

**(1991) 09 MAD CK 0049**  
**In the Madras High Court**  
**Case No : Tax Case (A) No. 982 of 1982**

|                              |    |            |
|------------------------------|----|------------|
| Picker X-ray (India) Limited | Vs | APPELLANT  |
| State of Tamil Nadu          |    | RESPONDENT |

**Date of Decision :** 09-09-1991

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 5(2)  
Tamil Nadu General Sales Tax Act, 1959 — Section 34

**Citation :** (1991) 09 MAD CK 0049

**Hon'ble Judges :** Kanakaraj, J;A.S. Anand, J

**Bench :** Division Bench

**Advocate :** P.P.S. Janardana Raja, for the Appellant; D. Srinivasan, Additional Government Pleader (Taxes), for the Respondent

## Judgement

Kanakaraj, J.—The appellant/assessee declared a total and taxable turnover of Rs. 3,29,697 and nil, respectively, for the assessment year 1975-76. On checking the accounts, the assessing authority, among other things, found that a turnover of Rs. 3,24,697 was claimed as representing sales in the course of import. The assessing authority proposed to reject the claim and after issuing notice confirmed the same and held that the turnover of Rs. 3,24,697 was exigible to tax at 10 per cent. On appeal to the Appellate Assistant Commissioner, the assessee contended that certain goods were imported on the strength of their actual user's licence issued to and in favour of M/s. Kasturba Medical College, Manipal, and on the strength of the letter of authority issued by the Controller of Imports and Exports. On the College placing an order on the assessee, the assessee placed an order with the foreign suppliers for the supply of equipment. The consignment was cleared at Madras and then despatched from Madras to Manipal for delivery to the licensee (College). The assessee filed a copy of licence issued in favour of the Kasturba Medical College, the letter of authority issued by the Chief Controller of Imports and Exports and a copy of invoice issued by the assessee. The letter of authority contained specific clause that the assessee had no liberty to dispose of the goods imported according to their own desire, but

should be only deliver the same to the licensee. The letter of authority authorised the assessee to act as the agent of the licence-holder (College). There was a further direction that the goods imported shall remain the property of the licence-holder, both at the time of clearance through the customs and subsequent thereto. The Appellate Assistant Commissioner therefore held that the transaction was not exigible to tax. He also relied on the decision of the Tribunal in I.B.M. World Trade Corporation in Tax Appeal No. 492, 546 and 547 of 1976 dated November 24, 1976.

2. The erstwhile Board of Revenue after perusing the records came to the conclusion that the decision of the appellate authority was not correct and issued notice to the assessee u/s 34 of the Tamil Nadu General Sales Tax Act, 1959. The assessee put forward the same contentions and claimed exemption u/s 5(2) of the Central Sales Tax Act, 1956 (hereinafter called "the CST Act"). The Board found that it was the assessee who entered into a contract with the foreign seller and that there was no agreement or contract between the foreign seller and the College. The Board, therefore, took the view that the privity of the contract was between the assessee and the foreign seller and that there was no privity of contract between the College and the foreign seller. The import of the goods was caused as a result of the contract of the assessee with the foreign seller. Referring to The Deputy Commissioner of Agricultural Income Tax and Sales Tax Central Zone, Ernakulam Vs. Kotak and Co., Bombay, etc. etc., the Board observed, that the assessee in that case acted merely as an agent rendering service. The Board also held that there was no evidence to show that the assessee agreed to act merely as an agent notwithstanding the stipulation in the letter of authority issued by the Chief Controller of Imports and Exports. The Board therefore thought that the transaction would be governed by the ratio of the judgment in Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, . Consequently the Board set aside the order of the Appellate Assistant Commissioner and held that the turnover of Rs. 3,24,697 was exigible to tax at 10 per cent.

3. Mr. Janardana Raja, for the appellant relies on Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam Vs. Indian Explosives Ltd., . In that case also the assessee imported the goods on the strength of the actual user's import licence obtained by his customers. There was also a letter of authority in favour of the assessee whereunder the licensee was permitted to engage the assessee to import the goods. Two significant conditions in the import licence were adverted to by the Apex Court as distinguishing features from the law laid down in Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, . They are (1) that the goods imported would be the property of the licence-holder at the time of the clearance through the customs. (2) That the goods would be utilised only for the consumption by the licence-holder and no portion thereof would be sold to or permitted to be utilised by any other party. The Supreme Court pointed out that these two factors established the integral connection or inextricable link between the transaction of sale and the actual import, thus

making the sales as one in the course of the import. Learned counsel for the appellant also relied on *State of Tamil Nadu v. I.B.M. World Trade Corporation* [1985] 60 STC 118 . In this case also the assessee had entered into an agreement with I.I.T., Madras, for supply of machineries. I.I.T., Madras, applied and obtained import licence. Thereafter it obtained a letter of authority in favour of the licensee. On the basis of the letter of authority and the import licence, the assessee imported the machines and supplied them to the I.I.T., Madras. There also the letter of authority prohibited the disposal of the machines by the assessee to any one else except the I.I.T., Madras. In that case the agreement provided that the title to the machines remained with the assessee until the full purchase price, the transportation and importation charges were paid by the licensees. Notwithstanding the fact that the agreement provided for the title to remain with the assessee until the payment of the full purchase price, the Division Bench of this Court held that the said circumstance would not mean that the assessee had not acted as an agent. The Division Bench held that but for the licence and the letter of authority the assessee could not have imported the goods. It was therefore held that the sales in favour of I.I.T., Madras, were in the course of import and exempted u/s 5(2) of the CST Act. These two judgments, in our opinion, are clinching and take the case out of the clutches of the sales tax levy. We have already noticed that in this case also the import was undertaken on the basis of the actual user's licence and the letter of authority. The letter of authority prevented the diversion of the goods for any other use. In this connection it would be worthwhile to notice the meaning of the words "actual user". Under the Import and Export policy for the period from April, 1984 and to March, 1985, the work is defined as a person who applies for licence for the import of any item required for his own use and not for business or trade in it. In the non-industrial category the item shall be utilised for its own use that is for the purpose for which the item was sought for import. We are, therefore, convinced that the movement of the goods took place pursuant to a pre-existing arrangement between the licensee (College) and the assessee who was the purchaser from the foreign seller. The conclusion, therefore, is inescapable that it was a transaction in the course of the import. We are of the opinion that the Board fell into an error when it says that the assessee did not act merely as an agent. The question whether the assessee acted only as an agent for the licensee or the assessee actually sold the imported goods to the licensee will essentially depend upon the facts of each case and the inference to be drawn from the circumstances of the case. As pointed out by the Apex Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Indian Explosives Ltd.* [1985] 60 STC 310 the import on the basis of the actual user's licence and the condition prohibiting the diversion of the goods after the import would establish an integral connection and link between the transaction of sale and the import. We are satisfied that on the facts and circumstances of the case and on the basis of the stipulation in the letter of authority to the effect that the assessee would act as a agent of the licensee, the assessee acted only as an agent of the licensee.

4. For all the above reasons we hold that the transactions clearly amounted to a sale in the course of the import. We, therefore, set aside the order of the Board of Revenue and restore the order of the Appellate Assistant Commissioner. The tax appeal is allowed. There will, however, be no order as to costs.

5. Appeal allowed.