

**(1969) 12 AHC CK 0012**

**In the Allahabad High Court**

**Case No :** Sales Tax Reference No's. 510, 511 to 517 of 1965

Gupta Brothers

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

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**Date of Decision :** 08-12-1969

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 3  
Sales of Goods Act, 1930 — Section 19, 2, 20, 23, 25

**Citation :** (1970) 26 STC 115

**Hon'ble Judges :** R.S. Pathak, J; R.L. Gulati, J

**Bench :** Division Bench

**Advocate :** Ashok Gupta and B.L. Gupta, for the Appellant; Standing Counsel, for the Respondent

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## **Judgement**

R.S. Pathak, J.—I agree with the answer proposed by my brother Gulati, J., to the question referred in this case.

2. The facts are not clearly set out in the statement of the case. They appear, however, from the assessment orders, the appellate orders and the revisional orders and have been summarised by my learned brother. There is nothing to show that during the submissions made on the hearing of the revision applications before the Additional Judge (Revisions) Sales Tax, either party relied on a different version of the facts from those appearing in the respective assessment orders and appellate orders. It seems to me that upon those facts the only reasonable conclusion is that there was a sale by Caltex Limited to the assessee as a result of which kerosene oil moved from outside Uttar Pradesh into the State and that kerosene oil was sold by the assessee. The contention for the assessee cannot be accepted that it is Caltex Limited which imported the kerosene oil into Uttar Pradesh and then sold it to the assessee. There was a prior contract of sale between the company and the assessee and in consequence of it the kerosene oil moved into the State of Uttar Pradesh. It may be that property in the goods passed in Uttar Pradesh from the company to the

assessee. But it is now settled law that for the purpose of deciding whether the movement of goods from one State to another has taken place as a covenant or incident of the contract of sale the question whether property passes in one State or the other is immaterial. It is sufficient that there is a contract of sale and as a covenant or an incident of that contract there is a movement of goods from one State to another. The decision of this court in *Bhika Mal Musaddi Lal v. Commissioner of Sales Tax, U.P.* [1963] 14 S.T.C. 770 relied on by the assessee does not help the assessee at all. That case does not decide that, if there is a contract of sale and consequent upon such contract goods cross from one State to another, the purchaser under that contract is not an importer. The court expressly pointed out:

Applying Rule 2(d-I) to the facts of this case, we come to the conclusion that the assessee was the importer of sugar under Clause (c) or under Clause (b). If it be said that sugar was imported into Uttar Pradesh as a direct result of a sale, namely the sale made by the Regional Director to the assessee, the sugar was intended to be resold in the same condition and Clause (b) would apply. The person importing it was the assessee who was a dealer and, when it sold it, it became the importer....

3. The Commissioner of Sales Tax is entitled to his costs which I assess at Rs. 100. Counsel's fee is assessed in the same figure.

R.L. Gulati, J.

4. The firm of M/s. Gupta Brothers, hereinafter referred to as the assessee, carries on business in motor parts, motor oil, lubricants, diesel and kerosene oil etc. at Firozabad in Agra district. It acts as the distributor of M/s. Caltex Co. Ltd., a well-known oil company. The Caltex Company is situate outside Uttar Pradesh but has branches inside the State. During the assessment proceedings under the U.P. Sales Tax Act thereafter referred to as the Act) for the assessment year 1958-59, the assessee claimed exemption in respect of its turnover of kerosene and diesel oil on the ground that it was not the importer and the turnover of those commodities, when imported from outside Uttar Pradesh was taxable only at the point of sale by the importer. According to the assessee, it was the company which was the importer. Similar contention was raised in subsequent three assessment years, viz., 1959-60, 1960-61 and 1961-62. This contention of the assessee was not accepted by the Sales Tax Officer nor by the Judge (Appeals) nor by the Judge (Revisions). The assessee then sought a reference u/s 11 of the Act and the Judge (Revisions) Sales Tax, Agra, has submitted this and the connected references for the opinion of this court on the following common question of law :

Whether in the circumstances of the case stated above, the assessee was an "importer" within the meaning of Rule 2(d-I)(b) of the U.P. Sales Tax Rules and as such liable for sales tax on the sales of kerosene and diesel oil ?

5. Unfortunately, the statement of the case does not set out all the relevant facts

of the case bearing upon the point. However, from a reading of the revisional order of the Judge (Revisions) and the orders of the Sales Tax Officer and the Judge (Appeals) Sales Tax, the following facts appear to have been admitted or found disclosing the modus operandi between the parties :-

(i) that the assessee in its capacity as the distributor of the company, placed on the company orders for the supply of kerosene and diesel oil. Such orders were booked by the company's representatives,

(ii) that some of the supplies were made by the company from its depot at Agra while others were made from its stock outside Uttar Pradesh,

(iii) that one of the recitals in the agreement of distributorship was: "whereas the company has at the request of the distributor agreed to sell kerosene to the distributor at Firozabad or at such place or places, as the company may elect upon the terms and conditions hereinafter mentioned",

(iv) that the stock supplied by the company from outside Uttar Pradesh (mainly from Bombay) was consigned to the assessee through rail and the relevant railway receipts were taken out by the company sometime in its own name and sometime in the name of the assessee,

(v) that such railway receipts were sent to the assessee by the company through its bankers at Firozabad and the bank delivered the railway receipts after collecting payment of the company's relative bills from the assessee.

6. There is no dispute about the turnover of the goods purchased by the assessee from Agra depot of the company. The dispute only relates to the turnover of kerosene imported from outside Uttar Pradesh. The reference to diesel oil in the question referred by the Judge (Revisions) is superfluous because the relevant notification referred to below relates only to kerosene oil.

7. Mr. Brij Lal Gupta, learned counsel for the assessee contends that having regard to the facts of the case, it was the Caltex Company which imported the goods into Uttar Pradesh before they were sold to the assessee and as such it was the company which was the importer and not the assessee.

8. Before dealing with this contention of the learned counsel it is necessary to notice the relevant provisions. u/s 3-A of the Act, the State of Uttar Pradesh has been vested with the power to declare that the turnover of certain goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify. In exercise of this power the State Government has been issuing notifications from time to time specifying a large number of commodities, the turnover whereof is taxable at the rate and at the point specified in those notifications. The exact notification with which we are concerned has not been mentioned anywhere either in the statement of the case or in the orders passed by the various sales tax authorities. However, it is admitted that the relevant notification is the Notification No. ST-905/X dated 31st March, 1956. According to that notification, the turnover of kerosene oil is

taxable only at the point of sale by the importer when that commodity is imported from outside Uttar Pradesh. The term "importer" has not been defined in the Act but the definition is contained in Rule 2(d-I) which reads as under :

2. (d-1) "Importer" means, as respects goods imported into Uttar Pradesh from any other State in India,-

(a) in a case where the goods are not imported for the purpose of resale in the same condition as they were imported by the person who imported them, the dealer in such other State, who made the sale as a direct result of which the goods are imported into Uttar Pradesh ;

(b) in a case where the goods are imported for the purpose of resale in the same condition as they were imported by the person who imported them, the dealer who makes the first sale (after the sale) as a direct result of which the goods were imported into Uttar Pradesh ; and

(c) in a case where the goods are imported into Uttar Pradesh otherwise than as a direct result of a sale, the dealer who makes the first sale after such import.

9. Out of the four clauses of Rule 2(d-I), Clause (a) deals with a case where the goods are imported not for resale but for consumption. We are not concerned with that clause. The clauses which are relevant for our purposes are Clauses (b) and (c). These two clauses apply when the goods are imported for resale. If the import takes place as a direct result of a prior sale, Clause (b) applies and where the goods are imported without there being a prior sale, Clause (c) applies. In either case, the importer is the dealer who makes the first sale after the import. On a further analysis, it appears that Clause (b) contemplates two sales one which occasions the import and the other after the import. The former may be called the "import sale" and the latter the "local sale". It is the local sale which is taxable under the Act for the obvious reason that the import sale would be an inter-State sale and would be taxable under the Central Sales Tax Act, 1956. In a case covered by Clause (c), there is no inter-State sale preceding the local sale. That, to my mind, is the difference between the two clauses.

10. Now reverting to the facts of the present case it is clear that the kerosene oil, the turnover of which is in dispute, was imported in Uttar Pradesh as a direct result of a prior contract of sale between the assessee and the company. By applying Clause (b) of Rule 2(d-I) therefore, the assessee would be the importer liable to tax in respect of the sales made by it of the kerosene oil so imported.

11. Mr. Gupta, however, contends that it is Clause (c) which applies. His argument is that although there was a prior contract of sale between the assessee and the company yet the property in the goods passed to the assessee only after the goods had crossed into Uttar Pradesh. For this submission he relies on two facts :

(a) that according to the terms of the contract the company was to effect sale in favour of the assessee at Firozabad and

(b) the railway receipts which are the documents of title were retired by the assessee in Uttar Pradesh after making payment of the price of the goods to the company's bankers.

12. He rests his contention on Section 25 of the Indian Sale of Goods Act and places reliance on the *Stale of Madras v. Vuppala Pedg Venkataramaniah and Sons* [1958] 9 S.T.C. 54 *Majety Balakrishna Rao Vs. Mooke Devassy Ouseph and Sons*, and *The Bank of Morvi, Limited Vs. Baerlein Bros.*, to support his contention that where the railway receipt is in the name of the seller, it shows his intention to remain its owner and retain control over the goods till the buyer makes payment through the bank.

13. Mr. V. K. Mehrotra, learned counsel appearing on behalf of the State contends that passing of the property depends upon the intention of the parties and, in the absence of any contrary intention, in the case of a contract for sale of specific goods in deliverable state, property in the goods passes to the buyer when the contract is made and the goods are appropriated towards the contract. He places reliance on Sections 19 and 20 of the Indian Sale of Goods Act. He further contends that there is no material on the record nor is there any finding to show the intention of the parties with regard to the passing of the property and, therefore, the property should be deemed to have passed to the assessee as soon as the company accepted the orders of the assessee to supply kerosene and diesel oil and placed the goods on rail. As regards the delivery of railway receipts to the assessee through the bank at Firozabad, his contention is that that procedure might have been adopted by the company for the purpose of securing the payment of the price of the goods without affecting in any way the passing of the property to the assessee.

14. Mr. Brij Lal Gupta counters by saying that the goods in question were neither specific nor in deliverable state as contemplated by Section 2(14) and 2(3) of the Indian Sale of Goods Act and therefore, neither Section 20 nor 46 of that Act would apply to the facts of the case. He reiterated that sections of the Indian Sale of Goods Act that were applicable were Sections 23 and 25.

15. I am of opinion that it is not necessary to decide these rival contentions of the parties. To my mind, it is wholly immaterial where the property passed. The only question that requires determination is as to whether the import of the goods in dispute was the direct result of a prior sale. To put it differently the question is as to whether the import has been occasioned by a contract of sale. I have already pointed out above that a sale which occasions the import would be an inter-State sale. A reference in this connection may be made to Section 3 of the Central Sales Tax Act which enacts that "a sale of goods shall be deemed to take place in the course of inter-State sale when the sale occasions the movement of goods from one State to another." In *Tata Iron and Steel Co. Ltd. v. S. R. Sarkar* [1960] 11 S.T.C. 655 the Supreme Court held that a sale occasions the movement of goods from one State to another within Section 3(a) of the Central Sales Tax Act, when the movement "is the result of a covenant or

incident of the contract of sale and the property passed in either State". The same view has been reiterated by the Supreme Court in the Cement Marketing Co. of India (Private) Ltd. v. The State of Mysore and Anr. [1963] 14 S.T.C. 175 and in the State Trading Corporation of India Limited v. The State of Mysore [1963] 14 S.T.C. 188. The last case to which reference may be made is that of K. G. Khosla and Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras Division, Madras [1966] 17 S.T.C. 473 where the Supreme Court after reviewing the earlier cases on the point, affirmed its view once again at page 488 in the following words :

Accordingly we hold that the High Court was wrong in holding that before a sale could be said to have occasioned import it is necessary that the sale should have preceded the import.

16. To the same effect is the ratio of a Full Bench decision of this court in National Carbon Co. v. Commissioner of Sales Tax. [1968] A.L.J. 497. There also it was held that in order to determine as to whether a sale occasioned an export it was immaterial as to where the property passed.

17. As already stated above, the expression "the sale as a direct result of which the goods are imported" has the same meaning as "the sale which occasions the import". Therefore, the ratio of the cases referred to above would apply with equal force for the determination of the question involved in the instant case.

18. The next question that arises is as to whether the sale between the assessee and the company was responsible for the import. In other words whether the sale between the parties had occasioned the import. The answer to that question would depend on as to whether the movement of the goods from another State into Uttar Pradesh was the result of a covenant in the contract of sale or was a necessary incidence thereof. We do not have the contract before us but it seems to me to be quite clear that it was incidental to the contract that the stocks of kerosene and diesel oil would move from outside Uttar Pradesh to Firozabad. When a dealer of Uttar Pradesh places order for the supply of goods from another State for delivery in the home State, the movement of the goods from that State into Uttar Pradesh would be a necessary incident of such a contract of sale.

19. The view that I have taken is directly supported by a decision of this court in Firm Rabhubar Dayal Kallu Mal v. State of Uttar Pradesh 1955 A.L.J. 860 where Chowdhry, J., while dealing with the interpretation of Rule 2(d-I), expressed the opinion that "all that Clause (b) of that rule required was that the motive force behind the import should be none other than sale, the stage at which the sale takes place being immaterial.

20. On behalf of the assessee, reliance was placed upon the decision of this court in Bhika Mal Musaddi Lal v. Commissioner of Sales Tax, U.P. [1963] 14 S.T.C. 770 There the assessee, a dealer in sugar, was appointed by the Regional Director of Food, Government of India, as the authorised dealer for the sale of sugar in Uttar

Pradesh. The stocks of sugar were consigned from Bombay to Lucknow and the railway receipts, which were in the name of the Regional Director, were retired by the assessee from the bank at Lucknow after making payment of the price of the sugar. A Division Bench of this court held that the case was covered by Clause 2(d-I)(b) and the assessee was the importer. It is true that in that case, Desai, C.J., after having held the assessee to be the importer under Clause 2(d-I)(b) proceeded to examine the alternative plea and held that even if the sugar could be said to have been imported by the Regional Director, the assessee would still be the importer because the Regional Director was not a dealer as defined in the Act. That case, to my mind, does not support the assessee. On the other hand, it supports the view that I have taken inasmuch as there also reliance was placed upon the Supreme Court decision in State Trading Corporation [1963] 14 S.T.C. 188 while interpreting Rule 2(d-I)(b).

21. For all these reasons I would answer the question by saying that in the circumstances of the case, it was the assessee which was the importer within the meaning of Rule 2(d-I)(b) with regard to the turnover of kerosene oil.

22. The Commissioner of Sales Tax is entitled to his costs which is assessed at Rs. 100. The fee of the learned counsel for the department is also assessed at the same figure.

By the Court

23. For the reasons contained in our respective judgments we are of opinion that upon the facts and circumstances of the present case the assessee was an "importer" within the meaning of Rule 2(d-I) (b) of the U.P. Sales Tax Rules and, therefore, liable to sales tax on the turnover of kerosene oil. The question referred is answered accordingly.

24. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 100. Counsel's fee is assessed in the same figure.