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(1992) 02 DEL CK 0011

In the Delhi High Court

Case No : S.T.R. No. 30 of 1979

Commissioner of Sales Tax APPELLANT

Vs

Philips India Ltd. RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Citation : (1992) 02 DEL CK 0011

Hon'ble Judges : S. Duggal, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : J. R. Goe, for the Appellant;

Judgement

B. N. Kirpal, J.—In respect of the assessment year 1971-72, two references (S.T.R. No. 30 of 1979 and S.T.R. No. 31 of 1979), have been made by the Appellate Tribunal, Sales Tax, Delhi, to this Court, which are being disposed of by this common judgment, one under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, and the other under the Central Sales Tax Act, 1956.

The facts as found by the Tribunal in its order are as follows :

"2. The first controversy pertains to the import of goods by the assessed on the basis of ''actual user licenses'' which its Indian constituents had obtained from the Chief Controller of Imports. Those licenses, it is stated, were not transferable and the holders thereof only were entitled to import the goods. The role played by the assessed was stated to be as a mere agent on behalf of those constituents for the purpose of imports. These imports were mostly effected from the N. V. Philips Holland which was said to be an associate of the assessed there.

3. Letters of authority were stated to have been issued by the Chief Controller of Imports authorising the assessed to effect import of the goods under those licenses on behalf of the license holders and the assessed was to act as an agent of the license holders and the goods imported were the property of the license holders both at the time of clearance through the customs and subsequent

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thereto. The license holders were further required to ensure that the goods on importation were delivered to them and were not disposed of otherwise. The assessed was required to clearly indicate on all the customs documents that the goods were imported on behalf of the license holders.

4. The assessed contended that in terms of these letters of authority, it placed orders with the foreign suppliers. The documents thereof were issued by that supplier in favor of the assessed which paid the price, thereof. The assessed on its part recovered the price, customs duty and its commission, etc., from the license holders when the goods were delivered to them. The insurance covers on those goods were obtained by the assessed in its name covering the risk from the supplier''s destination to the license holders warehouses. In the orders which the assessed used to place with the foreign supplier the names of the license holders were disclosed.

5. There was another set of transactions. They were the results of the Director-General of Supplies and Disposals inviting tenders for the supply of various goods to different departments of the Government. In response thereto the assessed used to submit tenders. On their acceptance, the goods were imported from the said foreign suppliers and then supplied to the concerned Government departments. Import recommendation certificates were said to be issued in favor of the assessed by the Controller of Imports. In the orders placed with the foreign suppliers by the assessed, the names of the Indian buyers were stated to be mentioned. The insurance covers were accordingly obtained by the assessed up to the Indian buyers'' warehouses.

6. Both these classes of transactions were claimed by the assessed to constitute as sales in the course of import and, Therefore, exempt from exigibility to sales tax. It was urged that so far as the import of goods on the actual user''s licenses were concerned, the assessed merely acted as an agent."

On the aforesaid facts, the dealer claimed exemption from tax both under the local law as well as under the Central Act. The submission of the dealer was that these sales were in the course of import and, Therefore, it was not liable to tax. This contention was not accepted by the sales tax authorities.

The Sales Tax Tribunal, however, came to the conclusion that both the transactions amounted to sale in the course of import and were exempt from sales tax.

On an application being filed by the Commissioner of Sales Tax, the Tribunal has referred two identical questions under the two Acts to this Court. The same are as follows :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the transactions effected by the assessed on the basis of letters of authority issued by the Chief Controller of Imports on behalf of ''actual user''s license holders'' were in the course of import and, Therefore, exempt from

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exigibility to sales tax ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the transactions effected by the assessed of supply of various goods to different departments of the Government on the basis of import recommendation certificates issued by the Chief Controller of Imports were sales in the course of import and, Therefore, exempt from exigibility to sales tax ?"

The points in issue are, as far as this Court is concerned, rest integra.

As far as question No. 1 is concerned, the facts are more or less identical to the facts in the case reported as Commissioner of Sales Tax v. General Trading & Sales Corporation [1992] 84 STC 193. In that case also, against actual user''s import license issued, imports were effected by an agent on behalf of the actual user and this Court held that the said sales were in the course of import. Following the ratio of the said decision, question No. 1, referred in the present case, is answered in the affirmative and in favor of the dealer.

As regards question No. 2 is concerned, the facts of this case are similar to the facts in the case of Commissioner of Sales Tax, New Delhi Vs. Gramophone Co. of India., . It was held in that case that against orders placed by Director-General of Suppliers and Disposals, two sale transactions would take place, one between the foreign seller and the Indian dealer and the second sale is by the dealer in favor of the ultimate consignee. It was accordingly concluded that the sales cannot be regarded as being in the course of import.

Following the said decision, question No. 2 referred to this Court is answered in the negative and in favor of the department.

There will be no order as to costs.

Question No. 1 answered in the affirmative.

Question No. 2 answered in the negative.

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