(1963) 05 RAJ CK 0007

Rajasthan High Court

Case No: Civil Miscellaneous Writ Petition No. 157 of 1962

Shivratan G. Mohatta, a firm		APPELLANT
	Vs	
Sales Tax Officer, Jodhpur and Another		RESPONDENT

Date of Decision: May 7, 1963

Acts Referred:

- Constitution of India, 1950 - Article 226, 286(1)
- Rajasthan Sales Tax Act, 1954 - Section 13(1), 2, 3

Citation: AIR 1964 Raj 5 : (1964) 15 STC 966

Hon'ble Judges: D.M. Bhandari, J; B.P. Beri, J

Bench: Division Bench

Advocate: M.D. Bhargava, for the Appellant; Kan Singh, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Bhandari, J.
This is a Writ petition under Article 226 of the Constitution by Messrs. Shiv Ratan G. Mohatta which is a partnership Firm having its office at Station Road, Jodhpur, for quashing the order of assessment dated the 5th of March 1962 (Ex. 2 on the record) passed by the Sales Tax Officer, Jodhpur City Circle Jodhpur (Respondent No. 1) with respect to the assessment year 1958-59 to the extent it seeks to charge sales tax on the turnover of Rs. 23,92,252.75 nP. which sum according to the petitioner, represents the price realised on account of the sale of the cement imported from Pakistan as agent of Shri State Trading Corporation of India Private Ltd., New Delhi (hereinafter called ''the State Trading Corporation'').

The relevant facts relating to the import of the Pakistan cement are mentioned in Paragraph 9 of the petition and are not denied in the reply filed by the Slate of

Rajasthan who is Respondent No. 2 and must also he taken to be admitted by Respondent No. 1. The Zeal Pak Cement Factory, Hyderabad (hereinafter called ''the Pakistan Factory'') manufactured cement in Pakistan. For the export of this cement from Pakistan, the Pakistan Industrial Development Corporation (hereinafter called ''the Pakistan Corporation'') entered into an agreement with Messrs. Milkhiram and Sons (Private) Ltd., Bombay (hereinafter called ''Mitkhiram and sons Ltd.), white for the import of this cement in India the State Trading Corporation entered into an agreement with Milkhiram and Sons Ltd. on the 12th of September 1956. This agreement is Ex. 3 on the record.

Under this agreement 35,000 long tons were to be delivered by Milkhiram and Sons Ltd. to the Stale Trading Corporation f.o.r. Khokhropar in Pakistan on the border of Rajasthan at approximately 5,000 tons per month commencing from September 1956. Another 70,000 long tons were to be delivered f.o.r. Wagh. It is with respect to the cement to be delivered f.o.r. Khokhropar that we are concerned in this case. The goods were to be sent to such places in India as were to be intimated by the buyer or his nominee from time to time. The railway receipt was sent to the State Bank of India, Karachi. Goods were to be despatched on ''Freight To Pay'' basis Freight for the distance to be covered in Pakistan was to be paid by the seller and for the distance to be covered in India Was to be paid by the buyer or his nominee. Payment of the price was to be made by the buyer by means of an irrecoverable (sic -- irrevocable?) and divisible letter of credit for the f.o.r. value of the goods calculated @ Rs. 98/8/ for deliveries at Khokhropar in favour of the seller or his nominee with the Commercial Bank Ltd., Lahore and Karachi within 10 days of the receipt by the buyer of the intimation of the seller''s readiness to export, and by means of cheques drawn on the State Bank of India, New Delhi in favour of the seller for the balance value of the goods on receipt of advice of negotiations of documents in Pakistan. Clause 11 of the agreement which is important provided that title and risk in the cement shall pass from the seller to the buyer at Khokhropar or Wagh Railway Station, as the case may be.

2. The State Trading Corporation appointed the petitioner as their agent as per fetter of appointment No. STC/C-5(29)/56, dated the 15th Dec. 1956 (Ex. 4). The relevant terms and conditions of this appointment as given in Ex. 4 are as follows :

"You shall inter alia :

(a) draw up in consultation with the Corporation a despatch programme destination wise and advise the seller as well as the Pakistan supplier in respect of deliveries to be made for a particular month at least 15 days before the commencement of that month;

(b) arrange for the clearance of the Railway wagons loaded with cement through the Customs and for their despatch to different places in India as may be intimated by the Corporation or any person authorised by it;

(c) make payment in respect of Customs duty and such other charges that need to be incurred;

(d) supervise movements of wagons, and the loading, packing, weight etc., whenever necessary;

(e) distribute the cement in accordance with the directions issued by the Corporation and sell it at Rs. 102/8/- per ton of 2240 lbs. f.o.r. destination Railway Station or at such other prices as may be determined by the Corporation from time to time:

(f) Keep the Corporation informed of the progress of despatches, clearance and distributions of cement by means of such regular reports as may be prescribed from time to time in this behalf."

3. According to the petitioner, he discharged his functions mentioned in Ex. 4 by obtaining orders from the buyers in Rajasthan under an agreement as per pro forma Ex. 5 and communicated the same along with despatching instructions as per pro forma Ex. 6 to the Pakistan Industrial Corporation, Karachi which intimated the same to the 7,eal Pak Cement Factory, the manufacturers, for arranging supply as per specimen letter Ex. 8. The manufacturers consigned goods by rail from Hyderabad (Pakistan) to destination in India, the Railway Receipt being taken in the name of the State Bank of India, Karachi, as consignee, and advice of despatch was sent by the Zael Pak Cement Factory to me ultimate buyer in Rajasthan directly with a copy to the petitioner. The original Railway Receipt used to be sent by the manufacturers to the State Bank of India, Karadii, along with the invoice and the State Bank used to endorse the Railway Receipt in favour of the ultimate buyer in Rajasthan and forward it directly to the buyer by registered post. Upon receipt of intimation of despatch of the consignment the buyer used to take delivery of the goods from the Railway generally on the strength of the manufacturer''s despatch advice against indemnity bond in pursuance of Railway circulars and the petitioner used to arrange for customs clearance and payment of customs duty at the border station Barmer.

The contention of the petitioner in the writ petition is that all these functions and responsibilities were discharged under Ex. 4 only as an agent of the State Trading Corporation but thereby he did not become a dealer within the meaning of Section 2(f) of the Rajasthan Sales Tax Act (hereinafter called the Act''). It is also contended by the petitioner that the petitioner did not conduct or eifcct any sale as defined under the said Act of any cement. Another important argument is that transfer of property in the cement sold by State Trading Corporation through the agency of the petitioner took place in the course of import of goods in the territory of India, and as such, no sales-tax under the Act could be levied on such sales in view of Article 286(1)(b) of the Constitution. It is contended that though the respondents had no right to recover sales tax on the price of the cement thus imported, yet Respondent

No. 1 issued and served upon the petitioner on 6th of March 1962 a Notice of Demand under Rule 32 of the Rajasthan Sales Tax Rules 1935 demanding of the petitioner to pay to the State of Rajasthan a sum of Rs. 74,757.88 Nps. within 15 days of the service of notice under the assessment order (Ex. 2). The assessment order, is sought to be declared as illegal and invalid on the grounds that:

(i) it totally failed to consider the impact and effect of Article 286(i)(b) on the facts of the case;

(ii) it illegally held that the petitioner, for all intents and purposes was a dealer liable to pay sales tax to the opposite party No. 2, on the ground that

(a) the petitioner was an agent of a non-resident dealer,

(b) the petitioner booked orders, issued sales bills, and thus under his terms of appointment Ex. 4 sale was to be effected by him;

(c) the petitioner was an importer of goods as he made application to the Customs Authority for the same;

(iii) it illegally attempted to draw support for the legality of the imposition of the tax on Clause (5) of Ex. 5 which says that Sales Tax was agreed to be paid by the buyer.

It is prayed that the assessment order be quashed so far as it seeks to recover the sales tax on the cement imported from the Pak Factory under the circumstances mentioned hereinbefore and the respondents be restrained from assessing, levying or recovering any tax or penalty or any other charge under the Act upon, against or from the petitioner in respect of the aforesaid sale. In the Writ Petition it is also mentioned that as the respondents were threatening to take coercive action for the recovery of the aforesaid amount from the petitioner, the petitioner has directly come to this Court without filing an appeal against the assessment as provided u/s 13(i) of the Act as the remedy by way of an appeal was not speedy, effective or adequate remedy in view of the fact that no appeal was to be entertained unless the amount of tax was paid.

4. The facts are not controverted by the respondents, but it is contended that the petitioner had an alternative remedy by way of an appeal and he should not be given any relief in this Writ Petition as the petitioner has failed to avail of the remedy by way of an appeal provided under the law. On the facts it is alleged that the petitioner was a dealer within the provisions of the Act and he had sold the cement imported by the State Trading Corporation on its behalf, to the various persons in Rajasthan and as such it is liable to pay the sales tax under the provisions of the Act. It is also contended that the sale cannot be said to have taken place in the course of the import of goods into the territory of India and the provisions of Article 286(1)(b) are not attracted

5. We first apply our mind to the question whether in the circumstances it would be proper for us to dismiss the Writ Petition on the ground that the petitioner has not availed himself of the remedy provided under the Act of preferring an appeal. The law on the subject has been laid down, by their Lordships of the Supreme Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, In that case, it was urged by the learned Solicitor General that :

"The existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could therefore be treated as void or non est." (pp. 1508-9)

Their Lordships considered their earlier cases on the subject and observed, as follows :

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond then a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to ihe facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court." (pp. 1509-1510)

In the instant case the contention of the petitioner is that in view of Article 286(1)(b) of the Constitution, the respondent had no jurisdiction to assess the petitioner to pay the sales tax on the sale of goods in the course of the import into the territory of India. As discussed hereinafter, this contention is sound and we have therefore thought it proper not to dismiss tbe writ petition in limine. Even if we take it that there was no total lack of jurisdiction in Respondent No 1 in assessing the petitioner to pay the sales tax, we are of the opinion that on the principles enunciated in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, we are not inclined to dismiss the Writ Petition in limine. We, therefore, overrule this contention on behalf of the respondents.

6. Before we come to the merits of the case, it is necessary to take notice of one more contention urged on behalf of the respondents.

7. The petitioner used to inform from time to time the various dealers of cement in Rajasthan by letters about ihe authorisation or re-allocation of the cement and also stated therein that the supply will be arranged by it of Pakistan cement to be imported by Khekhropar by the State Trading Corporation. One of the terms and conditions of Ex. 5 is, as follows :

"5. Terms of payment. All our cement dues are payable to us in advance in full/ 90% in advance and balance within 15 days of billing plus sales tax and other local taxes as per Circular of Ministry of Commerce and Industries letter No. Cem 8 (359) (f)/56. dated 4th August, 1956, No deduction in our Cement bills are entertained unless previously settled. All Bank or VPP. Charges will be on buyers account."

On the basis of this term, the petitioner collected the sales tax on the cement from the various dealers though it is contended that such collection, was merely in the nature of a deposit which was collected in order to safeguard any risk of payment of the sales tax if the petitioner was adjudged liable to pay such tax and that the petitioner shall be refunding the said deposit to the dealers in case ultimately it was held that the petitioner was not liable to the tax. It is contended on behalf of the respondents that when the petitioners themselves were collecting the sales tax they cannot refuse to pay it to the State. We cannot, however, construe this act of collection of Sales Tax to operate to the prejudice of the petitioner to the extent that it should be held liable to pay the sates tax even if it is not so liable under the law.

8. Now we come to the merits of the case. In the assessment order, Respondent No. 1 has relied on the terms and conditions mentioned in Ex. 4 to hold that the petitioner is a dealer within the meaning of Section 2 (f) of the Act. He has referred to the following points in particular :

"The agent has been appointed under written agreement on the file which shows that the terms of agreements are :

(a) To draw up a despatch programme destination-wise and advise the seller as well as the Pakistan suppliers in respect of the deliveries to be made at a particular point of time;

(b) To arrange for the clearance of Railway wagons loaded with cement through the customs and for the despatch to different places in India;

(c) To make payment in respect of customs duty and of such other charges that may be incurred;

(d) To supervise movement of wagons and loading, packing, weight etc.

(e) To distribute cement in accordance with the directions issued by the Corporation and sell it at Rs. 102/8 - per ton of 2240 lbs. F. O. R. destination or at such other prices as determined by the Corporation;

(f) To maintain a regular account of all payments made and expenditure incurred on behalf of the corporation as well as the money received by the assessee through the sale of cement;

(g) To receive for the aforesaid services a consolidated sum of Re. 1/- per ton. If any extra expenditure is incurred it was to be re-imbursed".

9. It is contended by the petitioner that it is merely a del credere agent for the State Trading Corporation and in spite of the circumstances relied on by Respondent No. 1 for holding it to be a dealer it cannot be said to be a dealer within the meaning of Section 2 (f) of the Act. The petitioner has relied on the following authorities.

(i) The State of Bombay Vs. Ratilal Vadilal and Bros.,

(ii) Karamchand Thapper and Bros. (Coal Sales) Ltd., Jaipur v. Sales Tax Officer City Circle) "A" Jaipur 1961 R L W 420 : ILR (1961) Raj 688 : AIR 1963 Raj 51.

10. On the other hand, learned Government Advocate has relied on Gilda Textile Agency Vijayawada v. State of Andhra Pradesh 1962 13 STC 738 and has argued that the petitioner must be deemed to be a dealer by virtue of Explanation to Section 2 (f) of the Act as he was an agent of the State Trading Corporation who carried on the business of selling and supplying goods in the State to its agent.

11. Let us examine the definition of "dealer" in Section 2 (f) of the Act as it stood at the material time. Dealer has been defined, as follows :

" ''dealer'' means any person who carries on the business of selling or supplying goods in the State whether on commission or for remuneration or otherwise and includes "the State Government in respect of any such business", a Hindu undivided family, and also a society, club or any other association which sells or supplies goods to its members;

Explanation :-- Where a dealer who resides outside the State carries on the business of selling or supplying goods in the State through a manager or agent, the manager or agent shall, in respect of such business, be deemed to be a ''dealer'' for the purpose of this Act".

12. There is no doubt that the State Trading Corporation curried on the business of selling or supplying the goods in the Rajasthan State through the petitioner who was appointed as its agent, though the State Trading Corporation may be taken to be residing outside the State. By virtue of the explanation to Section 2 (f) the petitioner must be held to be a ''dealer''. The Supreme Court case of The State of Bombay Vs. Ratilal Vadilal and Bros., is clearly distinguishable on facts. In that case the respondent Ratiial Vadilal carried on business as commission agents of clearing and transport contractors. One Nand Lal Krishna Das was allotted a priority certificate from the State Coal Controller under the provisions of the Colliery Control Order, 1945. He dealt with Messrs. S. C. Rungta Colliery, Bihar, through Messrs.

Ratiial Vadilal and Brothers. The consignment was in the name of Karasandas but the bill was sent by the colliery to the respondents. The respondents in their turn made out a bill in which they charged in addition to the amount of the bill of the colliery, their commission. The liability to pay the colliery rested upon Messrs. Ratilal Vadilai and Brothers, but they claimed to be acting as mere ''middlemen'' between the colliery and Karasandas. It was held that Ratital Vadilal and Bros. cannot be said to be conducting the business of selling coal and could not be held to be a dealer. This case was followed, by this Court in Karam Chand Thapper and Bros. (Coal Sales) Ltd., Jaipur Vs. Sales Tax Officer, City Circle ''A'' , Jaipur and Another, the facts of which were similar to the facts in Ratilal Vadilal''s case and it was held that Karamchand Thappar and Bros. could not be held to be dealers within the meaning of the Act.

13. But these cases are distinguishable from the facts and circumstances of the instant case. The important feature which takes out the case under consideration from the purview of the law enunciated in the cases relied on by the learned. Advocate on behalf of the petitioner is that the petitioner was appointed as an agent even for the purpose of selling cement, in this connection we may refer to the leiter of appointment (Ex. 4) which says that the petitioner was appointed as the clearing and distributing agent for the Stats Trading Corporation in respect of cement imported from Pakistan for Khokhropar and that the petitioner was to distribute the cement and sell is, at Rs. 102/8/- per ton of 2240 lbs. f. o. r. It may be further mentioned that the petitioner was to maintain a regular account of all payments made and expenses incurred as well as all moneys received from the sale of the cement. The essence of the matter is that it is the petitioner who was to conduct the operation of selling also. The petitioner received the orders. It received the payment and it carried on the other necessary functions on behalf of the State Trading Corporation to see that the goods reached the ultimate buyer, The instant case has, therefore, much more similarity to 1962 13 S T C 738 than to the case of the The State of Bombay Vs. Ratilal Vadilal and Bros., In this view of the matter, we are of the view that the petitioner must be deemed to be a dealer within the meaning of Section 2 (f) of the Act.

14. Now remains the contention whether the sale in this case had taken place in the course of import into territory of India. The law on the subject has been authoritatively laid down in a number of the Supreme Court cases. We may refer to the following cases : --

(1) State of Travancore-Cochin v. Bombay, Co. Ltd., Allepey 1952 3 STC 434 : AIR 1952 SC 366.

(2) State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others,

(3) J.V. Gokal and Co. (Private) Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others,

Relying on these authorities, it is argued by the petitioner that in this case the movement of cement took place on account of the agreement between the State Trading Corporation and Milkhiram and Sons Ltd. and subsequent sales by the former to the various dealers in Rajasthan, and, as such, the sales which occasioned the import of goods into India must be said to have taken place in the course of import into the territory of India and no sales-tax could be levied on account of exemption under Article 286(1)(b) of the Constitution. Learned Government Advocate has contended that it is not the sale by Milkhiram and Sons Ltd. to the State Trading Corporation which is being taxed but it is the subsequent sale by the Stale Trading Corporation through its agent to the various dealers in Rajasthan which is being taxed and the subsequent sales did not occasion the import of goods as the goods were imported in accordance with the agreement Ex. 3. In the circumstances of the case the sale which occasioned the movement of goods may be taken to be the first sale made by Milkhiram and Sons to the State Trading Corporation under Ex. 3. Subsequent sales by the State Trading Corporation through its agent cannot be said to have occasioned the movement of goods in India. In this view the contention of the petitioner cannot prevail.

15. Then, it is contended by the petitioner that in this case, sale to the various dealers in Rajasthan had taken place before the goods had entered into the territory of India and the sale must be held to be in the course of import into the territory of India. In this connection learned counsel has relied on the following circumstances which may be taken to be not disputed by the respondents :

(1) The petitioner upon the receipt of the orders communicated the order directly to the Pakistan Industrial Development Corporation stating the name of the buyer (consignee) the place of the destination, the quantity etc. directing despatch of loading advice, and R. R. to the consignee;

(2) The Pakistan Industrial Development Corporation communicated the same to the Pak Factory;

(3) The factory sent the despatch advice to the ultimate buyer;

(4) The factory took out the Railway Receipt in favour of the State Bank of India, Karachi and forwarded it to that Bank as it was the Banker of the State Trading Corporation. The State Bank sent the Railway Receipt directly to the ultimate buyer in Rajasthan;

(5) The post-card despatch advice authorised the ultimate buyer to obtain delivery of the cement at destination under arrangement with the Railways and the delivery was taken accordingly;

(6) That the petitioner only paid the customs duty and obtained the customs clearance certificate in India on behalf of the State Trading Corporation. It is contended that these facts clearly point out that the property in the case was transferred to the ultimate buyer in Rajasthan even before the goods were despatched from the Pak Factory or at least at the time when the goods were so despatched. In any case, it is urged that as the Railway Receipt was endorsed in the name of the ultimate buyer of Rajasthan and was sent by the State Bank of India, Karachi, as the agent for the State Trading'' Corporation to the ultimate buyer before the goods reached India the property in the goods passed to the ultimate buyer even before the goods reached the territory of India. Thus, it was either before the despatch of the goods or at some time when the goods were in transit before they reached the territory of India that the property in the goods passed to the ultimate buyer and the sale must be held to be the sale in the course of the import. These arguments arc sought to be met by the learned Government Advocate by pointing out that the title and risk in the cement were of Milkhiram and Sons Ltd. till the goods reached Khokhropar as provided in Clause 11 of the agreement (Ex. 3). Reliance is also placed on Clause 16 wherein Milkhiram and Sons Ltd. were responsible for obtaining export licence if one was necessary and for payment of any duty, octroi and other taxes for the export of goods from Pakistan and similarly the State Trading Corporation was responsible for obtaining licence for the import of the goods and payment of taxes levied in India.

16. In the ultimate analysis therefore, the I question is when did the property pass from the State Trading Corporation to the ultimate buyer in Rajasthan. In view of Clause 11 of Ex. 3 there can be little room for the contention that the title in the cement remained in Milkhiram and Sons Ltd. and did not pass to the Stale Trading Corporation or for that reason to the ultimate buyer in Rajasthan till the cement reached Khokhropar. 1 ill then the title in the property remained in Milkhiram Ltd. in spite of the circumstances relied on by the learned counsel for the petitioner relating to the payment of the price and the Railway Receipt.

17. It is to be examined what is the legal position when the goods reached Khokhropar and delivery was taken at ''Khokhropar. As already pointed out the railway receipts were in the name of the ultimate buyers who had also been sent despatch advice by the Pak Factory. The terms of the agreement under which the petitioner as an agent of the State Trading Corporation sold to the ultimate buyer in Rajasthan are given in Ex. 5. The following term in Ex. 5 under the heading. ''Delivery and Transit Risk'' may be noticed--

"No responsibility attaches to us or to the suppliers for non-supply, delay in despatch and non-receipt of consignment, or any loss, damage or shortage in transit due to any reason whatsoever. Although our standard rates are on F. O. R. destination basis but our responsibility of all kinds ceases once the goods are handed over to the carriers and Railway receipt obtained. All claims for loss, damage

or shortage, etc. during transit will lie with the carriers, and our payments are not to be delayed on any such account whatsoever".

Under this term the risk in transit was of the ultimate buyer and even if this term be taken to be controlled by Ex. 3 the risk of transit after Khokhropar must be of the ultimate buyer. The price had been paid by the ultimate buyers before even the goods were despatched. The Railway Receipts were in the name of the ultimate buyers and the risk in transit after Khokhropar was also of the ultimate buyers. These circumstances clearly point out that the property in the goods after the delivery had been taken by the petitioner on behalf of the State Trading Corporation passed to the State Trading Corporation and simultaneously to the ultimate buyers. Thus the property in the goods passed to the ultimate buyer in Rajasthan when the goods had not reached the territory of India (sic) only were in the course of import. In view of the authority of their Lordships of the Supreme Court in J.V. Gokal and Co. (Private) Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others, it must be taken that the sale took place when the goods were in the course of import and they should not be liable to the payment of the sales tax by virtue of Article 286(1)(b).

18. Learned Government Advocate has relied on Dhanalakshmi Mills Ltd. v. State of Madras 1960 11 STC 306: AIR 1961 Mad 87. That is a case of inter-State trade or commerce. We may take the facts of that case from the head note for the purpose of the present discussion. They are, as follows :

"The assessee, a spinning mill at Tirupur in the Madras State was assessed to tax under Rule 4 A(iv) on its purchases of cotton which had been imported from Africa by certain Bombay dealers. The assessee intimated its requirements to the Bombay dealers who placed orders with the suppliers in Africa and directed the shipments from African port to Cochin. The assessee, in the meantime, obtained the necessary transport licence.

The shipping documents were in the name of the Bombay dealers who sent them to their clearing agents at Port Cochin. The clearing agents presented the shipping documents, cleared the goods through the customs, despatched the goods by rail to the assessee at Tirupur and sent the railway receipts through bank. The assessee paid the price into the Bank against delivery of railway receipts." It was held that the purchases of cotton effected by the assessee were made after the cotton had been imported into India by the Bombay dealers and after the cotton had crossed the customs frontiers and they were therefore not entitled to the exemption under Article 286(1)(b). It is clear from the facts of that case that, the Bombay dealers were importing the cotton from Africa. It is only after the goods had been imported in India that the sale had taken place. We may quote the following observations.

"The relationship between the assessee and the importer at Bombay was that of buyer and seller, both being principals, and the sale was only after the import of the goods even where the contract to sell preceded the order to the exporter abroad to

ship the goods in India."

"They were not purchases in the course of import, but they were purchases effected after the import had been completed."

The facts, of that case arc clearly distinguishable from the facts, in the instant case. In the instant case, the title to the property passed to the ultimate buyers'' in Rajasthan from the moment the goods reached Khokhropar and the State Trading Corporation acquired title to them.

19. As a result of the aforesaid discussion, we are of the opinion that no sales tax can be levied on the petitioner for the transactions of the sale of the cement imported from the Pak Factory by the State Trading Corporation under the agreement with Milkhiram and Sons Ltd. as the sales by the petitioner as an agent of the State Trading Corporation to the various dealers took place while the cement was in the course of the import.

20. We, therefore, quash the order of assessment Ex. 2 so far as it seeks to levy tax on such transactions of sale as mentioned hereinbefore. We also direct the respondents not to collect any sales; tax on such transactions. The Writ petition is allowed with costs.