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September 27.

BURMAH SHELL OIL STORAGE AND DISTRIBUTING CO., OF INDIA, LTD., AND ANOTHER

v.

THE COMMERCIAL TAX OFFICER AND OTHERS

(AND CONNECTED APPEAL)

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Sales Tax—Sale of motor spirit for aviation purposes to aircraft at Airport—Exemption from taxation—Sale outside customs barrier —Whether sale within State—Aviation spirit loaded on board aircraft taken out of country—If exported—"Export", meaning of —Bengal Motor Spirit Sales Taxation Act, 1941 (Ben. 5 of 1941), s. 22, as amended—Constitution of India, Art. 286(1)(a)(b), Explanation.

The appellant companies which were carrying on business in Calcutta in petroleum and petroleum products maintained supply depots at Dum Dum Airport from which motor spirit for the purposes of aviation was sold and delivered to aircraft which either proceeded to foreign countries directly from that Airport or did so ultimately, though landing *en route* at some place or places in the Indian territory. Dum Dum Airport was a customs aerodrome and all aircraft coming into it or leaving it had to comply with ordinary customs formalities. The sales tax authorities of West Bengal sought to levy tax on the sales of motor spirit as aforesaid under the provisions of the Bengal Motor Spirit Sales Taxation Act, 1941, as amended. The appellant companies claimed that the sales were exempted from taxation under both the clauses (a) and (b) of Art. 286(1) of the Constitution of India on the grounds (1) that the sales in question had taken place outside the State of West Bengal, as they did not come within the Explanation to Art. 286(1)(a), (2) that aviation spirit was delivered outside the customs barrier and therefore the sales were outside the State, and (3) that the sales had taken place in the course of export, as aviation spirit was taken out of the territory of India.

Held: (1) that by sale in Art. 286(1)(a) is meant a completed transaction by which property in the goods passes. Before property in the goods passes the contract of sale is only executory and the buyer has only a chose in action. The taxable event is not to be found at an earlier stage because the critical taxable event is the passing of property.

The Explanation to cl. (1) of Art. 286 was added to avoid, among other things, multiple taxation of the same transaction. It indicates the State where the tax can be levied and also the State where it cannot. It achieves it by excluding from consideration the place where the property in the goods passed according to the law relating to sale of goods. The *non obstante* clause establishes this. By the fiction created by the Explanation a sale is deemed to have taken place in the State where the goods are delivered as a direct result of the sale for purposes of consumption in that State.

Where there are more States than one involved, any State claiming to tax a sale by reason of something anterior to the passing of property would not be able to claim that the sale took place there unless it was also the State of delivery.

The Explanation is meant to explain the Article and must be interpreted according to its tenor and the Explanation is not to be explained with the aid of the Article because that would reverse their roles. The Explanation is not applicable unless there are more States than one involved.

The State of Bombay v. *The United Motors (India) Ltd.*, [1953] S.C.R. 1069, *State of Travancore Cochin* v. *Shanmugha Vilas Cashewnut Factory*, [1954] S.C.R. 53, *Ramnarain Sons Ltd.* v. *Asst.*

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Commissioner of Sales Tax, [1955] 2 S.C.R. 483 and *The Bengal Immunity Company Ltd.* v. *The State of Bihar*, [1955] 2 S.C.R. 603, considered.

(2) that to exclude the power of taxation of the State of West Bengal under Art. 286(1)(a), read with the Explanation, the appellant companies must be able to point out some other State where the goods could be said to have been delivered as a result of the sale for the purpose of consumption in that other State, and that where, as in the present case, aviation spirit was delivered to the aircraft, there was no such rival State, and therefore, the ban contained in Art. 286(1)(a) and the Explanation, did not apply.

(3) that in the phrase "in the course of export out of the territory of India" in Art. 286(1)(b) the word "export" does not merely mean 'taking out of the country'. Export here means that the goods are being sent to a foreign destination at which the goods can be said to be imported. In the Article the notions of import and export go in pairs.

State of Travancore-Cochin v. *The Bombay Co. Ltd.*, [1952] S.C.R. 1112 and *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory*, [1954] S.C.R. 53, relied on.

(4) that aviation spirit loaded on board the aircraft for consumption, though taken out of the country, was not exported since it had no destination where it could be said to be imported. The sales in question could not, therefore, be said to have occasioned the export, nor were they in the course of export. Accordingly, Art. 286(1)(b) was not applicable.

(5) that the sales must be treated as made within the State of West Bengal. The customs barrier did not set a terminal limit to the territory of West Bengal for the purposes of sales tax, and the sales, though beyond the customs barrier, were still within the territory of the taxing State.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 751 of 1957 and 10 of 1958.

Appeal from the judgment and order dated December 7, 1956, of the Calcutta High Court in Matters Nos. 29 and 58 of 1956.

M. C. Setalvad, Attorney-General of India, C. K. Daphtary, Solicitor-General of India, Sukumar Mitra, Sankar Ghosh and *B. N. Ghosh*, for the appellants in C. A. No 751 of 57.

M. C. Setalvad, Attorney General of India, Sankar Ghosh and *D. N. Mukherjee*, for the appellants in C. A. No. 10 of 1958.

S. M. Bose, Advocate-General for the State of West

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Bengal, B. Sen and *P. K. Bose*, for the respondents (in both the appeals).

1960. September 27. The Judgment of the Court was delivered by

HIDAYATULLAH J.—These two appeals on a certificate under Art. 132(1) of the Constitution have been filed respectively by the Burmah Shell Oil Storage and Distributing Co., of India, Ltd., and the Standard Vacuum Oil Company (in this judgment referred to as the appellant-Companies) against a common judgment of the High Court of Calcutta dated December 7, 1956. The High Court was moved for writs of *mandamus*, prohibition and *certiorari* under Art. 226, but the petition was dismissed by D. N. Sinha, J. The matter arises out of assessment to sales tax on sale of motor spirit for aviation purposes (shortly, aviation spirit) supplied by the appellant-Companies to aircraft bound for countries abroad, under the Bengal Motor Spirit Sales Taxation Act, 1941, as amended by s. 2(a)(i) of the Bengal Motor Spirit Sales Taxation (Second Amendment) Act, 1954. The Commercial Tax Officer, the Commissioner of Commercial Taxes and the State of West Bengal have been joined as respondents in this Court, as they had previously been joined in the High Court.

The appellant-Companies deal in Petroleum and Petroleum products, and carry on business at Calcutta. They maintain supply depots at Dum Dum Airport from which aviation spirit is sold and delivered to aircraft proceeding abroad and belonging to several Companies. It appears that such sales were treated by the sales tax authorities in the State of Bombay as not falling within the taxing Acts in force in the Bombay State by reason of the provisions of Art. 286 of the Constitution. The sales tax authorities in West Bengal, however, took a different view of the matter, and after sundry procedure resulting in assessment of tax, presented a demand notice for the tax assessed which was paid under protest by the appellant Companies. The appellant Companies filed petitions under Art. 226 of the Constitution in the High

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Court of Calcutta questioning the legality of the imposition but without success. They have now filed these appeals after obtaining a certificate, as already stated.

The contentions in this Court, as they were also before the High Court, are that such sales are made in the course of export of such aviation spirit out of the territory of India, that they take place outside the State of West Bengal, that inasmuch as aviation spirit is delivered for consumption outside West Bengal, the sales cannot fall within the Explanation to sub-cl. (a) of the first clause of Art. 286, and that unless they can be said to become "Explanation Sales", the power to tax does not exist. It is argued in support of the last contention that there is not even an averment in the reply of the respondents before the High Court that aviation spirit is delivered for consumption within West Bengal.

The case in the High Court was restricted to consideration of supplies to aircraft which either proceed to foreign countries directly from Dum Dum Airport, or do so ultimately, though landing *en route* at some place or places in the Indian territory. The case has been similarly confined in this Court also, and we are not required to express any opinion about sales of aviation spirit to aircraft flying from one place in West Bengal to another place also within that State, or even to some place in another State in the territory of India.

The facts are fortunately not in dispute. Both parties admitted the procedure for the supply of aviation spirit to aircraft. Briefly described, it is as follows: Before the arrival of such an aircraft, a representative of the appellant-Companies applies to the Airport Customs Officer to depute an Officer to supervise the refuelling of the aircraft. After the aircraft lands, the captain or the Ground Engineer gives instruction about the quantity of aviation spirit required, and on permission being given by the Customs authorities, the stated quantity is delivered in the presence of the Customs Officer deputed. Details of the delivery are entered in a delivery receipt, which

is signed by the representative of the appellant Companies and the Customs Officer deputed. Duty drawback shipping bills are also drawn up to show the quantity of aviation spirit and are countersigned by them and also by a representative of the aircraft. Later, claims for refund of customs duty are made, and refund is granted.

In the petition filed in the High Court, it was averred that such aviation spirit is required for consumption during flight and/or outside the territory of India, and is thus delivered for purposes of consumption outside West Bengal and in some cases outside the territorial limits of India as well. It was also stated that it was sold in the course of export outside the territory of India, and drawback of customs duty was obtained. In the reply of the respondents, it was stated that the refund of customs duty was an irrelevant fact for the purpose of assessment. It was further stated in the affidavit of the Commercial Tax Officer as follows :

"I further state that a foreign bound aircraft on leaving Dum Dum Airport consumes a portion of the aviation spirit taken in by it at the Airport within the territory of West Bengal before it moves out of the said territory or the territory of India. I do not admit that the entire quantity is used outside the territorial limits of India as alleged.....I deny that the sale of such aviation spirit takes place outside the State of West Bengal and state that the sale takes place within the State of West Bengal and the purchaser pays its price within the State of West Bengal. The sale of such aviation spirit is completed by delivery at the Dum Dum Airport in West Bengal."

We have mentioned this fact, because it was argued that the respondents had not averred clearly that aviation spirit was sold for consumption within West Bengal even though the appellant Companies had denied it. The respondents pointed out that at least some of the aviation spirit must be consumed in the State, and that this was so stated in the affidavit filed in reply to the petition and quoted by us. This is

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hardly a case for a light on pleadings, especially as the entire procedure of the supply of aviation spirit and the use to which it is put are beyond controversy. The question that we have to consider is one of principle, and the answer depends upon broad facts and not on technicalities. Either the whole of the sale is within the taxing power of the State or it is not, and the fact that aviation spirit is consumed in taking off or in flying over the territory of West Bengal before it leaves that territory would make no difference either way to the principles applicable. Though parties entered into a debate on this part of the case, we do not propose to consider it, because, in our opinion, the question must be considered in substance and not in abstractions. The liability to sales tax, if any, is attracted when aviation spirit is sold, and immunity can only be claimed, if, as stated in Art. 286(1)(a) and the Explanation, the sale can be said to take place outside the State or can be regarded under Art. 286(1)(b) as having taken place "in the course of.....export of the goods out of, the territory of India".

Before we take up these two questions, we desire to refer to some provisions of certain Acts, which bear upon the matter. The Indian Aircraft Act, 1934, is an Act for the control of the manufacture, possession, use, operation, sale, import and export of aircraft. Section 16 of this Act provides that the Central Government may, by notification in the Official Gazette, declare that any or all of the provisions of the Sea Customs Act shall, with such modifications and adaptations as may be specified in the notification, apply to the import and export of goods by air. Sections 2(3) and (4) define "import" and "export" respectively as "bringing into India" and "taking out of India". A notification issued under the Indian Aircraft Act, the rules framed thereunder and the Indian Aircraft Rules, 1920, appointed the Civil Aerodrome, Dum Dum, a Customs Aerodrome, and to that Customs Aerodrome, the provisions of the Sea Customs Act *mutatis mutandis* were made applicable by r. 63 (Part IX) of the Indian Aircraft Rules, 1920. As

a result, Dum Dum Airport became a Customs Aerodrome, and any aircraft coming into India from foreign countries or leaving for any such country has to comply with ordinary Customs formalities. Section 42 of the Sea Customs Act, which allows drawback on re-export and is applicable *mutatis mutandis*, provides:

"When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port seven-eighths.....of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:". (Provisos omitted).

Under s. 51, no drawback is allowed unless the claim to receive such drawback is made and established at the time of re-export, and under s. 52, the person claiming drawback has to make and subscribe to a declaration. The procedure which is described in an earlier portion of this judgment bears upon these matters.

Coming now to the taxing Acts with which we are concerned, it may be pointed out that the Bengal Motor Spirit Sales Taxation Act, 1941, originally did not contemplate levy of a tax on the sale of aviation spirit. Motor spirit was defined to mean,

"any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for any form of motor vehicle or stationary internal combustion engine, and which has a flashing point below 76 degrees Fahrenheit".

Sub-section (4) of s. 3, which is the charging section, provided that no tax shall be levied on the sale of any motor spirit for the purpose of aviation. The Act was amended by the Second Amendment Act, 1954, and sub-s. (4) of s. 3 was omitted, and the proviso to the first sub-section was re-enacted, adding one more clause to the following effect:

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"the tax on all retail sales of motor spirit for the purpose of aviation, which are effected on or after the date of the commencement of the Bengal Motor Spirit Sales Taxation (Second Amendment) Act, 1954, shall be charged at the rate of three annas per gallon".

By the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1955, the original Act was further amended. To the definition of 'motor spirit' quoted by us earlier, an Explanation was retrospectively added, which reads as follows:

"*Explanation*—For the avoidance of doubt, it is hereby declared that in this Act, the expression 'vehicle' means any means of carriage, conveyance or transport, by land, air or water".

The original Act was again amended by the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1957. This time, among other amendments involving rates of tax, the words "and which has a flashing point below 76 degrees Fahrenheit" were omitted from the definition of 'motor spirit'. The result of all these amendments was to make retail sales of aviation spirit liable to sales tax, and 'retail sale' was defined, at all material times, as a sale "by a retail dealer for the purpose of consumption by the purchaser".

After the coming into force of the Constitution, s. 22, in terms of Art. 286, was added to the original Act by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950. It read:

"22(1). Nothing in this Act shall be construed to impose or authorise the imposition of a tax on the sale or purchase of motor spirit:—

(a) where the sale or purchase takes place outside the State of West Bengal;

(b) where the sale or purchase takes place in the course of the import of such motor spirit into, or export of such motor spirit out of the territory of India; or

(c) (omitted).

(2) The *Explanation* to clause (1) of article 286 of the Constitution shall apply for the interpretation of clause (a) of sub-section (1)".

Clauses (a) and (b) of the first sub-section do no more than re-enact the prohibition contained in Art. 286 of the Constitution with modifications to suit motor spirit, and the Explanation to sub-cl. (a) of cl. (1) of the said Article in the Constitution has been applied without an attempt to modify or adopt it. The Explanation to sub-cl. (a) of the first clause of Art. 286, the meaning of which was much in dispute in this case, may conveniently be quoted here. It reads :—

"Explanation—For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general laws relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State".

The High Court of Calcutta in its judgment dealt with the points urged, and rejected them. The reasons of the High Court briefly were as follows : The learned Judge declined to draw any inference from the fact that customs duties were refunded as drawbacks on aviation spirit delivered to the aircraft. He held that he was not required to decide whether the appellant Companies were entitled to claim and receive drawbacks of customs duty. He then gave a finding that the sale was physically within the State, because both the buyer and the purchaser were, at the time of sale, within the State of West Bengal, even though delivery of aviation spirit was beyond the customs barrier. He then considered the legal position in the light of Art. 286 from three points of view. He first held that it was not an inter-State transaction, because both the parties were in the State of West Bengal, and aviation spirit was not delivered outside the State. Thus, he held that cl. (2) of Art. 286 did not apply. In this connection, he relied upon the decision of this Court in the *Bengal Immunity Co., Ltd.* v. *State of Bihar and others* (1). He next considered

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the matter under the first sub-clause, and held that unless the fiction created by the Explanation applied, the sale must be treated as within the State under the law relating to sale of goods. In his opinion, the sale being completed within the State of West Bengal both as regards contract and delivery, the fiction could not be held applicable, because no "outside" State was involved, even though the aircraft might have to consume some aviation spirit while flying over the "outside" State. He, therefore, held that the Explanation and Art. 286(1)(a) which it seeks to explain, were both not applicable. He then considered the matter from the point of view of Art. 286(1)(b). He explained on the authority of the decision of this Court in *State of Travancore-Cochin and others* v. *Shanmugha Vilas Cashewnut Factory and others*(2) that the expression "in the course of export out of the territory of India" referred to sales which, by themselves, occasioned the export of goods out of the territory of India and not to sales for the purpose of export, even though the goods ultimately passed the customs barrier. He pointed out that there was no foreign purchaser to whom the aviation spirit could be said to have been exported, and that aviation spirit, in fact, was consumed *en route* and never taken to any foreign territory. He also pointed out that no bills of lading or shipping documents were drawn up, and therefore there was neither an export nor a sale in the course of export out of the territory of India.

The appellant Companies claim that these sales come within the exemption of both the sub-cls. (a) and (b) of the first clause of Art. 286. To claim the exemption granted by the first sub-clause, they rely upon certain decisions of this Court, and contend that unless the sale can be said to fall within the Explanation, it must be treated as a sale outside the State of West Bengal, and is thus exempt. With regard to the second sub-clause, they contend that there was an export out of the territory of India inasmuch as aviation spirit was taken abroad and any sale by which it is taken abroad is also exempt. These

(2) [1954] S.C.R. 53.

arguments, as has been shown above, were urged before the High Court, but were not accepted.

These two arguments need to be considered separately, as they have little in common. Article 286 places restrictions upon the power of the States to tax sales and purchase of goods, and cuts down the amplitude of Entry No. 54 in the Second List of the Seventh Schedule. Other restrictions are also to be found in Part XIII of the Constitution. With those we are not concerned in these appeals. We are also not concerned with the subsequent amendment of Art. 286, nor with the ban imposed by the second clause of the Article on taxes on sales in the course of inter-State trade and commerce. We are concerned with the first clause only, as it stood before the amendment. That clause is divided into two sub-clauses. The first sub-clause prohibits the imposition of tax on the sale or purchase of goods where the sale or purchase takes place outside the State. An Explanation is added to this sub-clause, which has been quoted by us earlier. This Explanation has led to a long controversy in this Court during which somewhat conflicting views have been expressed about its meaning. This conflict has further been accentuated when the interplay between the two clauses has been considered. The view now accepted is that the bans imposed by the two clauses are independent and separate and each must separately be got over. In view of this, we are not required to travel beyond the first clause in this case.

We have heard widely divergent arguments in these appeals. The learned Attorney-General who appeared on behalf of the appellant Companies read to us copious extracts from the earlier decisions of this Court, and contended that unless the sales could be said to fall within the Explanation so as to become 'Explanation sales', they must be regarded as having taken place outside the State of West Bengal and for that reason, not taxable. According to him, they could only become 'Explanation sales' if aviation spirit was delivered for the purpose of consumption within the State of West Bengal. The learned Advocate-General of West Bengal, on the other hand,

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contended that the Explanation did not apply to the facts here, and that the observations in the rulings were not relevant.

The first sub-clause in its opening portion says 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 outside the State. It is thus plainly meant that a State is not to tax sales which take place outside that State. But, where does a sale take place? Numerous elements go to make a sale, and they may take place in more than one State. Under the law relating to the sale of goods, property passes on the happening of certain events. When they happen, the sale is complete. Now, a contract for the sale of goods may be entirely within one State when all parties are within the State, the offer and acceptance also take place there, and the goods are also within that State, and there, the property in the goods passes and delivery also takes place. But it may also happen that the constituent elements may be spread over two or more States, some of the elements described above falling within one State and some others falling within one or more other States. Prior to the Constitution, multiple taxation of a single transaction of sale was possible, and Provincial legislation then existing clearly demonstrates that States having some connection with the sale because one or more elements took place within those States, treated this as sufficient nexus between the taxing power and the States, authorising them to tax sales even where property passed in another State. The Constituent Assembly desired to achieve certain objects in the matter of taxation, particularly in relation to sales tax. Article 286 achieves, among other objects, the avoidance of this multiple taxation.

The first sub-clause of the Article is clear in its terms, when it says that a State cannot tax sales which take place outside the State. The converse is also true, that is to say, that a State can tax a sale of goods which takes place within the State. By sale here is meant a completed transaction by which property in the goods passes. Before the property in the

goods passes, " the contract of sale is only executory, and the buyer has only a chose in action." Property in the goods passes either by the fulfilment of the conditions of the contract, if any, or by the operation of the law relating to the sale of goods.

Starting from the basic fact that what is to be taxed under the Constitution is a sale completed by the transference of property in the goods, we have to see at what stage and where this happens. The taxable event thus cannot be found at any earlier stage when the sale is not completed by the passing of property. The critical taxable event is the passing of property in the goods as a result of a contract for their sale. The parties to the contract can agree *when* that event is to take place, but *where* it happens may be a matter of some doubt and even of difficulty. Where the parties have not agreed as to the time of the passing of property, the law relating to the sale of goods furnishes the answer. There too, there may be the same difficulty as to the place of the passing of property. The place of physical delivery of the goods does not help to solve this difficulty, because delivery may precede or follow the passing of property in the goods. Delivery of goods is, thus, not always an element which determines the completion of a sale, because the sale may be completed both before and after delivery. The Constitution, however, thinks in terms of a completed sale by the passing of property and not in terms of an executory contract for the sale of goods.

The essence of the matter being thus the passing of property in goods, there was always a likelihood of more than one State claiming the right to tax the same transaction. One State might claim that goods in which property passed were in that State, and hence property in the goods passed there. Another State might claim that the conditions precedent to the passing of property were fulfilled in that State and hence the sale was completed by the passing of property there. Yet another State might claim that property passed in that State according as one or more events connected with the passing of property took place within that State.

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It was to avoid this welter of confusion as far as possible that the Explanation was added, and it also avoided multiple taxation. The Explanation serves two purposes. It indicates the State where the tax can be levied, and also indicates the State or States where it cannot. It achieves these two purposes by excluding all considerations as to where property in the goods can be said to have passed under the law relating to the sale of goods. The purpose is achieved by the Explanation and particularly by the *non obstante* clause in the Explanation. Any State claiming to tax a sale of goods on the ground that it was completed by the passing of property in the goods in that State could not do so, if the goods as a direct result of the sale were delivered for the purpose of consumption in another State. The Explanation creates a fiction that the sale must be deemed to have taken place in the latter State and not in the State where the sale was completed by reason of passing of property. It thus discards the test of passing of property and adopts the test of delivery 'as a direct result of such sale for the purpose of consumption in that State'. Where more than one State is involved, any State claiming to tax the sale by reason of something anterior to the passing of property would not be able to claim that the sale took place there unless it was also the State of delivery, because the sale is complete only on the passing of property, and till the sale is complete, liability to tax does not arise. Once the sale is complete, the delivery State gets the right to tax the sale by the fiction introduced.

Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1)(a) of the Article and not *vice versa*. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles. The Explanation discards the test of passing of property, and adopts the test of delivery as a direct result of the sale for purposes of consumption. This delivery may be in the State where the passing of property also took place, but then, there is no difficulty. The sale is then entirely within the State. The sale is outside

the State only when the passing of property takes place in the State, but that is not the State where the goods have been actually delivered as a direct result of the sale for purposes of consumption in that State. The Constitution has, thus, for certain cases shifted and confined the situs of the taxable event to the State of the delivery of goods; but it must be remembered that this delivery may precede as well as follow the passing of property. It is, therefore, plain that no single element of the contract of sale is by itself a decisive factor in determining which State is to tax the sale where there are more States than one involved, except the test of actual delivery of the goods in a State as a direct result of the sale for purposes of consumption in that State, and it is that State and that State only which has the right to tax the sale and none other. The Explanation is not applicable, unless there are more States than one involved. It is only a key to find out which of the States is competent to tax and which are not, and is by no means a definition of an 'outside sale'. It is an Explanation, which determines which State out of those connected with the transaction of sale can tax it.

The interpretation which we have placed upon the first sub-clause of Art. 286(1) is substantially the same, as was placed in the earlier rulings of this Court. In *The State of Bombay and another* v. *The United Motors (India) Ltd. and others* (1), it was pointed out that the Explanation formulated an easily applicable test to find out an 'outside sale' and this, it was said, was done "by defining an inside sale". It was observed further:

"Are the goods actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein? Then, such sale or purchase shall be deemed to have taken place *in* that State and *outside* all other States".

Certain reasons were given why this test was adopted, and it is these reasons and their effect on the second clause, which led to a re-examination of the sub-clause in *The Bengal Immunity Company Limited* v.

(1) [1953] S.C.R. 1069.

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The State of Bihar and others (1). The majority in that case touched upon the various grounds which were advanced before this Court, but declined to express "any final opinion upon the matter". The case went on to decide that the bans imposed by the two clauses of Art. 286 were independent, and needed to be separately enforced. But, on the meaning of the Explanation, no different view was expressed. Again, in *M/s. Ramnarain Sons Ltd.* v. *Asst. Commissioner of Sales Tax and others* (2), it was observed as follows:

"So far as article 286(1)(a) is concerned, *the Explanation determines by the legal fiction created therein the situs of the sale in the case of transactions coming within that category* and when a transaction is thus determined to be inside a particular State it necessarily becomes a transaction outside all other States. The only relevant enquiry for the purposes of article 286(1)(a), therefore, is whether a transaction is outside the State and once it is determined by the application of the Explanation that it is outside the State it follows as a matter of course that the State with reference to which the transaction can thus be predicated to be outside it can never tax the transaction". (Italics supplied).

Now, in so far as this case is concerned, the words "the Explanation determines by the legal fiction created therein the situs of the sale in the case of transactions coming within that category" in the extract last quoted, become important. The first question to consider is whether these cases can be governed by the Explanation at all. The learned Attorney-General contends that the power to tax these transactions can only be found if the sales were 'Explanation sales', in the sense that the goods were delivered as a direct result of the sale for consumption in West Bengal. In our opinion, the explanation can apply only if more than one State is involved in the same transaction. When there is no other State in which the goods can be said to be delivered for consumption, apart from the State where the property in the goods passed, the Explanation is not needed as a key. The

(1) [1955] 2 S.C.R. 603. (2) [1955] 2 S.C.R. 483, 492.

power to tax in those circumstances which is exercisable by virtue of transfer of title to the property, can only be taken away if there be some other State in which the goods as a direct result of the sale were delivered for consumption. But if there is no such other State, the question does not arise.

In the present cases, there is no such rival State. Where the purchaser buys goods in West Bengal for his own consumption, the test of an 'inside sale' is satisfied when the property in the goods passes in the same State and all the elements of the contract of sale also take place inside it. Where the property in the goods passes to a buyer who is also the ultimate consumer, the terms of the Explanation are themselves satisfied. To exclude, thus, the powers of taxation of the State of West Bengal, the appellant Companies must be able to point out some other State where the goods can be said to have been delivered as a direct result of the sale for the purpose of consumption in that other State. Unless they can do so—and they have not so done before us—they cannot invoke the Explanation, and the cases, to borrow the language of the last quotation, cannot be said to be "within that category". In our opinion, the learned Advocate-General of West Bengal was right in his argument (which was accepted by the High Court) that the ban contained in Art. 286(1)(a) and the Explanation does not apply.

The appellant Companies next rely upon Art. 286 (1)(b), which provides 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—

in the course of the.....export of goods out of, the territory of India".

The contention is that the sales in question must be regarded as having taken place in circumstances which exempt sales under the sub-clause. This the appellant Companies argue from the following facts that aviation spirit is delivered outside the customs barrier, that aviation spirit is taken out of the territories of India, and that the sales occasion this

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export. They rely upon the definition of 'export' in other Acts to show that the word means no more than 'taking out of the country'.

This clause of the Article has been construed on previous occasions by this Court, and what is meant by the expression "in the course of" has been well-established. Indeed, in *State of Mysore* v. *Mysore Spinning and Manufacturing Co. Ltd.* (1), this Court observed that the point could no longer be said to be at large. Fortunately, there is less disagreement on this point than on the interpretation of the Explanation, and it is sufficient to refer to the leading decisions of this Court. The earliest case on the subject is *State of Travancore-Cochin and others* v. *The Bombay Co. Ltd.* (2), where four possible meanings of the expression "in the course of" were considered. It is not necessary to refer to all of them here, and it is sufficient to point out that of the view that the clause is not restricted to the point of time at which goods are exported from India and that the series of transactions which necesssarily precede export of goods also come within the purview of the clause, it was said that it was too wide. It was observed by this Court that:

"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 resultant export form 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."

The meaning of these observations was furthe explained in *State of Travancore-Cochin and others* v *Shanmugha Vilas Cashew Nut Factory and Others* (3). It was observed (p. 62) that the words "export out of" in this context did not refer to the article or commodity exported, and that the reference to "the

(1) A.I.R. 1958 S. C. 1002. (2) [1952] S.C.R. 1112.
(3) [1954] S.C.R. 53.

goods" and to the "territory of India" made it clear that the words "export out of" meant the exportation out of the country. It was then added that,

"The word 'course' etymologically 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 postulates also a connected relation."

This inter-connection of the sale sought to be taxed with the course of export was emphasised again in clear terms thus:

"The phrase 'integrated activities' was used in the previous decision to denote that 'such sale' (i.e., a sale which occasions the export) 'cannot be dissociated from the export without which it cannot be effectuated, *and the sale and the resultant export form parts of a* single transaction'. It is in that sense that the two activities—the sale and export—were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act done 'in the course of the export of the goods out of the territory of India' any more than the other two activities can be so regarded."

From the views here expressed, it follows that every sale or purchase preceding the export is not necessarily to be regarded as within the course of export. It must be inextricably bound up with the export, and a sale or purchase unconnected with the ultimate export as an integral part thereof is not within the exemption. It may thus be taken as settled that sales or purchases for the purpose of export are not protected, unless the sales or purchases themselves occasion the export and are an integral part of it. The views expressed in these two cases were accepted and applied in *State of Madras* v. *Gurviah Naidu and Co. Ltd.* (1), *Kailash Nath* v. *State of U.P.* (2), *State of Mysore* v. *Mysore Spinning and Manufacturing Co. Ltd.* (3) and *Gordhandas Lalji* v. *B. Banerjee*

(1) A.I.R. 1956 S.C. 158. (2) A.I.R. 1957 S.C. 790.
(3) A.I.R. 1958 S.C. 1002.

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and others (1). These cases do not advance the matter further, and it is, therefore, not necessary to refer to them in detail.

In the earlier cases, it was not necessary to explain the meaning of the word 'export', because there was always a foreign buyer to whom the goods were ultimately sent. In none of the cases the facts found here were present. Here, the buyer does not export the goods to a foreign country, but purchases them for his own use on the journey of the aircraft to foreign countries. This difference is vital, and makes the position of the appellant Companies, if anything, weaker. It is for this reason that the appellant Companies depend on a wide meaning of the word 'export', which they illustrate from other Acts where the word is tantamount to 'taking out of the country'. We are of opinion that this meaning cannot be given to the word 'export' in the clause. The word 'export' may conceivably be used in more senses than one. In one sense, 'export' may mean sending or taking out of the country, but in another sense, it may mean sending goods from one country to another. Often, the latter involves a commercial transaction but not necessarily. The country to which the goods are thus sent is said to import them, and the words 'export' and 'import' in this sense are complementary. An illustration will express this difference vividly. Goods cannot be said to be exported if they are ordered by the health authorities to be destroyed by dumping them in the sea, and for that purpose are taken out of the territories of India and beyond the territorial waters and dumped in the open sea. Conversely, goods put on board a steamer bound for a foreign country but jettisoned can still be said to have been 'exported', even though they do not reach their destination. In the one case, there is no export, and in the other, there is, though in either case the goods go to the bottom of the sea. The first would not be within the exemption even if a sale was involved, while any sale in the course of the second taking out would be. In both, the goods were taken out of the country. The difference lies in

(1) A.I.R. 1958 S.C. 1006.

the fact that whereas the goods, in the first example, had no foreign destination, the goods, in the second example, had. It means, therefore, that while all exports involve a taking out of the country, all goods taken out of the country cannot be said to be exported. The test is that the goods must have a foreign destination where they can be said to be imported. It matters not that there is no valuable consideration from the receiver at the destination end. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. Purchases made by philanthropists of goods in the course of export to foreign countries to alleviate distress there, may still be exempted, even though the sending of the goods was a not a commercial venture but a charitable one. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports. The two notions of export and import, thus, go in pairs.

Applying these several tests to the cases on hand, it is quite plain that aviation spirit loaded on board an aircraft for consumption, though taken out of the country, is not exported since it has no destination where it can be said to be imported, and so long as it does not satisfy this test, it cannot be said that the sale was in the course of export. Further, as has already been pointed out, the sales can hardly be said to 'occasion' the export. The seller sells aviation spirit for the use of the aircraft, and the sale is not integrally connected with the taking out of aviation spirit. The sale is not even for the purpose of export, as explained above. It does not come within the course of export, which requires an even deeper relation. The sales, thus, do not come within Art. 286 (1)(b).

These sales must, therefore, be treated as made within the State of West Bengal. The customs barrier is a barrier for customs purposes, and duty drawback may be admissible if the goods once imported are taken out of the country. The customs duty drawbacks have nothing to do with the sale of aviation

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spirit, which takes place in West Bengal. The customs barrier does not set a terminal limit to the territory of West Bengal for sales tax purposes. The sale beyond the customs barrier is still a sale, in fact, in the State of West Bengal. Both the buyer and the seller are in that State. The goods are also there. All the elements of sale including delivery, payment of price, take place within the State. The sale is thus completely within the territory of the taxing State. No outside State is involved where the goods can be said to have been delivered for consumption as a direct result of the sale that takes place. Article 286(1)(a) and the Explanation are wholly inapplicable, and the sale cannot, even by a fiction, be said to be outside the State of West Bengal. No doubt, aviation spirit is taken out of the State and also the territory of India, but it cannot be said to have been exported or delivered for consumption in some other State. The so-called export is not occasioned by the sale, and the sale, on the authorities cited, is not in the course of 'export', so as to attract Art. 286(1)(b).

The decision of the High Court was correct. The appeals fail, and are dismissed with costs. One hearing fee.

Appeals dismissed.