MURARILAL SARAWAGI ETC.

v.

THE STATE OF ANDHRA PRADESH

December 15, 1976

[A. N. RAY, C.J. M. H. BEG AND JASWANT SINGH, JJ.]

Andhra Pradesh General Sales Tax Act, 1957*—Item* 1, *Second Schedule—State Corporation entering into contract with local dealers on f.o.b. basis and exporting to foreign countries—If sale in the course of export—Last purchaser—Who is.*

Under item 1 in the Second Schedule to the Andhra Pradesh General Sales Tax Act 1957, manganese ore was liable to be taxed at the point of purchase by the last dealer who bought in the State.

The appellants sell manganese ore to the Mines and Minerals Trading Corporation which exports the ore to buyers in foreign countries. Their contention before the Sales Tax authorities that the sales of the ore to the MMTC were complete within the State of Andhra Pradesh and that it was the MMTC which was the last purchaser liable to pay sales tax was rejected. On appeal the High Court held that the appellants' contracts with the MMTC were integrally connected with the contract entered into by the MMTC with the foreign buyer and, as such, the appellants were the last purchasers liable to pay the tax.

The respondent State contended before this Court that since the property in the goods passed from the appellants to the MMTC on board the ship in view of the f.o.b. character of the contract, it was the appellants who, as the last purchasers, were liable to pay the tax and not the MMTC.

Allowing the appeals,

HELD : The law is that it has to be found out whether the contracts between the merchants and the Corporation are integrated contracts in the course of export or different contracts. If they are different, the last purchaser within the State is liable to pay the sales tax. [446G]

(i) The tests for finding out the sale in the course of export 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.
[443E-F]

(ii) State Corporations are often the only authorities allowed to export goods out of the country. These corporations enter into contracts with foreign buyers for export and the Corporations in turn give directions to the merchants to place the goods on board a ship. These directions are not in the course of export because the export sale is an independent one between the Corporations and their foreign buyers. [444D-E]

(iii) In f.o.b. contracts the sellers' duty is to place the goods free on board a ship named by the buyer but the mere mention of f.o.b. price or f.o.b. delivery in a contract between the merchants and the trading corporations which export the goods under a separate contract with the foreign buyers to the latter will not make the two contracts either integrated or the contract between the merchants and the Corporation an f.o.b. contract. There cannot be two last purchasers in the sale of the same goods within the same State. There cannot be two exporters in respect of the same goods. [444G & 445C]

A (iv) In string contracts the contracts between the Corporation and the foreign buyers are different and it is the Corporation which enters into independent contracts with foreign buyers on f.o.b. basis. Under the terms of the contract, the merchants are required to bring the goods f.o.b. to the ship named by the Corporation. [444C]

Mohd. Serajuddin etc. v. *State of Orissa* [1975] Supp. S.C.R. 169, *Coffee Board, Bangalore* v. *Joint Commercial Tax Officer, Madras* [1970] 3 S.C.R. 147 B and *M/s. Binani Bros. (P) Ltd.* v. *Union of India & Ors.* [1974] 1 S.C.C. 459, followed.

National Tractors Hubli v. *Commissioner of Commercial Taxes Bangalore* [1971] 3 S.C.C. 143, no longer good law.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1221-1226 C of 1974.

(Appeals by Special Leave from the Judgment and Order dated 26-2-1974 of the Andhra Pradesh High Court in Tax Revision Cases Nos. 5—10 of 1973).

A. K. Sen, S. T. Desai, B. M. Bagaria and *D. P. Mukherjee,* for D the appellants.

P. P. Rao and *T. V. S. N. Chari* for the respondent.

The Judgment of the Court was delivered by

RAY, C.J. These six appeals are by special leave from the judg- E ment dated 26 February, 1974 of the Andhra Pradesh High Court.

The principal question in these appeals is whether the appellants are the last purchasers of manganese ore within the State of Andhra Pradesh. The appellants contended before the Sales Tax authorities that their sales of manganese ore to the Mines and Minerals Trading Corporation in short called the M.M.T.C. were complete within the F State of Andhra Pradesh. The appellants therefore contended that they were not the last purchasers but the M.M.T.C. was the last purchaser within the State, and therefore, the M.M.T.C. was liable to pay the tax.

The High Court came to the conclusion that the appellants were G the last purchasers in the State. The High Court held that the contract between the appellants and the M.M.T.C. indicated that the appellants' contract of sale occasioned the export and that the contract of the appellants with the M.M.T.C. was integrally connected with the contract entered into by the M.M.T.C. with their foreign buyer. In short, the High Court held that there existed a bond between the contracts of sale entered into by the appellants with the H M.M.T.C. and the actual exportation of the goods. The High Court held that these contracts were intrinsically linked and connected and the sales effected were held to be sales in the course of export of manganese ore out of the territory of India.

The Constitution Bench of this Court in the recent decision in *Mohd. Serajuddin etc.* v. *State of Orissa*(1) held that manganese merchants who bought manganese from mines and thereafter sold the goods to the State Trading Corporation for short the S.T.C. could not be said on the terms and conditions of the contracts in that case to be exporters of the goods. The S.T.C. contracts with the manganese merchants and the S.T.C. contracts with the Foreign Buyers were held not to be integrated activities in the course of export. The crucial words in section 5 of the Central Sales Tax Act 1956 are that a sale or purchase of goods shall be deemed to take place 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. This Court found that the contracts between the manganese merchants and the S.T.C. on the one hand and the contracts between the S.T.C. and their foreign buyers on the other were two separate and independent contracts of sale. The S.T.C. entered into direct contract with their foreign buyers. The S.T.C. alone agreed to sell the goods to their foreign buyers. The S.T.C. was the exporter of goods. There was no privity of contract between the manganese merchants and the foreign buyers from the S.T.C. The privity of contract was between the S.T.C. and the foreign buyers. The immediate cause of the movement of goods and export was the contract between the foreign buyers who were the importers and the S.T.C. who was the exporter and shipper of the goods.

In *Serajuddin's case* (supra) this Court referred to the rulings in *Coffee Board Bangalore* v. *Joint Commercial Tax Officer Madras* (2) and M/s *Binani Bros. (P) Ltd.* v. *Union of India & Ors.*(3) as laying down the correct tests to find out the sale in the course of export. 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.

Counsel for the State submitted that there were six contracts and it has been the case of the appellants that the contracts were different, and, therefore, there should be examination of five other contracts. It may be stated here that counsel for the State did not dispute that the decision in *Serajuddin's case* (supra) applied to one of the six contracts but he disputed the application of the ruling in *Serajuddin's case* to the other five contracts. The reasons given by counsel for the State are these. Only one contract was referred to in the High Court. The case of the appellants has all along been that the Sales Tax Appellate authorities considered only one contract. The High Court also considered only one contract. In the special leave petition the appellants assailed the assumption made by the High Court to the effect that all contracts between the appellants and the M.M.T.C. were similar.

(1) [1975] Supp. S.C.R. 169. (2) [1970] 3 S.C.R. 147.
(3) [1974] 1 S.C.C. 459.

Counsel for the State put in the forefront the contention that the M.M.T.C. could not be the last purchaser of goods within the State of Andhra Pradesh because property in the goods passed from the appellants to the M.M.T.C. on board the ship. In aid of that contention reliance was placed on F.O.B. character of the contract between the appellant and the M.M.T.C. The position is identical in all the six contracts.

This Court in *Serajuddin's case* (supra) pointed out that mention of F.O.B. price in the contracts between the manganese merchants and the S.T.C. did not render these contracts F.O.B. contracts with the foreign buyers from the S.T.C. The reason is simple. The contracts between the S.T.C. and the foreign buyers are different contracts and it is the S.T.C. which entered into independent contracts with their foreign buyers on F.O.B. basis. Under the contracts between the manganese merchants and the S.T.C. the merchants were required to bring the goods F.O.B. to the ship named by the S.T.C.

It has to be appreciated that quite often merchants dealing in goods which are exported out of our country enter into what is called string contracts for purchase of the goods from the factory or the mines for sale to exporters for sale to foreign buyers. The Trading Corporations are often the only authorities allowed to export out of our country. These Corporations enter into direct contracts with their foreign buyers for export. The directions given by the Corporations to the merchants to place the goods on board the ship are pursuant to the contracts of sale between the merchants and the Corporation. These directions are not in the course of export, because the export sale is an independent one between the Corporation and their foreign buyers. The taking of the goods from the merchants' place to the ship is completely separate from the transit pursuant to the export sale (See *Serajuddin's* case at pp. 184-185).

In string contracts or chain contracts delivery is made by the original seller and *eo instanti* it is delivered in implement under each separate contract in the chain. In chain or string contracts starting between the mills or mines or factories and their immediate buyer and ending with the ultimate buyer through several intermediaries not only does the mill give and its immediate buyer take actual delivery but *eo instanti* each middleman gives and takes actual delivery This process of delivery of possession goes all along the chain at the same moment when delivery is made to the steamer. See *Duni Chand Rataria* v. *Bhuwalka Brothers Ltd.*(1).

In F.O.B. contracts the seller's duty is to place the goods "free on board" a ship to be named by the buyer. When the seller delivers the goods for loading on board he normally obtains a mate's receipt which he transmits to the buyer and the buyer exchanges this for the proper bill of lading. In this sort of F.O.B. contract the almost universal rule is that property and risk both pass on shipment as soon as the goods are over the ship's rail and if it should be material, the property and risk in each part of the cargo will pass as it crosses the

(1) [1955] 1 S.C.R. 1071.

ship's rail. The loading of the goods is an unconditional appropriation which passes the property. This is not because of any peculiarity of F.O.B. contracts but because in this type of contract the seller's duty is to deliver the goods F.O.B. Once they are on board the seller has delivered them to the buyer and it is natural that they should thereafter be at the buyer's risk.

Now a days a party which has contracted to sell goods to a foreign buyer may itself buy the goods F.O.B. Indian port from Indian seller in order to fulfill F.O.B. contract with a foreign buyer.

This Court in *Serajuddin's* case (supra) has laid down that the mere mention of F.O.B. price or F.O.B. delivery in contract between a merchant and the S.T.C. which exports the goods under a separate contract with the foreign buyer to the latter will not make the two contracts either integrated or the contract between the merchant and the S.T.C. an F.O.B. contract. There cannot be two last purchasers in the sale of same goods within the same State. Similarly, there cannot be two exporters in respect of the same goods. After the decision of the Constitution Bench in *Serajuddin's* case (supra) the decision in *National Tractors Hubli* v. *Commissioner of Commercial Taxes Bangalore*[1] is no longer good law.

In the *National Tractors* case (supra) which was a three Judge Bench decision reliance was placed on the decision in *B. K. Wadeyar* v. *M/s. Daulatram Rameshwarlal*[2]. In *Wadeyar's* case (supra) this Court said that the normal presumption attaching to F.O.B. contracts is that property in the goods passes only when they are put on board the ship. *Wadeyar's* case (supra) was before the Central Sales Tax Act 1956. Further the Bill of Lading, the export licence and the export clause all showed that the export did not commence till the ship left the port.

In the *National Tractors* case (supra) it was said that the purchase by the State Trading Corporation from the merchant was in the course of export by the S.T.C. to the foreign buyer and, therefore, the purchase by the merchant from the mine-owner was the last purchase in the State. The basis of the decision is that these were integrated F.O.B. contracts in the course of export.

The decision in *National Tractors* case (supra) made no reference to the decision of this Court in *Coffee Board* case (supra). The correct law is laid down by this Court in the *Coffee Board* case and *Serajuddin's* case (supra). The law is this. It has to be found out whether the contracts between the merchants and the Corporation are integrated contracts in the course of export or they are different. If they are different contracts, as they are in the present case, the last purchaser within the State is the M.M.T.C.

For the foregoing reasons the appeals are accepted. The judgment of the High Court is set aside. The parties will pay and bear their costs.

P.B.R. *Appeals allowed.*

(1) [1971] 3 S.C.R. 143.
(2) [1961] 1 S.C.R. 924.