

(1986) 12 KL CK 0014

In the High Court Of Kerala

Case No : T.R.C. No's. 104, 111, 112, 113, 114, 117, 118, 119, 124, 127, 128, 132, 149, 150, 151, 152, 153, 154, 155, 167, 168, 169, 170 and 179 of 1985 and 10, 21, 28, 29, 45, 46, 47, 48, 49, 52, 55, 91 and 92 of 1986

Gopinathan Nair and Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-12-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 5, 6

Citation : (1987) 64 STC 452

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; T. Karunakaran Nambiar, for the Respondent

Final Decision : Allowed

Judgement

K.S. Paripoornan, J.—Identical questions arise for consideration in these batch of 37 revisions. These revisions are preferred against the orders of the Sales Tax Appellate Tribunal. There, T.A. Nos. 713 and 1020 of 1975 were treated as the main cases and a common order was passed dated 11th March, 1985, disposing of the appeals. The revisions filed from the said appeals, T.A. Nos. 713 and 1020 of 1975, are T.R.C. Nos. 91 and 92 of 1986. The common order passed in T.A. Nos. 713 and 1020 of 1975 was followed in all other cases. So, in this Court also, at the request of counsel appearing for both parties, T.R.C. Nos. 91 and 92 of 1986 were treated as the main cases and it was agreed by counsel on both sides that the decision in the said revisions will govern all other revisions in these batch of cases. T.R.C. Nos. 91 and 92 of 1986 relate to the assessment years 1970-71 and 1971-72. The same revision-petitioner in both the cases, is an assessee under the Kerala General Sales Tax Act. He is a cashew dealer. The Revenue is the respondent in both the revisions. Common questions arose for consideration for these two years. They were disposed of by a common order by

the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, in T.A. Nos. 713 and 1020 of 1975 by order dated 11th March, 1985. Briefly stated, the point in dispute is regarding the tenability of the claim of exemption put forward by the assessee/revision-petitioner on the turnover of "African nuts" for these two years. The assessing authority held that the turnover of African nuts, which were purchased by the assessee from M/s. Cashew Corporation of India Ltd., were only local purchases and not purchases "in the course of import" within the meaning of Section 5(2) of the Central Sales Tax Act. The appeals filed by the assessee, before the Deputy Commissioner of Agricultural Income Tax and Sales Tax (Appeals), Quilon, were dismissed. The Appellate Tribunal confirmed the aforesaid decisions. The assessee has come up in revisions.

2. At the outset, it should be stated that the order passed by the Appellate Tribunal in T.A. Nos. 713 and 1020 of 1975 dated 11th March, 1985, has dealt with the only question, as to whether the purchases made by the assessee from M/s. Cashew Corporation of India Ltd., are in the course of import and so exempt u/s 5(2) of the Central Sales Tax Act, 1956. In para 13 of the appellate order, the Tribunal has observed, that the other contentions raised in the appeal memorandum were not pressed by the appellant (assessee). On this basis, the other contentions were rejected as not pressed. Counsel for the revision petitioner made a feeble attempt to raise questions not dealt with by the Appellate Tribunal. In view of the decisions of the Supreme Court of India in *Bank of Bihar Ltd. Vs. Mahabir Lal and Others*, and in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, , we indicated to counsel, that if the statement contained in para 13 of the Tribunal's order is wrong or based on a misconception, the proper remedy was to file an appropriate application for review or rectification before the Appellate Tribunal itself and it is not proper, to entertain the plea for the first time, in this Court. So, in these revisions, we are concerned with the only question, as to whether the purchases of African nuts made by the assessee from the Cashew Corporation of India Ltd., are in the course of import and so the turnover is exempt u/s 5(2) of the Central Sales Tax Act.

3. We heard counsel for the revision-petitioner, Mr. Arikkat Vijayan Menon and counsel for the Revenue, Mr. T. Karunakaran Nambiar, at length. Both sides brought to our notice an array of decisions of the Supreme Court of India and also referred to many documents. In the light of the order which we propose to pass in these cases, it may not be necessary to refer to all of them.

4. At the outset, we should state that the Appellate Tribunal has, in para 4 of its order dated 11th March, 1985, stated that the following 7 sets of documents were produced before them. They are : (1) import licence (bulk and subsidiary), (2) bills of lading, (3) bill of entry, (4) letter of authority, (5) marine insurance, (6) invoices issued by the Corporation and (7) letters of allotment. The first 4 sets of documents, import licence, bills of lading, bill of entry and letter of authority, were filed before the assessing authority. They were available before

the first appellate authority, as well. The contents of these documents have not been stated in detail in the appellate order, though the Tribunal has stated that they perused all these documents.

5. In order to understand as to whether the exemption claimed by the assessee is tenable, we shall first advert to Section 5(1) and 5(2) of the Central Sales Tax Act, 1956.

Section 5. When is a sale or purchase of goods said to take place in the course of import or export.-(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

In this case, we are concerned with Section 5(2).

Article 286(1)(b) of the Constitution prohibits a State from imposing or authorising the imposition of a tax on the sale or purchase of goods, where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India. Section 5(1) and (2) of the Central Sales Tax Act point out as to when the sale or purchase of goods, is to be regarded as being in the course of export or import. As to when a sale or purchase of goods shall be deemed to take place in the course of the export or import, has been explained in a catena of decisions of the Supreme Court of India beginning from the first Travancore case. Important among them are-State of Travancore-Cochin v. Bombay Co. Ltd. [1952] 3 STC 434 (SC), State of Travancore-Cochin v. S.V.C. Factory [1953] 4 STC 205 (SC), Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, , Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, , Serajuddin and Others Vs. The State of Orissa, These cases dealt with "export". A few important cases which dealt with sales "in the course of import", are- K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, , The Deputy Commissioner of Agricultural Income Tax and Sales Tax Central Zone, Ernakulam Vs. Kotak and Co., Bombay, etc. etc., , Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, and Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd., . In Bombay Company's case [1952] 3 STC 434 (SC), a sale by export was explained as involving a "series of integrated activities commencing from 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". This view was amplified in the later case-Shanmugha Vilas" case [1953] 4 STC 205 (SC) wherein it was stated as follows :

The phrase "integrated activities" was used in the previous decision to denote that "such a 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 the 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.

In Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, , the Supreme Court held :

A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which the sale of a commodity is followed by export thereof. ...In general where the sale is effected by the seller and he is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export.

Still later, after an exhaustive survey of earlier cases, in Serajuddin and Others Vs. The State of Orissa, , the Supreme Court observed as follows:

It was said that to occasion export there must exist such a bond between the contract of sale and the actual exportation that each link is inextricably connected with the one immediately preceding it...A sale in the course of export predicates a connection between the sale and export...The features which point with unerring accuracy to the contract between the appellant and the Corporation on the one hand and the contract between the Corporation and the foreign buyer on the other as two separate and independent contracts of sale within the ruling in the Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, and the Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, are these.

Again in Murarilal Sarawagi and Others Vs. The State of Andhra Pradesh, , the Supreme Court held at page 299 :

The correct law is laid down by this Court in Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, and Serajuddin and Others Vs. The State of Orissa, . 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.

The Supreme Court has likewise dealt with the question as to when a sale can be considered to be one "in the course of import", in a series of decisions referred to earlier in this judgment. In the latest decision, reported as Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd., , the court observed :

...in order that the sale should be one in the course of import, it must occasion the import and to occasion the import there must be integral connection or inextricable link between the first sale following the import and the actual import provided by an obligation to import arising from statute, contract or mutual understanding or nature of the transaction which links the sale to import which cannot, without committing a breach of statute or contract or mutual understanding, be snapped.

It is in the light of the above principles laid down by the Supreme Court, we have to examine the rival contentions put forward by the parties.

6. Counsel for the revision-petitioner, Mr. Arikkat Vijayan Menon, contended that the Appellate Tribunal failed to consider the assessee's plea that the purchases made from M/s. Cashew Corporation of India Limited are in the course of import in a proper perspective or in accordance with law. The contentions were twofold : Firstly, it was contended that the purchase of raw cashew-nuts is in the course of import, as the purchase has occasioned such import. Secondly, it was contended that at any rate, the purchases were effected from the Corporation in the course of import of the goods into the territory of India by a transfer of documents of title to the goods before the goods crossed the customs frontiers of India. Counsel urged that the Appellate Tribunal failed to bear in mind that the import

of cashew-nuts was canalised through the Cashew Corporation of India Ltd., from 1st September, 1970 and the nature of the transaction discernible from the various documents produced and the Import Control Act, 1947 and the Import Control Order, 1955, would positively show that the purchases were in the course of import. The Appellate Tribunal did not advert to the provisions of the Import Control Act and the Import Control Order, as also the procedure adopted in the matter of allotment of the goods, in the matter of payment for the goods, the clearance of the same, as envisaged in the order, etc.

7. On the other hand, counsel for the Revenue, Mr. Karunakaran Nambiar, submitted that the Appellate Tribunal, having regard to the facts before it and in the light of the decisions brought to its notice, has correctly held that the purchases were not in the course of import and so not exempt u/s 6(2) of the Central Sales Tax Act. Counsel pleaded that the question as to whether the purchases made by the assessee/revision-petitioner from the Cashew Corporation of India Ltd., are in the course of import is a question of fact and no question of law arises for consideration.

8. On hearing the rival contentions of the parties, we are of the view that the question as to whether the purchases made by the assessee/revision-petitioner from the Cashew Corporation of India Limited are in the course of import and so exempt u/s 5(2) of the Central Sales Tax Act is a mixed question of fact and law. In order to arrive at a conclusion as to whether the purchases are ""in the course of import", the Appellate Tribunal should bear in mind Section 5(2) of the Central Sales Tax Act, as interpreted by the various decisions of the Supreme Court of India and apply the same to the facts of the case. The Tribunal has also to apply the relevant provisions of the Import Control Act and the Import Control Order, 1955, to understand the nature of the transaction. In such circumstances, we are of opinion that the ultimate conclusion to be arrived at is one of law. We reject the contention of the counsel for the Revenue to the contrary.

9. We have seen that 7 sets of documents were available before the Appellate Tribunal (para 4 supra). From 1st September, 1970, import of raw cashew-nuts was canalised through the Cashew Corporation of India Limited. The provisions of the Import Control Order are relevant to determine the nature of the transaction. On a perusal of the order of the Tribunal, we find that the Appellate Tribunal has not addressed itself to the provisions of the Import Control Act and the Import Control Order, 1965. It is also evident that the Appellate Tribunal referred to seven sets of documents produced by the assessee and observed that they have perused all these documents in respect of these transactions. What is the nature and the effect of these documents, considered in the light of the Import Control Order, is not seen discussed in the order of the Appellate Tribunal. A perusal of paragraphs 4 and 5 of the order of the Tribunal, shows that the following findings arrived by it resulted in the rejection of the asses-see's plea that the purchases were in the course of import. They are : (1) There is no evidence to prove that the Corporation placed orders for purchase of raw nuts with the foreign sellers,

at the instance of the assessee. There is no evidence to prove that the Corporation has acted as "an agent" of the assessee in importing raw cashew-nuts. (2) The principle enunciated by the Supreme Court reported in *Serajuddin and Others Vs. The State of Orissa*, applies on all fours to the facts of the case on hand. There is no privity of contract between the assessee and the foreign sellers. The privity of contract was between the Corporation and the foreign seller. (3) The import was occasioned by the contract of sale between the Corporation and the foreign seller. (4) The assessee was under no contractual obligation with the foreign sellers either directly or indirectly. (5) The relationship between the assessee and the Corporation was between the 2 principals and there was no aspect whatsoever of principal and agent. According to the Appellate Tribunal, these aspects clearly indicate that the purchase of African nuts by the assessee from the Cashew Corporation of India Ltd., was not in the course of import.

10. A bare reading of the order of the Appellate Tribunal, wherein the above findings have been arrived at, will show that the Appellate Tribunal failed to bear in mind the provisions of the Import Control Order and the nature of the transaction between the Cashew Corporation of India Ltd. and the assessee. The Tribunal also failed to apply the principles laid down in the decisions of the Supreme Court. We are of the view that notwithstanding the findings entered by the Appellate Tribunal (extracted in the previous paragraph), the purchases made by the assessee can still be one in the course of import, if certain other aspects which were enunciated by the Supreme Court and which we shall hereafter advert to, are satisfied. The expression the sale or purchase, "'occasions such import" in Section 5(2) of the Central Sales Tax Act, must have the same meaning as the expression "occasions the movement of goods" occurring in Section 3(a) of the Central Sales Tax Act. (See *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, at page 487). As in the case of inter-State sales, Section 3(a) of the Central Sales Tax Act would cover sales, other than those covered by Section 3(b) of the Act, in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, in the case of import sales, it would be a sale in the course of import of the goods, if the movement of the goods from the foreign country was the result of a contract of sale or an incident of such contract. It is not necessary that the sale by the importer to the purchaser should precede the import. (*K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, at page 489). On a close perusal of the decisions of the Supreme Court, in *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, , *Serajuddin and Others Vs. The State of Orissa*, , *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, and *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd.*, , it appears, that in order to hold that the sale by the actual importer in favour of the purchaser is an import sale, it is not necessary, in all cases, that there should

be privity of contract between the purchaser and the foreign exporter. We have already seen that the sale by the importer to the purchaser need not precede the import. All that is necessary is that the movement of the goods from the foreign country is incidental to or in pursuance to the conditions of the contract between the importer and his purchaser or there is inextricable link between the sale following the import and the actual import provided by an obligation to import. The integral connection or link between the first sale (to the assessee), following the import and the actual import, provided by an obligation to import, should arise from statute, contract or mutual understanding or nature of the transaction, which links the sale to import. The aspects stressed by the Appellate Tribunal in the order are, that the Corporation has not acted as an agent of the assessee in importing nuts from the foreign country, that there is no privity of contract between the assessee and the foreign sellers and that the assessee was under no contractual obligation with the foreign sellers either directly or indirectly. What were the mutual obligations and rights of the Parties flowing from the Import Control Order, what was the nature of the contract or nature of the transaction between the assessee and the Corporation and as to whether there was anything discernible either in the Import Control Order or the contract or mutual understanding or nature of the transaction to link the purchase of raw cashew-nuts by the assessee to the import, have not been adverted to or evaluated by the Appellate Tribunal. It failed to consider, as to whether the transaction between the foreign seller and the Cashew Corporation and the transaction between the Cashew Corporation and the assessee formed an "integrated transaction" or ""integrated contract", in the course of import or whether they were two separate or distinct and independent contracts, altogether. That this aspect is crucial, has been pithily stated by Sabyasachi Mukharji, J. (as he then was), in *Siemens India Ltd. Vs. The Commercial Tax Officer and Others*, The learned Judge, after referring to the decision of the Supreme Court in *K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes*, , observed as follows:

The test that has to be applied is that the sale must be in the course of import. It is not enough that the sale is for the purpose of import. The importation must be as a result of the sale and must be occasioned by the sale in respect of which exemption is being sought for. The act of importation and the sale in question must form an integrated transaction. How a particular sale and importation should be considered to have formed an integrated transaction depends upon the facts and circumstances of each case. No one test or combination of tests can be decisive in all cases. The fact that there are two different contracts-one a contract of purchase from the foreign seller and another a contract of sale to a buyer in India-may provide good indication of the fact that the sale in question was in the course of importation. Again, in my opinion, the fact that for effecting the sale the goods were imported or prior to the importation there was specification by the buyer or use of the actual user's licence of the buyer are not decisive of the matter. The important factor to be determined is whether the

importation and the sale formed an integrated transaction. That requires detailed examination of the transactions in question. In the impugned order the Commercial Tax Officer has observed : "It appears that each transaction claimed for deduction u/s 5(2) of the Central Sales Tax Act, 1956, consisted of two distinct sales". The Commercial Tax Officer has not discussed the evidence on record and how he has come to the conclusion. He has further gone on to observe that one transaction was the purchase of the dealer from the foreign supplier. Then after taking delivery of the goods in India there was another sale being sale by the dealer to the customer. He has not considered whether these two operations formed an integrated transaction.

11. Judged in the light of the legal principles laid down in the above decisions, we are of the view that the Appellate Tribunal totally failed to bear in mind the above aspects, in holding that the purchases made from the Cashew Corporation of India Limited by the assessee are not in the course of import. The Sales Tax Appellate Tribunal is the final fact-finding authority, under the Act and the order passed by it, should be sufficiently comprehensive and self-contained one, from which it should be possible to ascertain all the relevant facts and the questions that arose for consideration in the appeal. As to whether the contract between the foreign seller and the Corporation on the one hand and the contract between the Corporation and the assessee on the other, formed an "integrated" transaction and so the sale is in the course of import or they are ""distinct and different", is a matter which requires appraisal of the relevant law and facts before an adjudication is made thereon. As to whether there was an inextricable link between the sale to the assessee and the actual import provided by the Import Control Order or contract or mutual understanding or nature of the transaction is a matter which should be specifically adverted to and adjudicated. In this regard, the decisions of the Supreme Court in Murarilal Sarawagi and Others Vs. The State of Andhra Pradesh, and Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd., , Siemens India Ltd. Vs. The Commercial Tax Officer and Others, were entirely lost sight of. Nowhere in the order, the Appellate Tribunal has dealt with the above salient aspects. The order of the Appellate Tribunal is accordingly infirm. It is not in accordance with law. The contentions raised before the Tribunal should have been evaluated and adjudicated with reference to the facts, circumstances, the relevant evidence and the principles of law applicable thereto in a proper perspective. It has not been done. The Appellate Tribunal has not considered the essential or vital aspect that arose for consideration before it, with due care to all material facts and records. The crucial question was not approached from a proper perspective. The Tribunal was obliged to focus its attention on Section 5(2) of the Central Sales Tax Act, as explained in the various Supreme Court decisions, referred to above, as also the Import Control Act and the Import Control Order, 1955 and then evaluate the facts and circumstances in the case. It failed to do so. It is a serious infirmity or error. In these circumstances, we are of the view that the findings arrived at by the Appellate Tribunal that the purchases

made by the assessee from the Cashew Corporation are not in the course of import and so the exemption claimed by the assessee u/s 5(2) of the Act is not available, cannot stand. The Appellate Tribunal should deal with all facts and evidence in a proper perspective and with due care and in its absence the order would be infirm. It has failed to act in accordance with law. [See *Udhavdas Kewalram Vs. Commissioner of Income Tax, Bombay City I*, at page 465, *Killick Nixon and Company Vs. Commissioner of Income Tax, Bombay*, , *Basti Sugar Mills Co. Ltd. and Others Vs. Commissioner of Income Tax, Delhi and Rajasthan*, , *E. A. Venkataramier and Sons Vs. Commissioner of Income Tax, Madras.*, and *Tribhovandas Vithaldas v. Commissioner of Income Tax*.

12. We, therefore, hold that the Appellate Tribunal failed to decide the question of law posed before it, as to whether the exemption claimed under the first limb of Section 5(2) of the Central Sales Tax Act by the assessee is available, in accordance with law.

13. The Appellate Tribunal also considered the second limb of Section 5(2) of the Central Sales Tax Act, namely, whether the purchases of the assessee from the Corporation were in the course of import of the goods into the territory of India by transfer of documents of title to the goods before the goods crossed the customs frontiers of India. It took one example and adverted to it in para 7 of its order. Therein, the allotment letter by the Cashew Corporation of India Limited is dated 18th February, 1971, the invoice prepared by the Corporation in favour of the assessee is dated 23rd March, 1971 and the vessel arrived at the Cochin Port on 27th March, 1971. The Tribunal observed that it is not clear as to when the Corporation actually transferred the documents of title to the goods to the assessee. The assessee produced a letter dated 4th November, 1970, issued by the Corporation to the assessee to prove that the goods were sold on the high seas before the arrival of the vessel to the customs frontiers. It was discarded on the ground that there is no primary evidence to prove that the goods were sold on the high seas. We are afraid that the Tribunal has not dealt with the matter judicially or properly. The revision-petitioner's counsel contended that it was thought that the letter of the Cashew Corporation dated 4th November, 1970, produced before the authorities was sufficient to hold that the goods were sold on the high seas. The authenticity or the contents were not doubted. The assessee had no opportunity to substantiate the contents of the letter of the Cashew Corporation dated 4th November, 1970. Prima facie, we are of the view that before the letter of a responsible Corporation, like Cashew Corporation of India, is discarded, the authorities should inform the assessee about the same and may elicit further supporting materials to prove the contents of the letter dated 4th November, 1970. That has not been done. Now that we have held that the Appellate Tribunal has not considered the applicability of the first limb u/s 5(2) of the Central Sales Tax Act fairly or in accordance with law and so the matter requires a remit, we hold that with regard to the applicability of the second limb of Section 5(2) of the Act, the Appellate Tribunal will afford a chance to the assessee to substantiate the contents of the letter of the Cashew

Corporation dated 4th November, 1970, or require the assessee to produce more clinching material to precisely prove that the Corporation transferred the documents of title to the goods before the goods crossed the customs frontiers of India. On this aspect also, the matter requires a further and more detailed examination by the Appellate Tribunal.

14. In the result, we hold that the reasoning and conclusion of the Appellate Tribunal, to hold that the purchases made by the assessee from the Cashew Corporation of India Limited are not in the course of import and so the exemption u/s 5(2) of the Central Sales Tax Act is not available, is not in accordance with law. We set aside the orders passed by the Appellate Tribunal in these revisions and remit the matter to the Appellate Tribunal for a proper consideration, according to law and in the light of the various decisions referred to in this judgment. The tax revision cases are allowed. There shall, however, be no order as to costs.

15. The appeals, T.A. Nos. 713 and 1020 of 1975 and other connected appeals, are posted before the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, for appearance of parties, on 5th January, 1987. The Appellate Tribunal shall dispose of the appeals, as expeditiously as possible, at any rate, on or before 28th February, 1987.