeal the appellants contended before this Court:

1. The contract between the appellant and the S.T.C. is inextricably bound up with the export. The sale between the appellant and the S.T.C. and the export by Corporation to foreign buyer constitutes one integrated transaction.
2. The S.T.C. has been interposed by the Statute between the appellant and the foreign buyer for a limited purpose. The inextricable link is not broken by the S.T.C. The S.T.C. could not have diverted the goods to a buyer in India without violating Export and Import Control Order.
3. The contract between the appellant and the S.T.C. being on f.o.b. basis the property in the goods passed only on shipment when the goods are in the stream of export. There is no sale in the taxable territory.
4. Even if it is held that the appellant did not have any contract with the foreign buyer and that the privity is essential the rigid rule of privity of contract should be relaxed in consideration of equity and justice and a realistic approach should be adopted.

The respondent contended that the sale by the appellant to the S. T. C. was a sale for export but not a sale in the course of export.

There can be only one sale in the course of export.

HELD by C. J. (for himself and Mathew, Beg, Chandrachud, II).

1. In the first Travancore Cochin case, the contracts were directly between the respondents and their foreign buyers. There was no intermediary between the Indian seller and the foreign buyer. [175H]

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2. In the Coffee Board case this Court held that the

introduction of an intermediary between the seller and the importing buyer breaks the link. This Court has held that there must be a single sale which itself causes the export and there is no room for two or more sales in the course of export. [173FG&H]

3. The contention that the contract between the appellant and the S.T.C. and the contract between the S.T.C. and the foreign buyer formed integrated activities in the course of export is unsound. The crucial words in section 5 of the Central Sales Tax Act are that a sale or purchase of goods shall be deemed to take place in the coursed of the export of the goods only if the sale or purchase occasions such export There are two separate and independent contracts of sale one between the appellant and the S.T.C. and the other between the S.T.C. and the foreign buyers within the meaning of ruling in the Coffee Board case and the Benani Brother's case. [180FGH]

4. The word "occasion" in section 5 means the immediate and direct cause. [181B]

5. The appellant was under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the appellant were against the S.T.C. Similarly, obligations of the appellant were to the S.T.C. The price was different in the two contracts. This difference also dissociates the two contracts from each other. [181EFH]

6. The S.T.C.is not an agent of necessity. The agency of necessity arises where the person authorised to act as an agent for another without any regard to the consent of the principal, act in certain circumstances and the law creates an agency of necessity, e.g. a wife becomes an agent of necessity. In the present case, there is no principal and agent relationship between the appellant and the S.T.C. The relationship is between the two principals. [182CDE]

7. In the present case mention of f.o.b. price in contracts between the appellant and the S.T.C. does not render the contracts with the foreign buyers f.o.b. The S.T.C. entered into independent contracts with the foreign buyers on f.o.b. basis. The appellants were required under the contracts between the appellant and the S.T.C. to bring the goods to the ship named by the S.T.C. The shipment of the goods by the S.T.C. to the foreign buyer is the f.o.b. contract to which the appellants are not the parties. [184DE]

8. The fact that the export can be made only through the S.T.C. does not have the effect of making the appellants the exporters where there is direct contract between the Corporation and the foreign buyer. [185A]

Dismissing the appeals held, that sale was not in the course of export and was exigible to the Central Sales Tax. [185C]

(Per Khanna, J. dissenting)

Allowing the Appeals, Held

(a) It was laid down in the Travancore Cochin case that a sale in the course of export predicates action between the

sale and the export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted without a breach of the contract or the compulsion arising from the nature of the transaction. There must be in intention on the part of both the buyer and seller to export, there must be an obligation to export and there must be an actual export. [190BC]

(b) The sale of mineral ores for export was canalised through S.T.C. in pursuance of an order made under the Imports and Exports Control Act, 1947. Section 3 of that Act empowered the Central Government to prohibit, restrict
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or otherwise control imports or exports. Under the powers conferred by that section the Central Government issued the Exports Control Order, 1958. Clause 3 of that Order provided that no person shall export any goods of the description specified in Schedule I except under and in accordance with a licence granted by the Central Government. Chrome Ore and Concentrates were specified in the first Schedule. [193ABC]

(c) The agreement between the appellant and S.T.C. incorporated die terms and conditions which were settled between the appellant and the foreign buyer. IL was agreed that the contract between the appellant and the S.T.C. would be deemed cancelled if for any reason the foreign buyer cancelled the corresponding purchase contract of the S.T.C. The agreement between the appellant and S.T.C. clearly contemplated the export of Chrome Concentrates. The name of the ship on which the Chrome Concentrates were to be loaded for the purpose of export was also given in the agreement. The price to be paid by S.T.C. to the appellant was fixed in terms of dollars mainly because the price to be `charged from the foreign buyer was fixed in terms of dollars. The amount that the S.T.C. was to get in the course of this transaction was I Dollar per ton. The appellant was to get 90 per cent against shipping documents and the remaining 10 per cent after destinational weight and analysis. [193EH]

(d) The export of the Chrome Concentrates was occasioned by one transaction. The parties to that transaction were the appellant, the S.T.C. and the foreign buyer. The S.T.C. was brought into the picture as an intermediary because of the legal requirement according to which the export of Chrome Concentrates was to be cancelled through S.T.C. The agreements were part of one integrated transaction which resulted in the export of the goods. The interconnection between the agreement was so intimate that one agreement could not stand without the other. It was accordingly provided that the cancellation of one agreement automatically resulted in the cancellation of the other agreement. [194A to C]

(e) The observations of the Coffee Board's case that there was no, room for 2 or more sales in the course of export were made in the context of 2 independent sales. Those

observations could not be invoked in the sale like the present where two sales are so interconnected as to be part of one integrated transaction. In the Coffee Board's case, itself, the discussion about the absence of connection between the two sales would have been unnecessary if there was intention to lay down an absolute rule that once there are two contracts the court need not look to other circumstances. The Coffee Board's case which was decided by a Constitution Bench could not set at naught the rule laid down in a series of earlier decisions by Constitution Benches and in fact it did not do so. [194F. 195BC]

(f) The S.T.C. could not have diverted the goods supplied by the appellant for a purpose other than the export to the foreign buyer. [196F]

(g) The position of S.T.C. was not of a purchaser in the ordinary sense. S.T.C. was not entitled to get profits and was not liable to bear losses resulting from fluctuations in the market rate. The S.T.C. came into the picture as a statutory intermediary and all that the S.T.C. was entitled in the bargain was a commission of I Dollar. [196G & 197 A & C]

(h) In Khosla's case there were two contracts. Despite the existence of two contracts this Court held that the contract in question was exempt from payment of tax, as being in the course of import. [198A. D&E]

(i) The contract of sale between the appellant and S.T.C. was on F.O.B. terms. [198H]

ORDER

In accordance with the judgment of the majority the appeals were dismissed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 697 to 706 of 1973 and 2063 to 2082 of 1974.

Appeals by Special Leave from the Judgment & Order dated the 17th September, 1973 of the Orissa High Court in S. J. C. Nos. 25 to 44 of 1971.

Govind Das, P. H. Parekh, and Mrs. S. Bhandare, for the appellants (in C.As. Nos. 697-706/73) B. Sen, O. C. Mathur and D. N. Mishra, for the appellants (In C.As. 2063-2082/74) G. L. Sanghi and Bishamber Lal, for intervener, (Misri Lal Jain) F. S. Nariman, Additional Solicitor General of India, F. S. Desai, P. H. Parekh, Mrs. S. Bhandare and Manju Jatley, for the applicant/ Intervener (M. M. T. C.) S. T. Desai, M. C. Bhandare and B. Parthasarthy for the respondents (In all the appeals) The Judgment of the Court was delivered by Ray, C. J. H. R. Khanna, J. gave a dissenting Opinion.

RAY, C. J.-These Appeals by special leave raise the question whether the agreements between the appellants and the State Trading Corporation (hereinafter referred to as the Corporation) were in

course of export, and therefore, immune from liability to the Central Sales Tax Act. The appellant entered into four contracts for sale of mineral ore. Two of these contracts were with the foreign buyer M/s Associated Metal and Minerals Corporation, New York. The other two contracts were with the State Trading Corporation. It is common ground that the Corporation entered into contracts with foreign buyers for sale of the identical goods purchased by the Corporation from the appel- lant.

The present appeal relates to the two contracts between the appellant and the Corporation. The High Court came to the conclusion that the appellant's two contracts with the Corporation are exigible to tax under the Central Sales Tax Act, 1956.

Section 5(1) of the Central Sales Tax Act, 1956 hereinafter referred to as the Act contains the following relevant provision :-

> "A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India".

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

Counsel on behalf of the appellant relied on some terms of contract in support of the contention that the contract between the appellant and the Corporation and the contract between the Corporation with the foreign buyer formed one integrated transaction. The clauses in the contract between the appellant and the Corporation relied upon by the appellant are terms as to price, shipment, sampling, analysis weighing, payment and a special clause. The price is expressed in U. S. dollars per long ton, F.O.B. Ocean liner vessel, Calcutta. The term for shipment is that the material will be ready in Calcutta harbour for shipment per steamer as Leneverett or Substitute schedule to load during December, 1960. The clause as to sampling and analysis is final sampling and moisture determination will be made at the time of unloading at the port of discharge by Far East

Superintendence Company or U. S. Consultants and their certificate will be final and binding on both buyer and seller. The clause as to weighing says that the final weights as ascertained by Far East Superintendence Co. Ltd. or U. S. Consultants at the port of discharge is final and binding on both parties.

The terms as to payment are these. 90 per cent against shipping documents as described in buyer corresponding sale contract. Buyer will assign the relevant foreign letter of credit which is to be opened in their name by their foreign buyer, Messrs. Associated Metals and Minerals Corporation, on receipt from the sellers of a Bank draft for difference between buyers F.O.B. purchase value and F.O.B sale value, i.e. $ 1.00 (Rs. 4.75) per try long ton for a Bank guarantee from a Scheduled Bank guaranteeing that sellers will pay buyers F.O.B. purchase value as shown in the contract and buyers F.O.B. sale value as shown in the foreign letter of credit and the buyers will endorse the bills of lading and deliver the same to sellers to negotiate against the above mentioned letter of credit. Balance after destinational weight and analysis on the basis of documents mentioned in the Corporation's corresponding sale contract with buyer. If the balance 10 per cent is insufficient to cover short fall in weight and analysis at destination or any penalty imposed by the Corporation's foreign buyer the additional amount shall be payable by sellers to buyers on demand. The special clause relied on by the appellant is as follows

(i) Unless otherwise agreed upon, the sellers agree that the contract shall be deemed as cancelled if for any reasons whatsoever M/s Associated Metals and Minerals Corporation, cancel their corresponding purchase contract with the buyers for supply of chrome ore.

(ii) The terms and conditions of the buyers corresponding sale contract with M/s Associated Metals & Minerals Corporation will apply to this contract also except to the ex- tent specified in this purchase contract.

(iii) A true copy of buyers sale contract with M/s Associated Metals & Minerals Corporation is attached."

On behalf of the appellant it is said that the commodity could not be exported directly by the appellant in view of the restrictions imposed by law. The appellant entered into negotiations with foreign purchasers and settled all the conditions of the contract. The Corporation, thereafter entered into an FOB contract with the appellant and with the foreign buyer on identical terms. The Corporation is interested only in the commission of one dollar per long ton from the appellant. All necessary steps including payment of customs duty for the shipment and export have been done by the appellant. The contract between the appellant and the Corporation is on FOB basis and the property in goods passes only on shipment when the goods are in the course of export.

The appellant relied on the decisions in State of Travancore-Cochin & Ors. v. The Bombay Co. Ltd. (1952) S.C.R. 1112 and State of Travancore-Cochin & Ors., v. Shanmugha Cashew Nut Factory & Ors. (1954) S.C.R. 53 in support of two propositions extracted from those decisions. First, 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. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export from parts of a single transaction. Of these two integrated activities which together constitute an export sale whichever first occurs can well be regarded as taking place in the course of the other. Even in cases where the property in the goods passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey from the State, the sales must be regarded as having taken place in the course of the export, and, therefore, exempt under Article 286(1) (b). Second, the word "course" denotes movement from one point to another, and the expression "in the course of" not only implies a period of time during which the movement is in progress but also postulates a connected relation. A sale in the course of export out of the country should be understood as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities.

The two Travancore-Cochin decisions relied on by the appellant are on interpretation of the word "in the course of the export of the goods out of the territory of India" occurring in Article 286(1) (b) of the Constitution, Article 286 (1) states that 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 (a) outside the State or (b) in the course of the import of the goods out of territory of India. Prior to the Constitution Sixth Amendment Act, 1956 there was an explanation for the purpose of sub-clause (a) of Article 286 (1). There was no definition of the expression "in the course of import" or "in the course of export" before the Constitution Sixth Amendment Act, 1956. By the Constitution Sixth Amendment Act, 1956 Parliament was given power to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1) of Article 286. Section 5 of the Central Sales Tax Act has given a legislative meaning to the expression "in the course of export" and "in the course of import".

In the first Travancore-Cochin case (supra) the respondents claimed exemption from assessment in respect of sales affected by them to foreign buyers on CIF or FOB terms on the ground that such sales took place in the course of the export of the goods out of the territory of India within the meaning of Article 286(1) (b) of the Constitution. This Court held that the sales which occasioned the export in each case fell within the scope of the exemption under Article 286(1) (b). These sales were found to be a series of integrated activities commencing from the agreement of sale with the foreign buyer and ending with the delivery of ,he goods to a common carrier for transport out of the country by land or sea. These sales could not be dissociated from the export without which these could not be effectuated. The sale and the resultant export from parts of the single transaction. Any such integrated activities which together constitute an. export sale, whichever occurs first, can well be regarded as taking in the course of the other. On these reasoning this Court held in the first Travancore-Cochin case (supra) that assuming that the sales to the foreign buyers were complete within the State before the goods commenced their journey, the sales must nevertheless be regarded as having taken place in the course of the export.

It is noticeable in the first Travancore-Cochin case, (supra) that the contracts were directly between the respondents and their foreign buyers. There was no intermediary between the Indian seller and the foreign buyer. The sale and the export become integrated in one transaction.

In the second Travancore-Cochin case (supra) the respondents imported raw cashew nuts from aboard, and neighbouring districts in the State of Madras. The respondents converted the same by certain process into edible kernels and exported the kernels to foreign countries. The respondents claimed exemption Article 286(1) (b) in respect of purchase of cashew nuts. The three propositions laid down in the second Travancore Cochin case (supra) are these. First, sales by export and purchases by import fall within the exemption under Article 286(1) (b). Second, purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs barrier are not within the exemption. Third, sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs barrier are within the exemption, assuming that the State power of taxation extends to such transactions. The second Travancore-Cochin case (supra) was on the question whether two categories of sale or purchase would fall within the scope of exemption under Article 286(1) (b). The first category was the last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business and the first sale by the importer to fulfil orders pursuant to which the goods were imported or orders expected to be received after the import. The second category comprised of sales or purchases of goods effected within the State by transfer of shipping documents while the goods are in the course of transit. As to the first mentioned category this Court in the second Travancore-Cochin case (supra) said that the exemption under Article 286(1) (b) was for sale or purchase of goods taking place in the course of the import of the goods "into" or export of the goods "out of" the territory of India. The reference to the "goods" and to the "territory" of India make it clear that the words "export out of" and, ",import into" mean the exportation out of the country and importation into the country respectively. The word "course" denotes movement from one point to another and the expression "in the course" not only implies a period of time during which the movement is in progress,, but postulates also a connected relation. On this, reasoning this Court held that a sale in the course of export means a sale taking place not only during the activities directed to the end of exportation of the goods. out of the country but also as part of or connected with such activities. The purchase for the purpose of export was held in that decision not too be connected or integrated activities-. In the second Travancore-Cochin case (supra) the import from Africa fell into two categories. The first consisted of purchases made through intermediaries called the Bombay Party, who acted as agents for the respondents charging commission. The Bombay Party arranged for purchases on behalf of the respondents and obtained delivery or the Shipping documents on payment at Bombay. In the second category the Bombay Party indented the goods on their own account and sold the goods as principals to the respondents and other customers. The shipping documents were made out in the name of the Bombay Party as consignees. This Court held that in respect of the purchases under the first category the Bombay Party acted marely as agents of the respondents, and, therefore, there was privity between the respondent and the African sellers. With regard to the second category the Bombay Party were the purchasers and they sold the goods as principals to the respondents and there was no privity between the respondents and the African sellers. The principal decisions of this Court on the interpretation of section 5 (1) of the Act are Bengorm Nilgiri Plantations Company Coonoor & Ors. v. Sales Tax Officer Special Circle, Ernakulam & Ors. [1964] 7 S. C. R. 706, Coffee Board, Bangalore v. Joint Commercial Tax Officer Madras (1970), 3 S. C. R. 147 and the recent decision in M/s. Binani Bros. (P) Ltd., v. Union of India & Ors. (1974) 1 S.C.C. 459. In the Nilgiri Plantations Case (supra) the appellants were sellers of tea

and their purchasers were local agents of foreign buyers. The sale,,; were by public auction. This Court held that a transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export unless the sale occasions export. It was said that to occasion export there must exists such a bond between the contract of sale and the actual exportation that each link is inextricably connected with the one immediately preceding it. 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. There may be a variety of transactions if the sale of commodity is followed by export. Foreign purchasers may purchase through their agents within the territory of India. Such a transaction is not in the course of export because the seller does not export the goods and it is not his concern as to how the purchaser deals with the goods. There may be also a transaction under a contract of sale With a foreign buyer under which the goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale may be dissociated from the export. A sale in the course of export predicates a connection between the sale and export. No single test can be laid as decisive for determining that question. Each case must depend upon its facts. But it does not mean that distinction between transactions which may be called sales for export and sales in the course of export is not real. Where the sale is effected by the seller and the seller is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with sale so that the bond cannot be dissociated without a breach of the obligations arising 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 Nilgiri Plantations case (supra) this Court found that the sales by the appellants were intended to be complete without the export and as such it could not be said that the sales occasioned export. The sales were for export and not in the course of export.

In the Coffee Board case (supra) the Coffee Board framed rules for sale of coffee to registered exporters. Only dealers who registered themselves as exporters of coffee with the Coffee Board and who held permits from the Chief Coffee Marketing Officer in that behalf were permitted to participate at the auction. After the bid the price would be paid in accordance with the conditions. One of the conditions called ,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 catelogue of lots, or to any other foreign country outside India as may be approved by the Chief Coffee Marketing Officer and that it shall not under any circumstances be diverted to another destination, sold, or be disposed or otherwise released in India". Another condition provided that "if the buyer fails or neglect to export the coffee within the prescribed time, he would be liable to pay a penally". Another condition provided that if the buyer made any default to export the coffee, it would be lawful for the Chief Coffee Marketing Officer without reference to the buyer to seize the unexported coffee and deal with the same as if it was part and parcel of the coffee held by the board in their Pool Stock. The Coffee Board contended that the auctions were in the course of export, because the sales themselves occasioned the export of coffee. The Revenue contended that the sales were not bound up with the export. This Court held that the phrase "sale in the course of export" authorised not only a sale and an actual export but that the sale must be a part and parcel of the export. The word "occasion" in the context of sale or purchase was held to mean to cause export or to be the immediate cause of export. The introduction of an intermediary between the seller and the

importing buyer was held to break the link. There was one sale to the intermediary and another to the importer. The first sale was not in the course of export because the export began from the intermediary and ended with the importer. The ruling of this Court in the Coffee Board case (supra) is 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. Though the sales by the Coffee Board were sales for export, they were not sales in the course of export. They were two independent sales in the export programme. The first sale was a sale between the Coffee Board as seller to the export promoter. Then there was the sale by the export promoter to a foreign buyer. It was the second sale which was in the course of export since the second sale caused the movement of goods between an exporter and an importer. In the, Coffee Board case (supra) the rules compelling export meant compelling persons who bought on their own to export in their own turn by entering into another agreement for sale. An essential condition as to export of coffee purchased at the auction was held not to amount to turn the transaction into a sale in the course of export. The reason given was that if the registered exporter who was the bidder at the auction did not export he would commit a default of conditions No. 30 and 31 and be liable to penalty and seizure of the coffee.

In the Coffee Board case (supra) the phrase "sale in the course of export" was held, to comprise of three essentials. First, there must be a sale. Second, goods must actually be exported. Third, the sale must be a part and parcel of the export. The propositions laid down in the Coffee Board case (supra) are these : The sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two for then there are two sales one to the intermediary and the other to the importer. The first sale is not in the course of export because the export commences with the intermediary. The tests are that there must be a single sale which itself causes the export or is in the progress or process or export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer.

The Coffee Board case (supra) discussed all the earlier decisions some of which were on the meaning of the phrase "in the course of export" occurring in Article 286(1)(b). In the Coffee Board case (supra) at page 161 of the Report it is said that the same meaning must obviously be given to the phrase "in the course of export" or to the phrase "occasions the export". One of the decisions discussed was K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes (1966) 3 S.C.R. 352. In K. G. Khosla & Co. case (supra) Khosla and Company entered into contract of sale with the Director General of Supplies and Disposals for supply of axle bodies manufactured by the principal of the Khosla & Co. in Belgium. The goods were to be inspected by the Director General of Supplies and Disposals in Belgium. Under the contract of sale the goods were liable to be rejected after a further inspection by the buyer Director General of Supplies and Disposals in India. The goods were imported into our country and supplied to the buyer at Peramber and Mysore. The contract between Khosla and Company and Director General of Supplies and Disposals was held by this Court to be in the course of import. The term as to rejection of goods as a result of inspection in India indicated that there was no completed sale in Belgium under the contract.

In the recent decision in Binani Brothers case (supra) the petitioner was a supplier to the Director General of Supplies and Disposals. The petitioner obtained import licences to supply nonferrous metals. The Government agreed to pay to the petitioner sales tax under the Central Sales Tax Act or West Bengal Sales Tax Act, whichever was applicable in terms of the contract. After the decision of this Court in K. G. Khosla & Co. case (supra) the Revenue Authorities issued an order directing that sales tax should not be allowed in respect of supply of stores which have been imported against import licences for supplies under contracts Placed by the Director General of Supplies and Disposals. On the basis of that direction the Government deducted in respect of sales tax certain sums of money which were pending payment and also threatened to recover a large sum of money which had been paid as sales tax in respect of supplies already made. This Court discussed the Travancore & Cochin cases (supra) and the Nilgiri Plantations Company case (supra) and the Coffee Board case (supra). Mathew, J. speaking for the Court said that there was no obligation under the contract on the part of the Director General of Supplies and Disposals to procure import licences for the petitioner. It war, the obligation of the petitioner to obtain import licence. Even if the contracts envisaged the import of goods and their supply to the Director General of Supplies and Disposals 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 sales between the petitioner and the Director General of Supplies and Disposals. Khosla & Co. case (supra) was discussed and this Court said that there was no completed sale in Belgium because under the contract the Director General of Supplies and Disposals reserved the final right of inspection and rejection of goods on their arrival in India. The crucial test which was laid down in the Nilgiri Plantations case (supra) as well as Coffee Board case (supra) is whether there were independent transactions or only one transaction which occasioned the movement of the goods in the course of export.

The contention on behalf of the appellant that the contract between the appellant and the Corporation and the contract between the Corporation and the foreign buyer formed integrated activities in the coarse of export is unsound. The crucial words in the section are that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods only if the sale or purchase occasions such export. The various decisions to which reference has been made illustrate the ascertainment of the preeminent question as to which is the sale or purchase which occasions the export. The Coffee Board case as well as the case of Binani Bros. (supra) clearly indicates that the distinction between sales for export and sales in the course of export is never to be lost sight of. The features which point with unerring accuracy to the contract between the appellant and the Corporation on the one hand and the contract between Corporation and the foreign buyer on the other as two separate and independent contracts or sale within the ruling in the Coffee Board case (supra) and the Binani Brothers case, are these. The Corporation entered on the scene and entered into a direct contract with the foreign buyer to export the goods. The Corporation alone agreed to sell the goods

-to the foreign buyer. The Corporation was the exporter of the goods There was no privity of contract between the appellant and the foreign buyer. The privity of contract is between the Corporation and the foreign buyer. The immediate cause of the movement of goods and ,export was the contract between the foreign buyer who was the importer and the Corporation who was the exporter and shipper of the goods. All relevant documents were in the name of the Corporation whose contract of

sale was the occasion of the export. The expression "occasions" in section 5 of the Act means the immediate and direct cause. But for the contract between the Corporation and the foreign buyer, there was no occasion for export. Therefore, the export was occasioned by the contract of sale between the Corporation and the foreign buyer and not by the contract of sale between the Corporation and the appellant.

The appellant sold the goods directly to the Corporation. The ,circumstance that the appellant did so to facilitate the performance of the contract between the Corporation and the foreign buyer on terms which were similar did not make the contract between the ,appellant and the Corporation the immediate cause of the export. The Corporation in regard to its contract with the foreign buyer entered into a contract with the appellant to procure the goods. Such contracts for procurement of goods for export are described in com- mercial parlance as back to back contracts. In export trade it is not ,unnatural to find a string of contracts for export of goods. It is only the contract which occasions the export of goods which will be entitled to exemption. The appellant was under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the appellants were against the Corporation. Similarly the obligations of the appellant were to the Corporation. The foreign buyer could not ,claim any right against the appellant nor did the appellant have any obligation to the foreign buyer. All acts done by the appellant were in performance of the appellants obligation under the contract with the Corporation and not in performance of the obligations of the Corporation to the foreign buyer. The expression "sale" in section 5 of the Act has the same meaning as in Sale of Goods Act. String contracts or chain contracts are separate transactions even when there is similarity relating to quantity, quality of goods, shipment, sampling and analysis. weighment and force majeure etc. or other similar terms. A contract of sale is a contract whereby the seller transfers or agrees to transfer the pro- perty in goods to the buyer for the money consideration called the price. There were two separate contracts. The price was different in the two contracts. This difference also dissociates the two contracts from each other. The High Court was right in holding that the sales of the appellant to the Corporation were exigible to tax because the appellant's sales to the Corporation were not sales in the course of export. It has now been held by this Court in Glass Chatons & Users' Association v. Union of India (1962) 1 S.C.R. 862 ; Dave Son of Bhimji Gohil v. Joint Chief Controller of Imports & Exports (1963) 2 S.C.R. 73; and M/s. Daruka & Co. v. The Union of India & Ors. (1973) 2 S.C.C. 617 that the system of canalisation of exports or imports to the State Trading Corporation is constitutionally valid. The broad reasons for the system of canalisation are control" of foreign exchange and prevention of abuse of foreign exchange. Counsel for Minerals and Metals Trading Co. which became the successor to the Corporation did not contend that the Corporation is an agency. Agency is created by actual authority given by principal to the agent or principal's ratification of contract entered into by the agent on his behalf but without his authority. Agency arises by an ostensible authority conferred by the principal on the agent or by an implication of law in cases of necessity. On behalf of the appellant it was said that the Corporation is an agent of necessity because the Corporation is a special agency to carry out certain public policies. The appellant contends that it is the exporter and the foreign buyer is the importer and the contract is said to be processed through the agency of the Corporation. Agency of necessity arises where the persons authorised to act as an agent for another without any regard to the consent of the principal act in certain circumstances and the law creates an agency of necessity. A wife becomes an agent of necessity. In other cases agency of necessity is often applied where after the parties have created a

contractual relationship, the law, in view of some emergency, confers upon one party authority to act for another, or allows an agent to exceed the authority which has been conferred upon him. In the present case, there is no principal and agent relationship between the appellant and the Corporation and in the absence of such relationship the agency of necessity does not arise. Other instances of agency of necessity are where the master of a ship is entitled in the case of accident to enter into a contract which binds the owner of the cargo, notwithstanding that it transcends his express authority if it is bonafide made in the best interests of the owners con- cerned. The same power is possessed by a land carrier in respect of perishable goods. In the present case, the relationship between the appellant and the Corporation is between two principals and there is no aspect whatever of principal and agency. Further, this question of agency was never raised before the Sales Tax authorities. Counsel for the appellant contended that the contracts between the appellant and the Corporation were F. O. B. contracts and the property passed only on shipment when the goods were in the course of export. It was also said that the goods sold by the appellant to the Corporation could not be diverted by the Corporation, and, therefore, the transaction was in the course of export. Reliance was placed on the decisions of this Court in B. K. Wadeyar v. M/s Daulatram Rameshwarlal (1961) 1 S.C.R. 924 ; State of Bihar v. Tata Engineering & Locomotive Co. Ltd. (1971) 2 S.C.R. 849; National Tractors, Hubli v. Commissioner of Commercial Taxes, Bangalore (1971) 3 S. C. C. 143. In Wadeyar's case (supra) sales were direct between Daulat- ram Rameshwarlal and the foreign buyer. Under the contracts Daulatram Rameshwerlal continued to be owners of the goods till the goods crossed the customs barriers. The Revenue contended that property passed to the foreign buyer before shipment for three reasons. First, the bill of lading was taken in the name of the foreign buyer. Second, the export was under the contract to be under the buyer's export licence. behind, the export clause contained a provision that it shall be deemed to be a condition on licence that the goods, for the export of which licence is granted, shall be the property of the licensee at the time of the export. This Court said that the term in the contract for payment against presentation of documents meant that the bills of lading were retained by the sellers and the buyer would pay on presentation of the bills of lading. The retention of the bill of lading by the seller would indicate an intention of the parties that the property in the goods would not pass till after payment. With regard to the, export licence, it was said that the presumption in F.O.B. contract is that it is the duty of the buyer to obtain export licence though in the circumstances of a particular case this duty may fall on the seller. The clause in the, Export Control Order was construed to mean that the words "at the time of the export do not mean the time when the goods crossed the customs barrier. Finally it was said that export as defined in the Import and Export Control Act, 1947 means taking out of India by land, sea or air ; and, therefore, export cannot be held to have commenced till at least the ship carrying the goods has left the port. Further Wadeyar's case is before the Act. In the National Tractors case (supra) the assessee purchased iron ore from mine owners and sold them to the State Trading Corporation for export to foreign countries. Ore was transported by rail from the mines-from Hospet to Hubli and from there by road to Karwar port where it was loaded into ships for transportation to foreign countries. Under the relevant provision of the Mysore Sales Tax Act, tax was payable on iron ore at the point of last purchase within the State. The sales tax authorities held that the last purchaser was the State Trading Corporation, and, therefore, the assessee was not liable to pay tax. The High Court held that the assessee is liable to tax because, the transactions with the State Trading Corporation were in the course of export. This Court held that in the light of presumption which arises in the case of F.O.B. contracts, the property did not pass to the State

Trading Corporation until the goods were actually put on board the ship, and, therefore, the assessee was the last purchaser within the State and was liable to tax. The decision in the National Tractors case (supra) was on the question as to who was the last purchaser in the State. It was not the contention of the assessee that the sale to the Corporation was in the course of export.

In the Tata Engineering & Locomotive Co. Ltd. case (supra) the assessee was carrying on the business of manufacturing and selling trucks, bus chassis and spare parts to their appointed dealers. Agreement,,, entered into between the assessee and dealers showed that each dealer was assigned a territory in which alone the dealer could sell. The dealers had to place indents, pay the price of goods to be pur- 10 SC/75--13 chased and obtained delivery orders from the Bombay Office of the assessee. In pursuance of the delivery orders the trucks etcetera were delivered in Bihar to be taken to the territories assigned to them for sale there. If the dealers failed to abide by the term requiring them to move the goods outside the State of Bihar they would have committed breach of their contracts. The question was whether the turnover relating to the sales made by the assessee to its dealers for sale by them in their respective territories outside the State of Bihar was exempt from liability to pay sales tax under the, Bihar Sales Tax Act, on the ground that the sales took place in the course of inter-State trade or commerce. It was held that where under the terms of a contract of sale, the buyer is required, as a necessary incident of the contract, to remove the goods from the State in which he purchased the goods to another State and when the goods are so removed, the sale must be considered as a sale in the course of inter-State trade or commerce. In the Tata Engineering & Locomotive Co. (11) case (supra) the ratio was that under the contracts of sale the purchasers were required to remove the goods from the State of Bihar to other States. In the present case, the movement of goods in the course of export began when the Corporation shipped the goods under the export contract between the Corporation and the foreign buyer.

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

The expression "in the course" implies not only a period of time during which the movement is in progress but postulates a connected relation. Sale in the course of export out of the territory of India means sale taking place not only during the activities, directed to the end of exportation of the goods out of the country but also as part of or connected with such activities. In Burmah Shell Oil Storage & Distributing Co. v. Commercial Tax Officer (1961) 1 S.C.R. 902 it was said that the word "export" did not mean a mere taking out of the country but that the goods may be sent to a destination at which they could be said to be imported. The directions given by the Corporation to the appellant to place the goods on board the ship are pursuant to the contract of sale between the appellant and the

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

The fact that the, exports can be made only through the State Trading Corporation does-not have the effect of making the appellants the exporters where there is direct contract between the Corporation and the foreign buyer. Restriction on export that export can be made ,only through the State Trading Corporation is a reasonable restriction and has been upheld by this Court in several decisions to which reference' has been made earlier.

For these reasons, we are of opinion that the High Court was correct in its conclusion that the contracts between the appellant and the Corporation were not entitled to claim exemption within the meaning of section 5(1) of the Act. Civil Appeals No. 697-706 of 1973 are dismissed. Parties will pay and bear their own costs.

In Civil Appeals, No. 2063-2082 of 1974 the appellants entered into similar contracts with the Corporation. The Corporation entered into similar contracts with the foreign buyers. The appellants were assessed to tax under the Act. The appellants made an application to the Tribunal to refer the question to the High Court as to whether the sales by the appellants to the Corporation were in the course of export. The Tribunal dismissed the application of the appellants. The appellants applied to the High Court for orders that the Tribunal be called upon to file statement of case. The High Court dismissed the applications. The High Court relied on the decision which is the subject matter of Civil Appeals No. 697-706 of 1973. In view of our conclusion in Civil Appeals No. 697-706 of 1973 that the appellants are not entitled to claim exemption Civil Appeals No. 2063-2082 of 1974 are dismissed.

In view of the fact that the High Court directed the parties to pay and bear their own costs, similar order is made in all these appeals.

KHANNA, J.-This judgment would dispose of civil appeals Nos. 697 to 706 of 1973 which have been filed by special leave by Md. Serajuddin against the judgment of the Orissa High Court whereby the High Court answered the following question in respect of the two of the sales in favour of the revenue and against the assessee-appellant :

> "Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal is right in holding that the sales effected under the following four contracts. were sales in the course of export not exigible to tax under the Central Sales Tax Act, 1956 ?"

Apart from the two sales with which we are concerned in the present appeals, the question also covered two other sales but in expect of them, the answer of the High Court was in favour of the assessee appellant. So far as that part of the judgment of the High Court is concerned, its correctness has not been assailed by the revenue.

The assessee-appellant is a registered dealer of Cuttack III Circle under the Central Sales Tax Act. The appellant carries on the business of mining and exporting mineral ores to foreign countries. The

appellant entered into four contracts for sale of chrome concentrates. Two of those contracts were No. 19615 dated May 29, 1959 and No. 20579 dated December 7, 1959 with Messrs Associated Metals & Minerals, New York and Messrs Jan De Footer, Rotterdam (Holland) respectively. In 1960 the sale of mineral ores for export was canalised through the State Trading Corporation (hereinafter described as STC). The appellants entered into two contracts No. 6/60 dated October 26, 1960 and No. 2161 dated April 14, 1961 for sale of those chrome concentrates with STC. STC in its turn entered into contract with foreign buyers. The appellant was assessed to tax for the quarters ending September 30, 1959 to December 31, 1961 by the Sales Tax Officer, who made these assessments to the best of his judgment as the appellant failed to produce his account books or other, documents in support of-. the returns. On appeal the Assistant Commissioner reduced the assessments for nine out of the 10 quarters and enhanced the assessment for the quarter ending March 31, 1961. On second appeal the Sales Tax Tribunal remanded the case for fresh assessment, after holding that tile sales, effected by the appellant under the above mentioned four contracts were sales in the course of export and were thus exempt from payment of, sales tax under article 286(1) of the Constitution. The State of Orissa filed applications before the Tribunal for referring the above question of law to the High Court. Those applications were rejected by the Tribunal. Thereupon, the State approached the High Court. The High Court then called upon the Tribunal to state a case and refer the question reproduced above to it.

The High Court in the judgment under appeal has held that the two contracts dated May 29, 1959 and December 7, 1959 with the foreign buyers occasioned export of the minerals out of the territory of India and, as such, those sales were not exigible to tax under the Central Sales Tax Act. As mentioned earlier, we are no longer concerned with those two sales. As regards the other two sales effected under the contracts dated October 26, 1960 and April 14, 1961 with STC, the High Court answered the question against the assessee-appellant and held that those two sales were not exempt from sales tax under article 286(1)(b) of the Constitution read with section 5(2) of the Central Sales Tax Act.

In appeal before us Mr. Gobind Das on behalf of the appellant has assailed the judgment of the High Court and has contended that the sales in question were effected in the course of export and as such were exempt from the payment of sales tax. As against that, Mr. Desai has canvassed for the correctness of the view taken by the High court.

In order to appreciate the contentions which have been advanced on behalf of the parties, it may be relevant to set out the material terms of agreement dated October 26, 1960 which was entered into between the appellant and STC. According to the agreement the appellant had agreed to sell and STC had agreed to buy Indian chrome ore on the terms and conditions mentioned therein. After setting out the quantity of the material and the analysis specification, the agreement mentioned the price to be "U.S. $ 36.00 (U.S. Dollars thirty six) per long ton dry weight, basis 54% Cr O3 and 3.5/1 Cr/Fe ratio with a premium of $ 1.00 for increase of 1 % Cr2O3 content but no premium above 553 CR2O3, fractions prorata ; and with a penalty of $ 1.00 for each 0.1 below 3.5/1 Cr/Fe ratio, fractions prorata, FOB ocean liner vessel, Calcutta,."

According to clause 5, the appellant represented that the material would be ready in Calcutta harbour for shipment per steamer as Leneverett or Substitute scheduled to load ',during December 1960. Clause 6 dealt with sampling and analysis and according to it, the material will be sampled at the time of loading into ocean going vessel by R. V. Briggs & Co. or Mitra S. K. Pt. Ltd. and the final sampling would be made at the time of unloading at the port of discharge of Far East Superintendence Company or U.S. Consultants. The seller was to supply a weight certificate issued by the Calcutta Port Trust Authorities which was to form the basis for provisional payment. The final weights were to be ascertained by the U.S. Consultants at the port of discharge and they were to be final and binding on the parties. Clauses 8 and II of the agreement read as follows "8. Payment : 90% payment against shipping documents as described in Buyers corresponding sale contract. Buyers will assign the relevant foreign letter of credit which is to be opened in their name by their foreign buyer, Messrs. Associated Metals and Minerals Corporation, on receipt from the sellers of a Bank draft for difference between buyers FOB purchase value and FOB Sale value,, that is $ 1.00 (Rs. 4.75 nP) per dry long ton for a Bank guarantee from a scheduled Bank guaranteeing that sellers will pay buyers immediately upon shipment/shipments the difference between buyers FOB purchase value as shown in this contract and buyers FOB sale value as shown in foreign letter credit that is Dollar 'One (Rs. 4.75 nP) per dry long ton by Bank Draft for each shipment and the buyers will endorse the bills of lading and deliver the same to sellers to negotiate against the above mentioned letter of credit. Balance after destinational weight and analysis on the basis of documents mentioned in STC's corresponding sale contract with buyers. If the balance 10% is insufficient to cover shortfall in weight and analysis at destination or any penalty imposed by STC's foreign buyers, the additional amount shall be payable by sellers to buyers on demand.

11. Special Clause : (i) Unless otherwise agreed upon, the sellers agree that the contract shall be deemed as cancelled if for any reason whatsoever M/s. Associated Metals & Minerals Corporation, cancel their corres- ponding purchase contract with the buyers for supply of chrome ore.

(ii) The terms and conditions of the buyers corresponding sale contract with M/s Associated Metals & Minerals Corporation will apply to this contract also except to the extent specified in this purchase contract.

(iii) A true copy of buyers sale contract with M/s Associated Metals & Minerals Corporation is attached."

On November 4, 1960 M/s. P. Friedlaender & Co. of Calcutta addressed communication to the appellant stating that the above mentioned company bad been asked by the Joint Divisional Manager of STC to let them have details of the above sale mentioning specifications. delivery, payment, weight and analysis to be duly approved by the appellant to enable STC to draw up the necessary contract. M/s. P. Friedlaender & Co. also reproduced the particulars concerning- the transaction. The appellant was asked to sign a copy of the letter to enable M/s P. Friedlaender & Co. to forward the same to STC as the appellant's approval of the transaction. The letter gave the same particulars of the quantity, specifications, price, sampling and assaying, weighting and shipment which had been mentioned in the agreement between the appellant and STC. As regards the payment it was stated as under :

"Buyer to open an irrevocable letter of credit in US Dollars payable as follows :

90% against usual shiping documents balance after final weighment and analysis at destination."

The letter was signed on behalf of the appellant by M. K. Rahman in token of its acceptance.

In the meantime on October 26, 1960 the Chase Manhattan Bank New York sent a letter of credit to STC for thirty seven thousand U.S. dollars in the account of Associated Metals and Minerals Corporation. It was stated that it was in connection with the provisional commercial invoice for one thousand long ton Indian chrome concentrates originating from the appellant. In the letter of credit it was stated that it might be assigned by STC in favour of the appellant. On December 30, 1960 the appellant sent the different documents to the shipment of the goods along with the original letter of credit assigned in his favour to the United Commercial Bank. Accompanying the letter was also the invoice sent by the appellant, in respect of the above material.

I need not set out the terms of the other agreement dated April 14, 1961 between the appellant and STC as it is the common case of the parties that the relevant terms of that agreement are not materially different from the above mentioned agreement. 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 sale or purchase takes place-
>
> (b) in the course of import of the goods into, or export of the goods out of, the territory of India."

There was no definition of the expression "in the course of the import of the goods into, or export of the goods out of, the territory of India" before the Sixth Amendment of the Constitution. By that Amendment. Parliament was given power to formulate the principles for construing the expression. The Parliament accordingly provided in section 5 of the Central Sales Tax Act, 1956 as under :

> "5. (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.
>
> (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 Sale of Travancore-Cochin & Ors. v. The Bombay Co. Ltd.(1) Patanjali Sastri CJ. speaking for the Court observed "A sale by export thus 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. Such a sale cannot be dissociated from the

export without which it cannot be effectuated, and the sale and re- sultant export form parts of a single transaction."

In the case of State of Travancore-Cochin & Ors. v. Shanmugha Vilas Cashew Nut Factory & Ors.(2) it was held by this Court that purchases in the State made by the exporters for the purpose of export ,arc not within the exemption granted by article 286(1) (b) of the Constitution. Patanjali Sastri CJ. speaking for the majority observed "The word 'course' etymologically denotes movement from one point to another, and the expression 'in the course (1) [1952] SCR 1112.

(2) [1954] SCR 53.

of not only implies a period of time during which the movement is in progress but postulates also a connected relation..... A sale in the course of export out of the country should similarly be understood in the context of clause 1(b) as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities."

The learned Chief Justice further observed that the phrase "integrated activities" which had been used in an earlier decision to denote 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. It was in that sense that the two activities-the sale and the export-were said to be integrated. But a purchase for the purpose of export like production or manufacture for export, being only an act preparatory to export could not be regarded as an act done "in the course of the export of the goods out of the territory of India."

A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. 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 (see Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer, Special Circle Ernakulam &, Ors. (1) The appellants in that case were carrying on the business of growing and manufacturing tea in their estates. They sold tea to the local agents of the foreign buyers. The sales were by public auction at Fort Cochin, through brokers in accordance with the provisions of the Tea Act, 1953. The purchases by the local agents of the foreign buyers were with a view to export the goods to their principals abroad and the goods were in fact exported out of India. it was held that the sales by the appellants to the agents of the foreign

buyers did not conic within the purview of article 286(1) (b) of the Constitution. Dealing with the contention that the sellers had knowledge that the (1) [1964] 7 SCR 706.

goods purchased from them were with the intention of exporting, Shall J. speaking for the majority observed :

> "But there is nothing in the transaction from which springs a bond between the sale and the intended export linking them up as part of the same transaction. Knowledge that the goods purchased are intended to be exported does not make the sale and export parts of the same transaction, nor does the sale of the quota with the sale of the goods lead to that result. There is no statutory obligation upon the purchaser to export the chests of tea purchased by him with the export rights. The export quota merely enables the purchaser to obtain export licence, which he may or may not obtain. There is nothing in law or in the contract between the parties, or even in the nature of the transaction which prohibits diversion of the goods for internal consumption. The sellers have no concern with the actual export of the goods, once the goods are sold. They have no control over the goods. There is therefore no direct connection between the sale and export of the goods which would make them parts of an integrated transaction of sale in the course of export."

In K. G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes(1), the appellant entered into a contract with the Director-General of Civil Supplies for the supply of axle- bodies manufactured by its principals in Belgium. The goods were inspected on behalf of the buyers in Belgium but under the contract they were liable to rejection after further inspection in India. In pursuance of the contract the appellant supplies axle-bodies to the Southern Railway at Perambur and Mysore. It was held that the movement of the goods from Belgium to India was in pursuance of the contract between the appellant and the Director-General of Supplies and Disposals and that there was no possibility of those goods being diverted by the appellant for any other purpose. The sale was accordingly held to be in the course of import, and as such, exempt from taxation.

In Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras & Anr.(2) this Court dealt with a case relating to the export of coffee. Export of coffee outside India was controlled under the Coffee Act, 1942, by the Coffee Board. Coffee especially screened and selected was sold to registered exporters at 'export auctions'. Permits were given to such registered exporters to participate at the auction. The Coffee Board prepared a set of rules which incorporated the terms and conditions of sale of coffee in the course of export. Under condition 26 of the Rules a registered dealer was to give an ,export guarantee' under which export would be made only to stipulated or approved destinations. The buyer at an export auction was free to export the coffee either by himself or through a forwarding agent, without selling the goods to the forwarding agent. Immediately after the export evidence of the shipping bad to be produced before the (1) [1966] 3 SCR 352.

(2) [1970] 3 SCR 147.

Chief Marketing Officer. In case of default, according to conditions 30 and 31, the permit holder was liable to fine and the unexported coffee wits liable to be seized. The Coffee Board claimed that sales of coffee to registered exporters had been made in the course of export. It was held by the majority that the sales by the Coffee Board were sales for export and not in the course of export. Hidayatullah C.I. speaking for the majority in that case observed :

> "The phrase 'sale it the course of export' comprises in itself three essentials: (i) that there must be a sale (ii) that goods must actually be exported and (iii) the sale must be a part and parcel of the export. Therefore either the sale must take place when the goods are already in the process of being exported which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The word 'occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. Read in this way the sale which is to be regarded as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is bound up with it. The word 'course' in the expression 'in the course of' means progress or process of', or shortly 'during'. The phrase expanded with this meaning reads 'in the progress or process of export' or 'during export'. Therefore the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two for them there are two sales one to intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer.
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> Therefore the tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale which itself results in the movement of the goods from the exporter to the importer."

The decision in the case of Coffee Board (supra) was relied upon by this Court in the case of M/s. Binani Bros. v, Union of India(1). The petitioner in that case purchased goods from foreign sellers and supplied the same to the Directorate General of Supplies & Disposals (DGS&D). Question arose whether the sale by the petitioner to DGS&D took place in the course of export. The question was answered in the negative and it was observed that there was no reason in principle to distinguish this case from the decision in the Coffee Board's case.

(1) [1974] 1 S.C.C. 459.

Before dealing with the question as to whether the sales in question took place in the course of export, I may mention that the, sale of mineral ores for export was canalised through STC in pursuance of an order made under the Imports and Exports (Control) Act, 1947 (Act 18 of 1947). Section 3 of that Act empowered the Central Government to prohibit, restrict or otherwise control

imports or exports. Under the powers conferred by that section, the Central Government issued the Exports Control Order, 1958. Clause 3 of that order provided that no person shall export any goods of the description specified in Schedule I except under and in accordance with a licence granted by the Central Government or by any officer specified in Schedule It. Chrome ore and concentrates were specified in the first schedule. Clause 6 of that order inter alia provided that the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any other licensing authority to grant a licence if the licensing authority decides to canalise exports through special or specialised agencies or channels. It Was If pursuance of the above power that the export of chrome concentrates was canalised through STC. Subsequently this function has been taken over by the Minerals and Metals Trading Corporation of India Ltd. (MMTC).

I may now advert to the question as to whether the sales in question took place in the course of export. I have given above the broad facts and it would appear therefrom that the agreement between the appellant and STC incorporated the terms and conditions which had been settled between the appellant and the foreign buyer. The terms and conditions of the contract between STC and the foreign buyer were also to apply to the contract between the appellant and STC, except to the extent specified in the latter agreement. It was agreed that the contract between the appellant and STC would be deemed cancelled if for any reason the foreign buyer cancelled the corresponding purchase contract with STC. The agreement between the appellant and STC clearly contemplated the export of chrome concentrates. The name of the ship on which the chrome concentrates were to be loaded for the purpose of export was also given in the agreement. The price to be paid by STC to the appellant was fixed in terms of dollars plainly because the price to be charged from the foreign buyer was fixed in terms of dollars. Indeed, the amount that STC was to get in the course of this transaction was one dollar per ton of the concentrates. The name of the foreign buyer to whom the chrome concentrates supplied by the appellant were to be sold was expressly mentioned in the agreement between the appellant and STC. The final sampling of the chrome concentrates as well as the final weights were to be ascertained at the port of discharge in America and the certificates in that respect were to be binding on the parties. Although the letter of credit was to be opened by the foreign buyer in favour of STC, STC was to assign the same in favour of the appellant. The appellant was to get 90 per cent against shipping docu- ments and the remaining 10 per cent after destinational weight and analysis. Before doing that the appellant had to give a bank draft or a bank guarantee to STC at the rate of one dollar per ton of the concentrates to be supplied by the appellant.

The facts of the case, in my opinion, go to show that the export of the chrome concentrates was occasioned by one transaction. The parties to that transaction were the appellant, STC and the foreign buyer. S.T.C. was brought into the picture as an intermediary because of the legal requirement, according to which the export of chrome concentrates was to be canalised through STC. Although the above requirement necessitated the execution of two agreements, one between the appellant and STC and the other between STC and the foreign buyer, there can, in my opinion, be no doubt that the agreements were part of one integrated transaction which resulted in the export of the goods. The interconnection between the two agreements was so intimate that one agreement could not stand without the other. It was accordingly provided that the cancellation of one agreement would automatically result in the cancellation of the other agreement.

Mr. S. T. Desai on behalf of the respondents has laid great stress on the observations in the case of Coffee Board (supra), according to which there must be a single sale which causes the export and there is no room for two or more sales in the course of export. It is urged that it was the agreement of sale between STC and the foreign buyer which can be said to cause the export. The sale by theappellant to STC of the chrome concentrates was only for the purpose of export and as such was not exempt from payment of tax.Learned counsel further submits that once there are two contracts, one between the dealer and the intermediary and the other between the intermediary and the foreign buyer, the court 'need not took any further, for it would be only the contract between the intermediary and the foreign buyer which would occasion the export and not the other contract. I find it difficult to accede to the above submission of Mr. Desai. The observations in the case of Coffee Board (supra) that there was no room for two or more sales in the course of export were made in the context of two independent sales. Those observations cannot be invoked in a case like the present where the two sales are so interconnected as to be part of one integrated transaction. Hidayatullah CJ. speaking for the majority took full note of that aspect of the matter and it was in that context that lie observed "Here there are two independent sales involved in the export programme. The first is a sale between the Coffee Board as seller to the export promoter. Then there is the sale by the export promoter to a foreign buyer. Of the latter sale the Coffee Board does not have any inkling when the first sale takes place. The Coffee Board's sale is not in any way related to the second sale. Therefore, the first sale has no connection with the second sale which is in the course of export, that is to say, movement of goods between an exporter and an importer."

The above observations would have been wholly unnecessary and superfluous if it had been the intention of this Court to lay down an absolute rule that once there arc, two contracts, one between the dealer and the intermediary and the other between the intermediary and the foreign buyer, the court need not look to other circumstances showing their inter-relationship and that only the latter contract would qualify for exemption from payment of tax. This Court in a series of cases, all decided by the Constitution Bench, namely, State of Travancore-Cochin & Ors v. The Bombay Co. Ltd., State of Travancore Cochin & Ors. v. Shanmugha Vilas Cashew Nut Factory & Ors. and Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer, Special' Circle, Ernakulam & Ors (supra), had laid stress on the integrated nature of the activities and the close nexus between the contract of sale and the export of goods. The Coffee Board case, which too was decided by the Constitution Bench, could not set at naught the rule laid down in a 'series of earlier decisions and, in fact it did not do so as is apparent from the passage reproduced above wherein Hidaytullah CJ. dealt with the question as to whether the two contracts were independent or not. The correct legal position, in my opinion, is that if there is one integrated transaction which results in export the fact that the transaction takes the shape of two interlinked contracts would not make much material difference.

Argument similar to that advanced by Mr. S. T. Desai before us was put forth on behalf of the State in the case of State of Bihar & Anr. v. Tata Engineering & Locomotive Co. Ltd.(1) and was repelled in the following words "We have earlier noticed that this Court in a series of decisions has pronounced in unambiguous terms that where-under the terms of a contract of sale, the buyer is required to remove the goods from the State in which he purchased those goods to another State and when the goods are so moved, the sale in question must be considered as a ,ale in the course of inter-State trade or commerce. This is a well established position in law. In the Coffee Board case this Court did

not deviate from this position nor could it deviate as the earlier decisions were binding on it. Further in the course of his judgment. the learned Chief Justice who spoke for the Court referred with approval to the earlier decisions of this Court where distinction between the sales in the course of inter-State trade or commerce and sales for the purpose of inter-State trade and commerce were explained. On the basis of the facts of that case, his Lordship came to the conclusion that the export of the coffee in question was not integrated with the sales with which the Court was concerned and that there was no direct bond between the export and the sales."

The passage I have already reproduced earlier was thereafter set out.

One important criterion in order to determine as to whether the contract of sale between the appellant and STC occasioned the export (1) [1971] 2 SCR 849.

is to find whether STC could divert the goods supplied by the appellant for a purpose other than the export to the foreign buyer. If the answer be in the negative, it would necessarily follow that the contract between the appellant and STC resulted in the export of chrome concentrates. The above criterion was applied in a number of cases. In the case of Ben Gorm Nilgiri Plantations Co. (supra) Shah speaking for the majority observed :

> "There is no statutory obligation upon the purchaser to export the chests of tea purchased by him with the export rights. The export quota merely enables the purchaser to obtain export licence, which he may or may not obtain. There is nothing in law or in the contract between the parties, or even in the nature of the transaction which prohibits diversion of the goods for internal consumption."

In the case of K. G. Khosla & Co. (supra) Sikri J. speaking. for this Court observed :

> "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." In the case of Coffee Board (supra) Hidayatullah CJ observed "The compulsion to export here is of a different character. It only compels persons who buy on their own to export in their own turn by entering into another sale. It is a sale for export. Even with the compulsion the sale may not result for clauses 26, 30 and 31 visualize such happenings."

Coming to the facts of the present case, I find that it was an f.o.b. sale and there was absolutely no chance of diversion of the goods by STC for a purpose other than the export to the foreign buyer.

It may also be mentioned that the position of STC under the contract between the appellant and STC was not of a purchaser in the ordinary sense of the term. Unlike such a purchaser, STC was not entitled to get profits and was not liable to bear losses resulting from fluctuations in the market rate

of the goods specified in the contract. It was not open to STC to charge any price for the goods exported to the foreign buyer. The price to be charged from the foreign buyer was already fixed in the contract between the appellant and STC. An ordinary purchaser of goods is entitled to resell the goods or retain them with himself for any length of time. There is no obligation upon him to export the goods, much less to export them to a specified foreign buyer. As against that, in the present case is a result of the agreement between the appellant and STC, the latter was not entitled to retain the goods but was bound to export them immediately to the specified foreign buyer at a price which was at-

ready mentioned in the agreement between the appellant and STC. In fact, the arrangement for export of the goods was also made by the appellant because the contract of sale between the appellant and STC was f.o.b. contract. STC came into the picture as a statutory intermediary because of the legal requirements under the Exports Control Order. All that STC was entitled in the bargain was a commission of one 'dollar per ton. Indeed, STC in one of its letters described its remuneration as commission. In the case of M/s Daruka & Co. V. The Union of India & Ors.(1) this Court observed in para 23 of the judgment that the Corporation like STC is in the nature of a commercial undertaking to which a licence has been granted for the export of certain commodities and the service charges are nothing but quid pro quo for the services rendered by the Corporation. The introduction of a statutory intermediary Eke STC with only entitlement of commission of one dollar per ton would not, in my opinion, affect the real nature of the transaction that it was the appellant who was to export the chrome concentrates to the foreign buyer.

The matter can be looked at from' another angle. According to Article 286, no law of a State shall impose or authorise the imposition of tax on the purchase or sale of goods where such purchase or sale takes place in the course of import of the goods into or the export of the goods out of the territory of India. There is nothing in this article which restricts the exemption from payment of tax to only one sale or purchase. Likewise, there is nothing in Section 5 of the Central Sales Tax Act which restricts the sale or purchase occasioning export or import to only one sale or purchase. The fact that section 5 refers to sale or purchase in singular and not in plural would not make much material difference because according to section 13 of the General Clauses Act, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa. Although in a vast majority of cases it would be only one sale or purchase which would qualify for exemption from payment of tax, this is not an absolute rule. There is nothing in law to rule out two sales qualifying for the exemption, if the facts of the case show that each of the sales is so interlinked with the export of the goods, that the export can be said to be direct result of the two sales which are part of one integrated transaction.

It may be stated that a simple sale for export, i.e. a sale to a person who enters into a contract with a foreign buyer and exports the goods purchased by him to the foreign buyer would not by itself and in the absence of anything more qualify for exemption from payment of tax on the ground of being made in the course of export. The question with which we are, however, concerned is as to what would be the position in law if the two sales are so interlinked as to be part of the same transaction and whether the first sale in such an event would not be exempt from taxation even though the export is occasioned by the two contracts of sale taken together. The respondents cannot, therefore,

derive much assistance from the observations relied (1) [1973] 2 S.C.C. 617.

upon by Mr. S. T. Desai in the case of East India Tobacco Co. V. The State of Andra Pradesh & Anr.(1) that a sale for the purpose of export is not protected by article 286(1) (b) of the Constitution.

I may mention that in the case of Khosla & Co. (supra) there were two contracts. This is clear from the statement of facts given in the judgment of the High Court which was under appeal in this Court. The judgment of the High Court is reproduced in the report of that case in 17 STC 473. The relevant passage in this respect reads as under :

> "The assessee, Messrs Khosla and Co. entered into a contract with the Director-General of Supplies and Disposals, New Delhi, for the supply of 'axle-box bodies'. In order to fulfil the contract, the assessee had to enter into contract with the manufacturers in Belgium. The goods were so got manufactured and imported into India and cleared at the Madras Harbour and supplied to certain parties on the instructions of the buyer, the Director-General of Supplies and Disposals, as contained in the contract itself."

Despite the existence of two contracts, this Court held that the contract of sale by Khosla & Co. to the Director-General of Supplies and Disposals was exempt from payment of tax as being in the course of import. It was observed :

> " The next question that arises is whether the movement of axle-box bodies from Belgium into Madras was the result of a covenant in the contract of sale or an incident of such contract. 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 section 5 (2) of the Act, and are, therefore, exempt from taxation."

Although the facts of the present case are converse to those of Khosla & Co. the principle laid down therein fully applies to the present case.

I have already mentioned above that the contract of sale between the appellant and STC was an f.o.b. contract. The question as to whether such a contract would be immune against liability to sales tax under article 286 arose for determination in the case of B. K. Wadeyar v. M/s Daulatram Rameshwarlal(2). The respondents firm (1) 13 S.T.C. 529.

(2) [1976] 1 S.C.R. 924.

in that case claimed exemption from sales tax under article 286(1) (b) of the Constitution in respect of sales made by them of cotton and castor oil on the ground that the sales were on f.o.b. contracts under which they continued to be the owners of the goods till those goods crossed the customs barrier and entered the export stream. The respondents also contested the purchase tax to which they were assessed under section 10(b) of the Bombay Sales Tax Act. It was held that the goods remained the seller's property till they had been brought and loaded on board the ship and so the sales were exempt from tax under article 286(1) of the Constitution. Dealing with the f.o.b. contracts, this Court observed that the normal rule in such contracts was that the property in the goods was intended to pass and did pass on the shipment of the goods. It is no doubt true that there was no reference in the above mentioned case to section 5 of the Central Sales Tax Act which formulates the principles as to when sale or purchase of goods shall be deemed to take place in the course of export or import, this fact would not affect the binding force of the rule laid down in the above case. I may also observe in the above context that an f.o.b. sale though contemplating the export of the goods may be made between parties carrying on business in the same country (,see "Sale of Goods" by P. S. Atiyah, p. 215). The learned author has given the following instance. "A company, which has contracted to sell goods to a foreign buyer, may itself buy goods, in order to fulfil the contract, f.o.b., English ports from English sellers." Referring to the case of Wadeyar (supra) Shah J. speaking for the majority in the case of Ben Gorm Nilgiri Plantations Co. (supra) observed "This was undoubtedly a case of two sales resulting in export, and the first sale was held immune from State taxation: but that was so because the property in the goods had passed to the Indian purchaser when the goods were in the export stream. The first sale itself was so inextricably connected with the export that it was regarded as a sale in the course of export."

The above observations clearly lend support to the view that even in the case of two sales. the first sale would be immune against taxation if the property in the goods passed to the Indian purchaser when the goods were in the export stream. The reason for that was that the first sale was so inextricably connected with the export that it was regarded as a sale in the course of export.

Another test which was laid down in the case of Ben Gorm Nilgiri Plantations Co. was as under "Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export."

10 SC/75-14 Applying the above test also, the sale by the appellant to STC would qualify for exemption from taxation. It is plain that a breach of the appellant's obligation arising under the above contract of sale would result in a situation that STC would not be able to export the chrome concentrates to the foreign buyer.

I would, therefore, accept the appeals with costs, set aside the judgment of the High Court and answer the question referred to it in favour of the assessee and against the revenue. One hearing fee.

In civil appeals Nos. 2063 to 2082 of 1974 which has been filed by Nandaram Huntaram, the appellants were lessees of mines. They entered into a contract with STC for the sales of iron ore. STC

in its turn entered into export contracts with foreign buyers. The appellants were assessed to tax under the Central Sales Tax and as their declaration was not produced within the requisite time, the full rate was applied. The Sales Tax Tribunal negatived the appellant's contention that the sales were exempt from payment of tax for being D in the course of export. The declaration filed by the appellants was accepted and it was directed that the assessments be made at the concessional rate. The Tribunal in holding the appellants to be liable to pay Central Sales Tax found that the appellants had no direct connection with the export and that the sale by the appellants to STC was independent of the export. It was further observed that the contracts with STC had occasioned inter-State movement of the goods and E as such the turnover was liable to be assessed under the, Central Sales Tax Act. An application was thereafter made by the appellants to refer the following questions for decision to the High Court :

> 1. Whether in the facts and circumstances of the case the Tribunal was right in holding that sale of iron ore was not in course of export ?
>
> 2. Whether in the facts and circumstances of the case the contracts between the petitioner and State Trading Corporation of India and State Trading Corporation of India and foreign buyers are all inter-connected ?
>
> 3. Whether in the facts and circumstances of the case the sale of iron ore is liable to be taxed under Central Sales Tax Act at all ?
>
> 4. Whether in the facts and circumstances of the case there was material available on record for assessing the petitioner under the provisions of Central Sales Tax Act ?
>
> 5. Whether the sale by the petitioner had occasioned movement of goods in course of export and is protected by article 286 of the Constitution of India ?"

The Tribunal dismissed the above application. The appellants then filed applications before the High Court that the Tribunal be called upon to file a statement of the case in respect of the above mentioned questions. The High Court dismissed those applications and in doing so relied upon the judgment in the case of Md. Serajuddin v. State of Orissa which is the subject-matter of the other 10 appeals, namely, civil appeals Nos. 697 to 706 of 1973. The above mentioned 20 appeals have been filed against the order of the High Court dismissing those applications.

Mr. Bhandare on behalf of the State has urged in these 20 appeals that the facts of these cases are materially different from those in the cases of Md. Serajuddin and as such even if we accept the appeals in the cases of Md. Serajuddin, we should not interfere with the order of the High Court in these 20 appeals. So far as the above submission is concerned, I may observe that I do not express any opinion on the point as to whether the facts of these cases are similar to those in cases of Md. Serajuddin. This is a matter which would have to be gone into after a reference and statement of case is submitted to the High Court. For our purpose it is sufficient to note that the High Court in dismissing the applications filed by the appellants placed reliance upon its decision in the cases of Md. Serajuddin. As the judgment in the cases of Md. Serajuddin is being set aside, the ground for

refusing to call for a reference no longer holds good. I therefore, accept the 20 appeals filed by Nandaram Huntaram, set aside the judgment of the High Court and direct the Tribunal to file a statement of the case and refer the questions reproduced above to the High Court. The appellants shall be entitled to the costs in this Court in these appeals also. One hearing fee.

P.H.P. Appeals dismissed.