(2011) 02 AHC CK 0310

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1488 of 2009

India Exports APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 5(1), 5(2), 8(1), 8(6)
Constitution of India, 1950 — Article 286
Customs Act, 1962 — Section 12, 3, 7
Special Economic Zones Act, 2005 — Section 12, 27, 3, 5(1), 50

Citation : (2011) 02 AHC CK 0310

Hon'ble Judges : Yogesh Chandra Gupta, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Bharat Ji Agrawal, Sr. Advocate assisted by Shri Krishna Agrawal for the Petitioner. Shri S.P. Kesarwani, Addl. Standing Counsel appears for the State Respondents. Addl. Solicitor General of India, High Court, Allahabad has accepted notice on behalf of Respondent Nos. 4 and 5.

2. The Petitioner is an industrial unit established in the Noida Special Economic Zone (in short SEZ), manufacturing furniture, which is cleared for sale to Domestic Tariff Area Units (in short DTA Units) u/s 2(i) of the Special Economic Zone Act and which means whole of India under the Special Economic Zone Act, 2005 (SEZ Act of 2005) but does not include areas of the Special Economic Zones. The sale are mostly made to hotels promoting furniture as capital goods under the Export Promotion of Capital Goods Schemes on concessional customs duty. The Petitioner also exports furniture outside India.

3. For the assessment year 2006-07 for Central Sales Tax, the Deputy Commissioner (Administration) Sector 14, Commercial Tax Noida rejected the account books and has imposed tax liability of Rs. 1,08,51,076/- on the Petitioner, on the turn over of Rs. 11,71,68,654/-. He issued demand of Rs.

7347798/-after adjusting the deposit of Central Sales Tax of Rs. 35,03,278/-. The Assessing Authority imposed central sales tax on the sales from SEZ to DTA, on the ground that vide notification dated 5.5.2006 the Central Sales Tax the sales from SEZ to DTA was exempt. By a notification dated 17.1.2007 issued by the State Government, the exemption on Central Sales Tax on sales from SEZ to DTA was withdrawn. Consequently the exemption was applicable only from 5.5.2006 to 17.1.2007. The Circular Letters dated 17.7.2007 and 9.8.2007 issued by the Commissioner, Commercial Tax it was clarified that the exemption was applicable only from 5.5.2006 to 16.1.2007. The assessing authority found that the circulars of the Commissioner of Commercial Tax are binding, and thus assessed and imposed Central Sales Tax.

4. The Petitioner instead of filing a statutory appeal against the assessment order has preferred this writ petition challenging the Notification No. UP 2542 dated 17.1.2007, to the extent it records that sales made from SEZ to DTA are not exempt from Central Sales Tax and further to set aside the Circular No. 708052 dated 17.7.2007, and Circular No. 789 dated 9.8.2007 as well as the impugned Assessment Order dated 30.3.3009 passed by the Respondent No. 3. The Petitioner has also prayed for writ of mandamus directing the Respondents to treat the sales made from SEZ to DTA in the course of import, not liable to sales tax.

5. Shri Bharat Ji Agrawal has formulated following questions to be decided by the Court:

1. Whether Central Sales Tax can be levied on the sales made by the Petitioner from SEZ unit which is deemed to be a territory outside the territory of India u/s 53(1) of SEZ Act, to DTA in view of Article 286 of the Constitution of India?

2. Whether in view the various duties, namely, basic custom duties, under Customs Act, 1962, counter-veiling duties, additional duties, anti dumping duties, safeguard duties levied under the Customs Tariff Act, 1935 on the importer of the goods of domestic tariff area from the units situate in SEZ, the sale in question is purely a sale in the course of import; since these duties are leviable only on the import of the goods from outside the customs territory of India?

6. Shri Bharat Ji Agrawal submits that Section 53(1) of the SEZ Act provides that Special Economic Zone shall be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations and thus in view of the deeming provision, sale from SEZ, which is outside the custom territory of India, has to be treated as sale in the course of import to the DTA, both for the purposes of Section 5(2) of the Central Sales Tax Act and Article 286 of the Constitution of India. He further submits that any goods removed from SEZ to DTA u/s 30 of the SEZ Act are chargeable to custom duties including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 applicable as leviable on such goods when imported. He submits

that since sale of goods from SEZ to DTA are by way of imports, in view of Article 286 of the Constitution of India and Section 5(2) of the Central Sales Tax Act, there is no levy or liability of Central Sales Tax on such sales. Article 286 of the Constitution of India provides:

286. Restrictions as to imposition of tax on the sale or purchase of goods-

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place

(a) outside the State or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorised the imposition of (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

7. The arguments of Shri Bharat Ji Agrawal may be summarised as follows:

(i) Sale from SEZ to DTA are sales in the course of import on which Central Sales Tax is not leviable under Article 286 and Section 5(2) of the Central Sales Tax Act and for which no exemption notification is required, vide Associated Cement Companies Ltd. Vs. State of Bihar and Others,

(ii) Rule 47 (1) of the SEZ Rules requires buyer of DTA to submit import license and Rule 47 (4) provides for valuation and assessment of goods cleared for DTA to be made in accordance with Customs Act and Rules; Rule 48 (1) requires the buyer of DTA to file a Bill of Entry for home consumption applicable to goods imported into India and Rule 48 (2) provides for valuation of goods for customs duty in accordance with the provisions of the Customs Act. The territory of SEZ under these Rules shall be deemed to be territory outside the territory of India and thus any goods removed from SEZ to DTA shall be deemed to be goods imported from outside the territory of India. Section 5(2) of the Central Sales Tax Act deems sale and purchase of goods in the course of import only if the sale and 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. The customs frontiers of India u/s 2(ab) of the Central Sales Tax Act means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance. There is no liability for payment of Central Sales Tax in respect of the sale and purchase of the goods in the course of import into the territory of India.

(iii) The customs duty is levied only on the goods imported into India, from territory outside India. Section 12 of the Customs Act, 1962 read vide Entry 83 of List-1 of 7th Schedule of the Constitution of India, Vide In Re Sea Customs Act AIR 1963 SC 1760 (page 191) u/s 53(1) and Section 53(2) of the SEZ Act, the authorised operations in SEZ are deemed to be imports to SEZ as custom station, which covers port, air port etc. The importer from SEZ to DTA is required to have import license and to file a bill of entry. The deeming fiction in SEZ Act and Rules read with Customs Act and Central Sales Tax Act makes the special transaction as import, exempt from Central Sales.

(iv) The SEZ are deemed to be territory outside customs territory of India and thus they cannot be treated as part and parcel of any particular State in India. In the transaction of sale from SEZ to DTA there is no moment of goods from one State to another, calling for imposition of Central Sales Tax.

(v) The deeming fiction has to be given full play and affect and regulations assuming all facts on which fiction can operate, vide Ali M.K. and Others Vs. State of Kerala and Others, State of West Bengal Vs. Sadan K. Bormal and Another, and The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others,

(vi) Section 50 of SEZ Act provides exemption from State Taxes to the developer or entrepreneur. The notification u/s 50 can be issued, where a taxable event is in respect of various taxes other than taxes under the Central Act. No notification is required u/s 50 of the SEZ Act in respect of sale in the course of import from SEZ to DTA. The taxable event in this case is deemed import of goods within the customs barrier.

(vii) The units established in SEZ are given special status. In view of Section 51 the other Acts including Central Sales Tax are overridden by SEZ Act.

(viii) Section 3(5) of the Customs Tariff Act provides for duty, which is counterbalancing duty, to counterbalance the sales tax, VAT and other local taxes. The charging of Central Sales Tax on sales from SEZ to DTA will, therefore, cause multiple taxation avoided by SEZ Act.

(ix) The impugned circulars dated 17.7.2007 and 19.8.2007 have been issued by the Commissioner, Trade Tax, U.P. to give effect to the notification dated 17.1.2007, which is completely outside the jurisdiction of the State Government.

(x) The Petitioner is challenging the validity of notification dated 17.1.2007 and the consequent circulars, which are binding upon the assessing authority and thus alternative remedy of statutory appeal is not a bar to the filing of the writ petition.

8. Shri S.P. Kesarwani, Addl. Chief Standing Counsel refers the notification dated 5.5.2006 and the impugned notification dated 17.1.2007. These notifications are

quoted as below:

[1] Exemption on sale to units in SEZ NOTIFICATIO NKA.NI.-2-770/XI-9 (820)/92-U.P. Act-15-48-Order (07) 2006Lucknow:Dated: May 05 2006

In exercise of the powers u/s 22 of the Uttar Pradesh Special Economic Zone Development Authority Act, 2002 (U.P. Act No. 10 of 2002) and Section 50 of the Special Economic Zone Act, 2005 (Act No. 28 of 2005) the Governor is pleaded to declare that with effect from May 05, 2006, the provisions of the Uttar Pradesh Trade Tax Act, 1948 shall apply with the modification that the transactions of sale from Domestic Tariff Area to authorised units in Special Economic Zone and the transactions of sale from authorised units in Special Economic Zone to Domestic Tariff Area shall be exempted from the provisions of the Uttar Pradesh Trade Tax Act, 1948. Explanation: For the purpose of this notification, the words "Special Economic Zone" and "Domestic Tariff Area" shall have the same meaning as assigned to them in Special Economic Zone Act, 2005.

By order, Dr. Bachittar Singh Sachiv

NOTIFICATION KA.NI.-2-2542/XI-9 (820)/92-U.P. Act-15-48- Order-(01)-2007 Lucknow: Dated: January 17, 2007

In exercise of the powers u/s 22 of the Uttar Pradesh Special Economic Zone Development Authority Act, 2002 (U.P. Act No. 10 of 2002) and Section 50 of the Special Economic Zone Act, 2005 (Act No. 28 of 2005) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make with effect from January 17, 2007, the following amendment in Government Notification No. KA.NI-2-770/XI-9(820)/92-U.P. Act-15-48-(07)-2006 dated May 05, 2006:

AMENDMENT

In the aforesaid notification for the words "with effect from May 05, 2006 the provisions of the Uttar Pradesh Trade Tax Act, 1948 shall apply with the modification that the transactions of sale from Domestic Tariff Area to authorised units in Special Economic Zone, and the transactions of sale from authorised units in Special Economic Zone to Domestic Tariff Area shall be exempted from the provisions of the Uttar Pradesh Trade Tax Act, 1948. "the word" The developer the co-developer and the units established in Special Economic Zones shall be exempted from trade tax and State development tax, for "operations" authorised by Development Commissioner which shall be applicable for transactions within the Special Economic Zone and for goods received from Domestic Tariff Area. Exemption from trade tax and State development tax shall also be available to domestic Tariff Area units on sale of goods to developer, co-developer or to units in the Special Economic Zone for "operations" authorised by Development Commissioner. The provision regarding treating sale from Special Economic Zone to Domestic Tariff Area as "import" for payment of Central and State taxes shall not continue, shall be substituted.

By order, (K. Chandramouli) Pramukh Sachiv

9. Shri Kesarwani submits that SEZ Act provides for exemption, wherever deemed necessary. The Petitioner''s sales from SEZ to DTA are not covered under these provisions. Section 7 of the SEZ Act provides:

7. Exemption from taxes, duties or cess-Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by-

(i) a Unit in a Special Economic Zone; or

(ii) a Developer, shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

10. Shri Kesarwani submits that Section 7 of the SEZ Act of 2005, provides for exemptions from tax, duties or cess on any goods or services exported out of or imported into or procured from DTA by a unit in SEZ or a developer subject to such terms, conditions and limitations as may be prescribed to be exempted from payment of tax, duties and cess specified in the first schedule. The First Schedule does not refer to Central Sales Tax Act, 1956. In Section 27 of SEZ Act, 2005 the provisions of Income Tax Act, 1961 are to apply with certain modifications in relation to developers and enterprenuers for carrying out authorised operations in SEZ subject to modifications specified in the Second Schedule, and Section 57 amends certain enactments from such date as the Central Government may by notification appoint. These enactments are specified in the Third Schedule and are amended in the manner specified therein. The Third Schedule includes Insurance Act, 1938; Banking Regulations Act, 1949 and Stamp Act, 1899. He submits that the Central Sales Tax payable on transactions by unit established in SEZ to DTA is not referred to in any of the Schedules, and is thus not exempt. He submits that expression import has been specifically defined in SEZ Act to mean bringing goods or receiving services in SEZ by a unit or developer from a place outside India by land, see or air or by any other mode whether physical or otherwise or receiving goods or services by a unit or developer from another unit or developer in the same economic zone or a different Special Economic Zone. Where any expression has been defined in the Act, the fiction as suggested by the Petitioner u/s 30 of the Act or Rule 47 (1), 47 (4), Rule 48 (1), 48 (2) of the Rules and Section 53(1) of the SEZ Act is not attracted to the transactions and levies. The provisions of the Central Sales Tax Act will apply to the interstate sales.

11. Shri Kesarwani submits that u/s 8(1) of the Central Sales Tax Act, 1956 every dealer, in the course of interstate trade or commercial sales to the registered dealer goods of the description referred to in Sub-section (3), is liable to pay taxes under the Act. Sub-section (6) refers to exemptions in respect to sale of any goods in the course of interstate trade or commerce to a registered dealer, in a unit located in any SEZ or for development, operation or maintenance of SEZ by developer of SEZ if such registered dealer has been authorised to

establish such unit or to develop, operate and maintain SEZ by the authorities specified by the Central Government. Sub-section (8) provides that Sub-section (6), (7) shall not apply to any sale of goods made in the course of interstate trade or commerce unless dealer selling such goods furnishes to the Prescribed Authority referred to in Sub-section (4) a declaration in the prescribed manner or on the prescribed form obtained form the authorities specified by the Central Government under Sub-section (6) duly filled in and signed by the registered dealer to whom such goods are sold. Section 8 (1), (6) and (8) of the Central Sales Tax Act, 1956 are quoted as below:

8. Rates of tax on sales in the course of inter-State trade or commerce

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in Sub-section (3), shall be liable to pay tax under this Act, which shall be [two percent] of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower.

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this Sub-section.

(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of Special Economic zone by the developer of the Special Economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such Special Economic Zone by the authority specified by the Central Government in this behalf.

(8) The provisions of Sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the [prescribed authority referred to in Sub-section (4), a declaration in the prescribed manner on the prescribed form obtained from the authority specified by Central Government under Sub-section (6), duly filled in and signed by the registered dealer to whom such goods are sold.

12. Shri Kesarwani refers to Form-1 of the Central SalesTax Rules. He also refers to the definition of import u/s 2(23) of the Customs Act, and Section 3 of the Central Sales Tax Act, 1956. He submits that even deemed import are covered u/s 5(2) of the Central Sales Tax Act, 1956 and thus the Court would not readily interpret the provisions of SEZ Act, 2005 for giving deeming effect to the sales from SEZ to DTA. Section 3 and Section 5 (1) and (2) of the Central Sales Tax Act relied upon by Shri Kesarwani is quoted as below:

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce:

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

a. occasions the movement of goods from one State to another; or

b. is effected by a transfer of documents of title to the goods during their movement from one State to another.

5. When is a sale or purchase of goods said to take place int he 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 effect 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.

13. Shri Kesarwani submits that u/s 5(2) of the Central Sales Tax Act, sale or purchase of goods shall be deemed to take place in the course of import of the goods into territory of India, only if sale or purchase either occasions such import or is affected by transfer of documents of title to the goods before the goods have crossed customs frontiers of India. He submits that relevant words are ''territory of India'' and not ''customs station'' or ''port'' as suggested by the Petitioner.

14. Shri Kesarwani submits that the assessing authority has rejected the books of accounts of the Assessee and in such case the Court should not interfere, even if notification is under challenge, and which may affect a part of liability. Where books of accounts are rejected, the Assessee should adopt remedies of statutory appeal available under the Act. The appellate authority in such case has to first look into rejection of account books. The question of law raised by the Petitioner would depend upon the admitted transactions and not on disputed transactions. The Petitioner should not be heard by the Court to submit that in such case the alternative remedy is not absolute bar. He relies upon the observations of the Supreme Court in para 3, 4 and 5 of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others,

15. We have carefully considered the submissions, the relevant provisions of law, and the case law cited by the parties.

16. Article 286 of the Constitution of India places restriction on any law made by a State to impose, or authorise the imposition of the tax on the sale or purchase of goods, where such sale or purchase takes place (a) outside the State; or (b) in

the course of the import of the goods into, or export of the goods out of, the territory of India. By the Constitution (6th Amendment) Act, 1956 Clause (2) was added to the Article accepting the Parliament to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1). The Constitution (46th Amendment) Act, 1982 substituted Clause (3) to the Article providing that any law of a State, in so far as it imposes, or authorises the imposition of (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366, subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

17. Article 286 is intended to ensure that sales tax imposed by the States do not interfere with the imports and interstate trade and commerce, which are matter of national concern, and the taxation of which is beyond the competence of the State.

18. The Central Sales Tax is a tax imposed by the parliament to be assessed, realised by the State Government. According to Section 5 of the Central Sales Tax Act a transaction of sale or purchase may take place in the course of export or import in one or two ways as suggested in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, where a sale or purchase occasions and import into or an export out of territory of India; and where a sale or purchase by transfer of shifting documents takes place before or after (as the case may be) the goods have crossed the customs frontiers of India. The expression ''export or import'' implies that the moment of goods across the border, caused by a covenant in a contract or in other words the contract itself involves such movement; but it is not necessary that the sale should have preceded the import in order to hold that it has occasioned the import. The sale or purchase by transfer of documents of title is effected within the State by the exporter or importer by transfer of shifting documents while the goods are beyond the customs frontier. In B.K. Wadeyar Vs. Daulatram Rameshwarlal, it was held that the reason is that the expression ''in the course of'' implies a movement and includes transactions taking place while the goods are in transit or movement in the course of export or import. This movement in the course of export out of or import into the territory of India does not commence or terminate until the goods cross the customs frontier. Thus, if the property in the goods passes to the buyer after they have, for the purpose of export to a foreign country, crossed the customs frontier, the sale has taken place ''in the course of export''.

19. The SEZ Act, 2005 was enacted to promote the establishment, development and management of SEZ for promotion of export and matters connected therewith. The statement of objects and reasons of the Act is given as below:

"Statement of Objects and Reasons

1 The Government of India had announced a Special Economic Zone Scheme in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth.

2 There are at present eleven functioning Special Economic Zones. While seven Zones have been set up by the Central Government, four by the private/ joint/ State sector. In addition, approvals have been given for setting up of thirty-five new Special Economic Zones in the private/ joint/ State sector.

3 While the policy relating to the Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various notifications and circulars issued by the concerned Ministries/ Departments. The present system, therefore, does not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting up of the units in the Zones for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones has been found to be necessary in line with international practice. To achieve this purpose, a "Special Economic Zones Bill, 2005" is proposed. The salient features of the Bill are as under:

(i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;

(ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;

(iii) the fiscal regime for developers of Special Economic Zones and units set up therein;

(iv) single window clearance mechanism at the Zone level;

(v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and (6) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

4. The Bill seeks to achieve the aforesaid objects.

20. We do not find any substance in the argument of Shri Bharat Ji Agrawal that the Central Sales Tax cannot be levied on the sales made by the Petitioner from SEZ unit to a unit in DTA. The SEZ Unit under the SEZ Act, 2005 is deemed to be

territory outside the territory of India u/s 51, 53(1) for a limited purpose; Sub-section (2) provides that SEZ shall with effect from the date of notification by the Central Government be deemed to be a port, airport, inland container port, land station and land customs station u/s 7 of the Customs Act.

21. The SEZ Act, 2005 has taken into consideration and has provided for amendment of the various taxing statutes, or modified them, for fulfilling the object and purpose of the Act. Section 7 provides for exemption from tax, duties or cess on any goods or services exported out of or imported into or produce from DTA by unit in SEZ or a developer subject to terms and conditions as may be prescribed and be exempt from the payment of tax, duties or cess under all enactment specified in the First Schedule. Section 27 of the SEZ Act, 2005 applies Income Tax Act with certain modifications in relation to developers and interpreneurs carried out authorised operations in SEZ and modifications are specified in Second Schedule. Section 57 amends the enactment specified in the Third Schedule, which are amended by SEZ Act, 2005. The Central Sales Tax is not included in any of these Schedules.

22. We also do not find any substance in the contention of Shri Bharat Ji Agrawal that the sales from SEZ unit to unit in DTA shall be deemed to be imports. No such presumption can be drawn from Section 5(2) of the Central Sales Tax Act or any of the provisions of the SEZ Act of 2005.

23. The deeming provision is not to be inferred in law. It has to be either provided by legislation validly elected and competent to declare such deeming provision with its consequences. There can be no inference drawn from deeming provisions from the provisions of any Act. The deeming provision also cannot be inferred from the analogy drawn from different Acts. The fiction in law is to be created by law itself and not by any inference to be drawn from the law.

24. A fiction in law cannot be extended beyond its purpose. In construing Clause 5 (3) (ii) of the Imports (Control) Order it was held that fiction created was for the proper implementation of the Imports and Exports (Control) Act, 1947, and to hold the licensee responsible for anything and everything that happens from the time of import till the goods are cleared through customs. In Union of India and another Vs. Sampat Raj Dugar and another, it was held that the fiction cannot be employed to attribute ownership of the imported goods to the importer in a case, where he abandons them i.e. in a situation where he does not pay and receive the documents of title.

25. In The Bengal Immunity Company Limited Vs. The State of Bihar and Others, Justice S.R. Das said that the legal fictions are created only for some definite purpose. A legal fiction is to be limited to that purpose for which it was created and should not be extended beyond that legitimate field. It was held in modification to the view expressed in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, that the Explanation to Article 286(1)(a) of the Constitution (As it stood before the Constitution Sixth Amendment Act)

could not be extended to Article 286(2) either as an exception or as a proviso thereto so as to convert inter-State transactions into intra-State transactions qua the delivery State. The Explanation on its true construction was for the purpose of explaining an outside sale referred to in Sub-clause (a) of Article 286(1) and the fiction created by it could not be extended beyond that purpose.

26. The arguments that since SEZ is deemed to be outside the customs territory of India, the sale from SEZ to DTA has to be treated as import, is not born out from the provisions of either SEZ Act, 2005 or Central Sales Tax Act, 1956.

27. We also find substance in the contention of Shri Kesarwani that since the account books have also been rejected, the Petitioner should be relegated to file appeal against the assessment order.

28. The writ petition is dismissed.

