Supreme Court of India
State Of Punjab (Now Haryana) And ... vs New Rajasthan Mineral Syndicate on 29 April, 1975
Equivalent citations: AIR 1975 SC 1652, (1975) 4 SCC 555, 1975 36 STC 378 SC
Author: R Sarkaria
Bench: A Gupta, R Sarkaria, V K Iyer
JUDGMENT R.S. Sarkaria, J.

1. The common question of law that arises in these appeals by the same assessee is : Whether the sales in question made by the asses-see were sales effected in the course of export of goods out of the territory of India and as such were exempt from imposition of sales tax under Article 286(1)(b) of the Constitution ?

2. The relevant assessment years are 1957-58, 1958-59 and 1959-60. The assessee, the New Rajasthan Mineral Syndicate, is registered as a dealer under the Punjab General Sales Tax Act, 1948. It is not registered under the Central Sales Tax Act, 1956 (for short, called the Act). The assessee carries on the business of quarry contractOrs. In the relevant years, it held a licence from the then Punjab State to quarry iron-ore at Nizampur, District Mohindergarh.

3. During the assessment years in question, the Sales Tax Officer assessed the assessee-firm to tax under Section 9 of the Act on a turnover of Rs. 3,18,757.6, Rs. 3,99,948.93 and Rs. 5 lakhs, respectively. The last assessment was made on the best judgment basis.

4. To impugn these assessment orders, the assessee filed three writ petitions in the High Court of Punjab under Article 226 of the Constitution. It was averred in the petitions that the export of iron-ore had been nationalised by the Central Government and no such export could be made by any private dealer like the assessee. The Government of India had authorised the State Trading Corporation (to be hereinafter referred to as S. T. C.) as the sole authority for the purpose of exporting iron-ore to other countries, including Japan. The S. T. C. had further nominated Sri Narayan & Co. (to be called for short, N. & Co.) to procure the iron-ore for the purpose of export. N. & Co. accordingly entered into agreements with the assessee-firm for procuring the iron-ore from the assessee. Excepting the quantity to be supplied, the basic terms of the agreements were the same. The material part of one such agreement reads as follows :

Agreement made on this day, the 1st April, 1957, between Messrs. Shri Narayan Company, Mine Owners, Exporters & Importers, 174, Mahatma Gandhi Road, Calcutta-7, hereinafter called buyers and Messrs. Rajasthan Mineral Syndicate, Maonda, Rajasthan, hereinafter called sellers, on the following terms and conditions:

Quantity : 25,000 (twenty-five thousand) tons of Haematite iron-ore of their Dhanota Dhancholi Mines Railway Station, Nizampur.

Specification:

Price: Rs. 14-8-0 plus actual railway freight from Nizampur to Kandla Port, per ton of 2,240 lbs. f. o. r. Kandla Port.

Delivery:

Sampling and analysis: The sellers agree to stock the ore at the railway siding or sidings and the buyers have the right to reject any ore or cancel at any stage before the same is loaded into wagons. The buyers have the option to appoint any good analytical and consulting chemist and their findings shall be binding on both the buyers and sellers.

Payment: Rs. 25,000 (Twenty-five thousand) will be arranged for payment to the sellers after the acceptance of Re. 1 (Rupee one) per ton for the aggregate quantity of 25,000 tons contract for supply. The balance amount shall be paid to the sellers against actual weight of iron-ore loaded by the sellers when iron-ore is either weighed at Kandla Port or by draft weight of the ship at the time of shipment to the foreign countries as per bargain by the buyer or by the State Trading Corporation of India.

3. The amount of railway freight shall be paid directly by the buyer at Kandla Port on the to pay R/Rs. and the sellers shall be held responsible for shortage and excess of weight, if any.

4. The account shall be finally settled when the shipment is made and satisfactory report is received from the foreign buyers or the State Trading Corporation approves the material for foreign countries where iron is extracted out of it.

5. Then there is a letter dated September 2, 1957, from N. & Co. addressed to the assessee-firm. It reads as under :

We are in receipt of your letter and noted your comments regarding the price schedule mentioned in your agreement, referred to above, which runs as under : Rs. 14-8-0 plus actual railway freight from Nizampur to Kandla Port, per ton of 2,240 lbs. f. o. r. Kandla Port. In this connection we have to clear our position as under :

1. It is clear to all and you, that the Government of India is dealing with foreign countries on Government level in the export of iron-ore;

2. The State Trading Corporation of India, New Delhi, is the business organization on Government level and we work as the brokers;

3. Whatever term or terms they dictate to us we pass on to you;

4. Your iron-ore is to be shipped to Japan and you are solely responsible for the quantity and quality till the material is delivered to Japanese firms;

5. They test the material for extracting of iron, before they pass the pay orders;

6. As such we get approximately Re. 1 (Rupee one) per ton, which is in fact our brokerage, otherwise in fact you are the sellers and Japanese firms are the buyers, through the State Trading Corporation. The following details will clear your doubt.

Selling price to S. T. C. Rs. 47 per ton f. o. b. t. Kandla Port:

Our approximate price per ton :

1. Cost of iron-ore payable to you Rs. 14-8-0 2. Railway freight-Nizampur to Kandla Port Rs. 24-8-0 3. Port charges, unloading of wagons, plot rent, agents' commission, shipment. Rs. 1-0-0 4. Our brokerage and misc. expenses Rs. 1-0-0 Hope you are satisfied that the price fixed is in your interest. Please continue railment without any hesitation.

6. Before the assessing authority, it was contended by the assessee that "he was exporting the iron-ore outside India and is not liable to tax under the Central Sales Tax Act, 1956. He also produced copies of the agreement and other letters in support of his contention". It was further contended that no inter-State tax was leviable in view of the exemption in Section 5(1) of the Act and Article 286(1)(b) of the Constitution as the sale was in the course of export of goods outside the territory of India; the sale having occasioned the export. The assessing authority negatived the assessee's claim to the exemption in these terms :

The dealer has no privity of contract between the foreign buyers and plea taken by him that he exported the goods outside the State of Punjab holds no ground. It appears to me that the State Trading Corporation of India enters into contract with the foreign buyers for the supply of iron-ore. In order to meet their obligations, the State Trading Corporation of India appoints certain procuring agents such as M/s. Shri Narayan & Co. as intermediaries. These intermediaries enter into contract with the quarries who extract iron-ore, charge their commission and pass on this iron-ore to the State Trading Corporation. The agreement entered into between the New Rajasthan Mineral Syndicate and M/s. Shri Narayan & Co. leaves no doubt that the former is the seller and the latter is the buyer. In view of the ambiguous position stipulated in the agreement, the dealer sold iron-ore in the course of inter-State trade and commerce. It is further evident that . M/s. New Rajasthan Mineral Syndicate are not the direct exporters of iron-ore because they did not enter into contract with the foreign buyers. The inter-State tax is, therefore, leviable on the dealer, viz., M/s. New Rajasthan Mineral Syndicate.

7. The learned single Judge of the High Court allowed the writ petitions and quashed the assessment orders holding that "the petitioner was engaged in the export of the iron-ore to Japan through the S. T. C. which, in turn, for its facility had appointed N. & Co. a broker" and that "at no point of time the property in goods passed either to N. & Co. or to S.T.C.".

8. The Letters Patent Bench of the High Court dismissed the appeal preferred by the revenue. Mehr Singh, C. J., who delivered the opinion of the Bench, observed:

These facts prove beyond controversy that the sale of iron-ore by the assessee-firm to the Japanese buyers through the State Trading Corporation and with the aid of the nominee of that Corporation leading to export of the iron-ore from the country, and this export, is a single unbroken transaction or activity. Between the sale or supply of iron-ore, its transportation to the port of shipment, its shipment at that port, and its export to Japan, there intervenes no independent transaction not directly connected with the export of iron-ore from this country to Japan. No completed and independent transaction of sale occurs between the assessee-firm and any other party before the iron-ore leaves the port of this country. The whole is one and the same transaction...The intervention of the State Trading Corporation or its nominee, Shri Narayan & Company, is not as buyers of iron-ore from the assessee-firm, but merely as intermediaries facilitating the export of iron-ore by the assessee-firm so that in regard to foreign exchange earned by such export what is earned is available to the nation without any questionable handling of the same. This manner and method of export of iron-ore through the State Trading Corporation as an intermediary does not bring about any contractual relation between the assessee-firm and the Corporation so that a conclusion can be drawn that there has first been a sale of iron-ore by the assessee-firm to the Corporation and thereafter the latter has been responsible for the export of the same.

9. Article 286 of the Constitution, so far as it is material for our purpose, reads thus:

286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India;

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

10. Pursuant to Clause (2) of Article 286, Parliament has enacted Section 5 in the Central Sales Tax Act, 1956, Sub-section (1) of which runs thus :

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.

11. In view of the tests prescribed by this sub-section, the points to be considered are : Did the sales in question made by the assessee occasion the export ? Were these sales effected by a transfer of documents of title to the goods after the goods had crossed the customs frontiers of India ? If the answer to either of these questions is in the affirmative, the sales would be deemed to have taken place in the course of export of the goods out of the territory of India. If neither of these tests is satisfied the sales would be sales in the course of inter-State trade and taxable as such.

12. Learned Counsel for the appellant has pressed these points into argument :

(1) The sales in question neither occasioned the export nor were they effected by transfer of documents of title after the goods had crossed the customs frontiers of India. These sales, at best, could be said to be for export and not in the course of export;

(2) The sales in question did not occasion the export because :

(a) the movement of the goods was the result of the agreement between the assessee and N. & Co., and was not caused by any agreement entered into by the assessee with the foreign buyer, and

(b) there was no privity of contract between the assessee and the foreign buyer.

(3) There is no room for two or more sales "in the course of export" within the contemplation of Article 286(1)(b). That Constitutional provision is not attracted in the present case because there have been more than one sale, namely, one by the assessee in favour of N. & Co./S.T.C. and another by the S.T.C. in favour of the foreign buyer.

13. Reference has been made to this Court's decisions in Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras ; ., Binani Bros. v. Union of India , Dalmia Cement (Bharat) Ltd. v. Commissioner of Commercial Taxes, Bangalore [1974] 34 S.T.C. 553. and Sales Tax Officer, Jodhpur v. Shiv Ratan G. Mohatta ; .

14. At the outset the learned Counsel tried to contend that the authenticity of the agreement and the letter dated September 2, 1957, was doubtful and that the High Court was in error in basing its findings on these documents, but subsequently he did not press this contention.

15. Mr. Sharma, the learned Counsel for the assessee, has advanced these contentions:

(1) That the property in the goods, according to the agreement read with the letter dated September 2, 1957, never passed to the buyer before the goods had crossed the customs frontiers of India. It is stressed that the contract between the assessee and the nominee of the S.T.C. was an f. o. b. t. (free on board trim). The point sought to be made out is that the sales in question were effected by transfer of documents of title to the goods after the goods had crossed the customs frontiers of India and, therefore, they had taken place "in the course of export" within the meaning of Sub-section 5(1). Reliance has been placed on this Court's decisions in National Tractors, Hubli v. Commissioner of Commercial Taxes, Bangalore , and B. K. Wadeyar, Sales Tax Officer, IV Division, Licence Circle, Bombay v. Daulatram Rameshwarlal .

(2) The sales in question had directly occasioned the movement of the goods for export. The whole process, that is, the despatch of the iron- ore from the quarry till it was handed over to the common carrier, i. e., the shipper, constituted one integrated transaction, N. & Co. and S.T.C. being merely conduits in this course of export. Reference has also been made to Serajuddin & Co. v. Commercial Tax Officer, Sealdah Charge [1968] 23 S.T.C. 258., J. V. Gokal & Co. (Pvt.) Ltd. v. Assistant Collector

of Sales Tax (Inspection) , and Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer, Special Circle, Ernakulam [1864] 15 S.T.C. 753 (S.C).

16. Mr. Sharma further tried to distinguish the decision of this Court in Coffee Board's case on the ground that there the auction sale by itself did not occasion the export. It is maintained that privity of contract between the indigenous seller and the foreign buyer is not an indispensable aspect to bring the sale within the ratio of Nilgiri Plantations' case [1864] 15 S.T.C. 753 (S.C).

17. As factual premises for his contentions, Mr. Sharma relied on these facts which are apparent from the agreement between the assessee and N. & Co. and the said letter dated September 2, 1957 :

(a) The iron-ore was meant for export.

(b) The assessee was a licensee from the Government authorised to quarry the ore.

(c) The Government of India had appointed S.T.C. as the only authority competent to export iron-ore out of India.

(d) The goods were liable to be rejected even by the foreign importer and any shortage or loss according to the agreement had to be recovered from the assessee.

(e) N. & Co. were merely brokers nominated by S.T.C. They were entitled only to brokerage.

(f) The bulk of the price was to be paid against actual weight of the ore sold by the assessee when either it was weighed at Kandla or weighed on ship.

(g) The documents of title to the goods were prepared after the ore was tested at the port and thereafter the price was collected by N. & Co. from the S.T.C. and passed on to the assessee.

18. Towards the fag end of the arguments, it was brought to our notice that these very points which are in issue before us were pending consideration by the Constitution Bench of this Court in Civil Appeals Nos. 697-703 of 1973 (Md. Serajuddin v. State of Orissa Since reported at . Judgment in Civil Appeals Nos. 697-703 of 1973 has since been delivered. The facts of that case were very similar, if not on all fours, with the one before us. There, the assessee had entered into two contracts with S.T.C. for the supply of mineral ore (chrome concentrates). The S.T.C. entered into contract with the foreign buyers for sale of identical goods purchased by it from the assessee. Counsel for the assessee in this Court 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 the 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.

19. The clauses of the agreement executed between the assessee and the S.T.C. were similar to the terms of the agreement between the assessee and N. & Co. in the present case. The price was expressed in U. S. dollars per long ton, f.o.b. ocean liner vessel, Calcutta. Under that agreement sampling and moisture determination had to be made at the time of unloading at the port of discharge by Far East Superintendence Company or U. S. Consultants and their certificate was to be final and binding on both the buyer and the seller. Final weights as ascertained by Far East Superintendence Co. Ltd. or U. S. Consultants at the port of discharge was to be final and binding on both parties. The terms as to payment were these :

90% 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' f. o. b. purchase value and f. o. b. sale value, i. e., $1.00 (Rs. 4.75) per dry 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 abovementioned letter of credit. Balance after destinational weight and analysis on the basis of documents mentioned in the Corporation's corresponding sale contract with buyers. If the balance 10% 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.

20. There were two other clauses of contract:

(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 and Minerals Corporation will apply to this contract also except to the extent specified in this purchase contract.

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

21. It was further argued on behalf of the assessee that the commodity could not be exported directly by him in view of the restrictions imposed by law; that he entered into negotiations with the foreign purchasers and settled all the conditions of the contract; the Corporation thereafter entered into an f. o. b. contract with the assessee and with the foreign buyers on identical terms; that the Corporation was interested only in the commission of one dollar per long ton from the assessee; that all necessary steps including payment of customs duty for the shipment and export had been taken by the assessee and that the contract between the assessee and the Corporation being on f. o. b. basis, the property in the goods passed only on shipment when the goods were in the course of export.

22. Almost all the relevant rulings which have been cited before us were noticed in that case. Following the ratio of the Coffee Board's case ; . and Binani Brothers' case [1974] 33 S.T.C. 254 (S.C.), the learned Chief Justice who delivered the opinion of the majority, negatived the contentions of the assessee in these terms:

The Coffee Board case [1970] 25 S.T.C. 528 (S.C.) 7 as well as the case of Binani Bros. , 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 the Corporation and the foreign buyer on the other as two separate and independent contracts of sale within the ruling in the Coffee Board case [1970] 25 S.T.C. 528 (S.C.); and the Binani Brothers case [1974] 33 S.T.C. 254 (S.C.); 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 commercial 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 appellant 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 appellant's obligation under the contract with the Corporation and not in performance of the obligations of the Corporation to the foreign buyer.

23. With regard to the contention that the contracts between the assessee and the Corporation were f. o. b. contracts, the learned Chief Justice said :

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 appellants and the Corporation to bring the goods to the ship 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 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.

24. The above observations, reproduced in extenso, furnish a complete and effective answer to all the arguments advanced on behalf of the assessee, in the instant case, to support the judgment of the High Court. Indeed the factual premises on which Mr. Sharma's contentions are based are weaker and less favourable to the assessee than those in Serajuddin's case . Here there is no direct agreement between the assessee and the S.T.C. The agreement is between the assessee and N. & Co. Here is thus room for argument that the export sale made by the S.T.C. to the foreign buyer was preceded by two separate sales, namely, the first made by the assessee to N. & Co. and the second made by N. & Co. to S.T.C. Further, in the case before us, the assessee was entitled to payment even before shipment, if the goods were weighed and approved by S.T.C. at Kandla Port.

25. Be that as it may, the basic features of the case in band are the same as those in Serajuddin's case . Respectfully following the ratio and reasoning of this Court in the above-quoted observations in Serajuddin's case , by which we are bound, we accept the contentions canvassed on behalf of the appellant and negative those advanced by the assessee.

26. In the result, we allow these appeals, set aside the judgment of the High Court, and dismiss the writ petitions filed by the assessee. We further direct that in the circumstances of the case, the parties do bear their own costs.