

(1976) 10 MAD CK 0027

In the Madras High Court

Case No : Tax Cases No"s. 205 to 207 of 1971 Revisions No"s. 120 to 122 of 1971

South India Viscose Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-10-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 5

Citation : (1980) 46 STC 7

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ismail, J.

Appendix

1. These tax revision cases are filed against the orders of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 6th April, 1970,

dismissing the three appeals preferred by the petitioner herein. The three appeals related to the revision of assessments for the years 1962-63 and

1963-64 and the original assessment for 1964-65. We are not referring to the actual figures involved in these cases for the simple reason that it is

admitted that the dispute in all these cases is in respect of sales of viscose rayon yarn to Export Promotion Scheme Card-holders said to have been

effected through the petitioner's selling agent at Bombay. It is stated that the exporters were given an incentive in the form of import licence to

import art silk yarn from abroad. But that import entitlement was cut to some extent, by allotting to them indigenous art silk yarn at a concessional

price and for the purpose of such allotment, a committee called Art Silk Yarn

Distribution Committee constituted by the Government was functioning at Bombay. This committee made allotments to different importers and the allotment orders indicated the manufacturers from whom the allottees should obtain the allotted quantities. A typical specimen of such an order which has been placed before the authorities below and which has been referred to before us also, is the one dated 7th November, 1963, issued in favour of Messrs. Ramesh Silk Fabrics, Ramapuram Main Road, Surat-3. This order stated that the manufacturer shall ensure that the quantity sold is not more than the quantity allocated as indicated in column No. 4(b) on the reverse of that order; that the rayon manufacturer shall offer yarn to the allottee within seven days from the date of the allocation card. The yarn manufacturer shall return the allocation card without waiting for the allottee to approach him; that the contract for the supply of yarn shall be concluded within 21 days from the date of the allocation card; that if a firm commitment is not entered into by the allottee with the yarn manufacturer within 21 days from the date of the allocation card, the yarn manufacturer shall return the allocation card to the Distribution Committee, with suitable remarks on the card and a covering letter explaining the reasons for returning the card ; and that the allocation card shall be returned to the Distribution Committee after the delivery of yarn has been completed. The said Messrs. Ramesh Silk Fabrics, under the allocation order referred to above, was allotted 273 legs, of indigenous art silk yarn to be obtained from the petitioner herein. According to the petitioner, after assessing the demands from the allottees at Bombay, its sole selling agent, namely, Messrs. Rayon Yarns Import Co. Private Ltd., Bombay-1, used to place orders with the petitioner's office at Sirumughai for consignment of yarn to Bombay and after the yarn was consigned to the Bombay agent, the Bombay agent took delivery of the consignments and thereafter sold the yarn to the various allottees as per the allotment orders. It is the case of the petitioner that these sales having taken place at Bombay, they were local sales in Bombay, that the petitioner had actually paid sales tax to the Maharashtra Government under the sales tax law in that State and that therefore no sales tax can be levied by the State of Tamil Nadu under the provisions of Section 3 of the Central Sales Tax Act, 1956, hereinafter referred to as the Act. The contention of the

petitioner was that the sales were exclusively and wholly intra-State sales and they were not inter-State sales and that, therefore, the question of the

Tamil Nadu Government collecting any sales tax under the Act did not arise. This contention of the petitioner was rejected by the assessing officer,

the Appellate Assistant Commissioner on appeal and the Tribunal on further appeal. It is thereafter that the petitioner approached this Court with

these revision cases for revising the orders of the Tribunal.

2. We shall first refer to the grounds urged by the Appellate Assistant Commissioner and the Tribunal for holding that the transactions in question

constituted inter-State sales as denned in Section 3 of the Act. The Appellate Assistant Commissioner in his order, after referring to the clauses in

the allotment order to which we have made reference and, in particular, the clause that there should be a firm commitment within 21 days from the

date of the card and that if there was no firm commitment, the manufacturer should return the allocation card to the Distribution Committee with

suitable remarks on the card and a covering letter explaining the reasons for returning the card, stated :

These two clauses establish a contract between the appellants (petitioner herein) and the allottee within 21 days from the date of the card in cases

in which the sale materialised under the allocation. This card is the basic document concerning these sales under the contract evidenced by it. It

was in pursuance of the contract arising from the offer and acceptance contemplated in the allocation card that subsequent steps were taken

including the movement of the goods from the factory to the buyer in separate parcels meant for each buyer.

3. We may immediately point out that the Appellate Assistant Commissioner was wrong in stating that the goods were subsequently sent from the

factory to the buyer in ""separate parcels meant for each buyer"" because that is not factually correct. The Tribunal in its order pointed out:

The wordings of these allocation cards clearly show that the seller cannot sell independently or sell more than the allotment and the allottee is

expected not to resell. They are expected to enter into firm contracts for the supply of yarn. In the ordinary course, therefore, it has to be

concluded that the firm contracts have been entered into between the manufacturers and the purchasers and the supply is only in fulfilment of such

contracts.

4. It is on such basis that the assessment made on the petitioner was sustained by the Sales Tax Appellate Tribunal.

5. The learned counsel for the petitioner, however, contended before us that the conclusion drawn by the authorities below are erroneous and are

not supported by the materials available on record. The learned counsel drew our attention to an order dated 23rd May, 1964, by the petitioner's

selling agent in Bombay placed with the petitioner at its factory at Sirumughai for consignment of 69 cases of art silk yarn and subsequent

documents. The said order dated 23rd May, 1964, is as follows :

We enclose herewith list for a total number of 69 cases of art silk yarn, which we request you to send to us in Bombay on consignment basis as

was done on previous occasions. We will send you copies of the invoices and delivery orders as and when the cases are sold by us.

. However, we must request you to kindly ensure that only the cases mentioned in the enclosed lists may be sent to us. M/s. South India Clearing

& Forwarding Agent will collect the cases and despatch the goods from your godowns and bring the same to us in Bombay through Messrs.

Vasundhara Lorry Service. You may, therefore, kindly take this letter as authority for clearance and despatch of the 69 cases. After the goods

have been handed over, please confirm to us the details of the cases which have been delivered.

6. Along with this order, a list was enclosed giving the particulars of 69 cases referred to in the order. The numbers which the cases bore were

given in the order. For 13 cases with their respective numbers, the total quantity was shown as 1,185 kgs. ; for another 23 cases with their

respective case numbers, the total quantity was shown as 2,042 kgs.; and for yet another 33 cases with their respective case numbers, the total

quantity was shown as 2,929.50 kgs., covering in all 6,156.50 kgs. On 23rd May, 1964, on receipt of this order, the factory passed the following

delivery order :

Please deliver to M/s. Vasundhara Lorry Service 69 cases of 6,156.50 kgs. of rayon yarn as requested by M/s. Rayon Yarns Import Co. Pvt.

Ltd., Bombay, as per their letter dated 23rd May, 1964, and the list attached thereto.

Please obtain from the representative of the party an acknowledgement both in the copy of the delivery order and also in your packing list in

triplicate on completion of the delivery. Please arrange to send us the packing list (in duplicate) of the cases delivered along with copy of the

receipted delivery order.

7. It is represented that 69 cases were despatched by the petitioner to its Bombay agent on 29th May, 1964, and 30th May, 1964. It is again in

evidence that on 3rd June, 1964, the petitioner's Bombay selling agent directed the National Transport Co., Bombay, to deliver three cases out of

69 cases to Messrs. Ramesh Silk Fabrics, Ramapuram Main Road, Surat-3, to whom we have already made reference. The invoice for the value

of the three cases was drawn on Messrs. Ramesh Silk Fabrics, Ramapuram, Surat-3, on the same date, namely, 3rd June, 1964. The allotment

order in favour of Messrs. Ramesh Silk Fabrics dated 7th November, 1963, and the invoice and the delivery order relating thereto were filed

before the authorities as typical specimen of the transactions involved in these cases for the purpose of showing that the sales took place only in

Bombay. The learned counsel for the petitioner, on the basis of these materials, contended that when the Bombay selling agent on 23rd May,

1964, placed the order with the petitioner for consignment of 69 cases, the said order was not placed in respect of any particular sale in favour of

any allottee, but it was an ad, hoc order for the purpose of getting goods from the factory to its godown at Bombay for subsequent sale to various

allottees concerned and that, therefore, u/s 3(a) of the Act, it could not be contended that the movement of the goods from Tamil Nadu to Bombay

was the result of any contract of sale or incident of sale that took place between the Bombay agent and the allottee. The learned counsel also

contended that the fact that three cases out of 69 cases covered by the consignment order dated 23rd May, 1964, were delivered to Messrs.

Ramesh Silk Fabrics, Surat, as referred to already, would not establish that there was a contract between Messrs. Ramesh Silk Fabrics, Surat,

and the petitioner's selling agent at Bombay prior to the movement of the goods in the present case so as to attract the applicability of Section 3(a)

of the Act. According to the learned counsel, the goods were sent from Tamil Nadu to Bombay only in the name of the petitioner's selling agent; it

was the petitioner's selling agent which took delivery of the goods from the carriers and kept them in its own godown and it was the petitioner's

selling agent that issued the subsequent order for delivery of the three cases to Messrs. Ramesh Silk Fabrics, Surat. It is on this basis that the

learned counsel for the petitioner contended that where the petitioner's agent itself to whom the goods were consigned took delivery of the goods

and subsequently delivered the goods to the ultimate buyer, the provisions of Section 3(a) of the Act could not be said to be applicable.

9. We are unable to accept these submissions of the learned counsel for the petitioner. We have already referred to the fact that the entire turnover

in dispute in all the three revision cases related to sales of yarn to the allottees under the Export Promotion Scheme. It is not in dispute that the

allotment orders made in favour of the various allottees were also sent to the manufacturers so that they might comply with the requirements of the

said allotment orders. In this particular case, the allotment order issued in favour of Messrs. Ramesh Silk Fabrics has ultimately been signed by the

petitioner's selling agent on behalf of the petitioner, after having supplied the three cases covered by the consignment order on 23rd May, 1964,

whose total weight was 268 kgs. as against the allotted total weight of 273 kgs. The allotment order in question produced before us also contains

an endorsement that the balance to be supplied is 5 kgs. Under these circumstances, the question that has to be considered is, whether there was

any contract or understanding between the petitioner's Bombay agent and the allottee before the petitioner's Bombay agent placed the indent on

23rd May, 1964. Having regard to the circumstances of the case, we are of the opinion that there must have been a contract or understanding

between the petitioner's Bombay agent and the allottee before the Bombay agent placed the indent on 23rd May, 1964, for the despatch of the

goods from the petitioner's factory at Sirumughai to the Bombay agent. We have already referred to the fact that the allotment order in the present

case was dated 7th November, 1963, and that it contained a provision that if a firm commitment was not entered into by the allottee with the

manufacturer within 21 days from the date of the allocation card, the manufacturer should return the allocation card to the Distribution Committee

with suitable remarks on the card and a covering letter explaining the reasons for returning the card. From what we have pointed out already, in so

far as the allotment to Messrs. Ramesh Silk Fabrics was concerned, the supply was actually made only on 3rd June, 1964, that is, more than six months after the date of the allotment. Under these circumstances, is it conceivable at all that the petitioner's Bombay agent suddenly placed the indent on 23rd May, 1964, for the purpose of supply of goods to various allottees without the allottees themselves having previously approached the petitioner's Bombay agent and having agreed to purchase the silk yarn allotted to them ? Otherwise, it is inexplicable as to how the allotment order dated 7th November, 1963, came to be executed towards the end of May or the beginning of June, 1964. It is pertinent to point out that the indent placed on 23rd May, 1964, contained a list showing the number of cases to be sent and also a request that only those cases should be sent and that no other case or further case should be sent to the Bombay agent. That again merely confirms our conclusion that particular cases were required to be despatched only because the Bombay agent had already entered into commitments with various allottees concerned for the sale of the quantities of yarn covered by those cases only. Therefore, as a fact we draw the inference and conclude that before 23rd May, 1964, when the petitioner's Bombay agent placed the indent on the petitioner in Tamil Nadu for the despatch of the goods in question, it should have entered into contracts for the sale of the allotted quantities of yarn with these various allottees to whom they were ultimately sold on receipt of the goods towards the end of May or the beginning of June, 1964.

9. The next question for consideration is, whether, on these facts, Section 3(a) of the Act is applicable and the sales in question are liable to tax

under that provision. Section 3(a) of the Act provides :

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 occasions the movement of goods from one State to another.

10. This provision has been the subject-matter of construction and interpretation by several decisions of the High Courts as well as the Supreme Court.

11. In *Kelvinator of India Ltd. v. State of Haryana* , the Supreme Court observed :

A sale of goods can be held to have taken place in the course of inter-State trade under Clause (a) of Section 3 of the Act if it can be shown that

the sale has occasioned the movement of goods from one State to another. A sale in the course of inter-State trade has three essentials : (i) there must be a sale, (ii) the goods must actually be moved from one State to another, and (iii) the sale and movement of the goods must be part of the same transaction. The word "occasions" is used as a verb and means to cause or to be the immediate cause of. In the case of *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, , Shah, J. (as he then was), speaking for the majority, observed that a transaction of sale is subject to tax under the Act on the completion of the sale. A mere contract of sale is not a sale within the definition of "sale" in Section 2(g). A sale being, by the definition, transfer of property, becomes taxable u/s 3(a), "if the movement of goods from one State to another is under a covenant or incident of the contract of sale". In *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, , this court dealt with the provisions of Section 5 of the Act which relates to sale or purchase of goods in the course of import or export. It was held that a sale in the course of export predicated 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. The export, it was further observed, should be inextricably linked up with the sale so that the bond cannot be dissociated. The observations in the case of *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, as well as *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, were relied upon by a Constitution Bench of this Court in the case of *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, , and it was held that the sales to be exigible to tax under the Act must be shown to have occasioned the movement of goods or articles from one State to another and that the movement must be the result of a covenant or incident of the contract of sale. It can, therefore, be said that a sale of goods is in the course of inter-State trade if the sale and movement of goods from one State to another are integral parts of the same transaction. There must exist a direct nexus between the sale and the movement of goods from one State to the other. In other words, the movement should be

incident of and be necessitated by the contract of sale and thus be interlinked with the sale of goods.

It is also plain from the language of Section 3(a) of the Act that the movement of goods from one State to another must be under the contract of

sale. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of the above clause. Perusal of

Section 3(a) further makes it manifest that there must be a contract of sale preceding the movement of the goods from one State to another, and

the movement of goods should have been caused by and be the result of that contract of sale. If there was no contract of sale preceding the

movement of goods, the movement can obviously be not ascribed to a contract of sale nor can it be said that the sale has occasioned the

movement of goods from one State to the other.

12. In view of our finding that even before the petitioner's Bombay agent placed an indent on 23rd May, 1964, there should have been a contract

between the allottees and the petitioner's Bombay agent and it is because of that contract the petitioner's Bombay agent placed the indent on 23rd

May, 1964, it will follow that there was a contract of sale between the petitioner through its Bombay agent and the allottees in question and that it

was pursuant to that contract of sale the goods moved from Tamil Nadu to Bombay.

13. The learned counsel for the petitioner, however, contended that even on the basis of our finding that there should have been a contract or

agreement between the allottee and the petitioner through its Bombay agent even before 23rd May, 1964, still the transaction in question will not

be hit by Section 3 of the Act for the following reasons :

(1) The sale and the movement of the goods must form part of a single integrated transaction and in the present case such a single integrated

transaction does not exist;

(2) The movement of the goods must be directly to the buyer concerned and cannot be to the seller itself or to its agent; and

(3) Once the movement of the goods is interrupted by the intervention of the seller itself or its agent, such movement cannot be said to be one

occasioned by a contract of sale as to come within the scope of Section 3 of the Act. On the basis of these contentions, the learned counsel for the

petitioner argued that the sales in question are not exigible to tax u/s 3 of the Act. In support of the above contention, the learned counsel relied on certain decisions to which we shall immediately draw attention.

14. The first decision is that of the Supreme Court in *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial*

Taxes and Another, . In that case the manufacturer was periodically despatching its goods to various stock-yards to be delivered to its dealers and

the Supreme Court on the facts observed:

It would appear from the materials placed before us that generally the completion of the sales to the dealers did not take place at Jamshedpur and

the final steps in the matter of such completion were taken at the stock-yards. Even if the appellant took into account the requirements of the

dealers which it naturally was expected to do when the vehicles were moved from the works to the stock-yards it was not necessary that the

number of vehicles allocated to the dealer should necessarily be delivered to him. The appropriation of the vehicles was done at the stock-yards

through specification of the engine and the chassis number and it was open to the appellant till then to allot any vehicle to any purchaser and to

transfer the vehicles from one stock-yard to another. Even the Assistant Commissioner found that on some occasion vehicles had been moved

from a stock-yard in one State to a stock-yard in another State. It is not possible to comprehend how in the above situation it could be held that

the movement of the vehicles from the works to the stock-yards was occasioned by any covenant or incident of the contract of sale.

15. As far as the facts of the present case are concerned, they are entirely different. As we have pointed out already, the movement of the goods

from Tamil Nadu to Bombay was made on the basis of the indent placed by the petitioner's Bombay agent and that indent was the result of the

contracts entered into between the petitioner through its Bombay agent with the various allottees concerned.

16. The next decision is again that of the Supreme Court in *Kelvinator of India Ltd. Vs. The State of Haryana*, , to which we have made reference

already. In that case also, the finding of the Supreme Court was that the refrigerators manufactured by the assessee at Faridabad were brought to

its godown at Delhi and only thereafter orders were placed for supply to the

distributors. In other words, there is a clear finding in that case that the movement of the goods from Faridabad to Delhi preceded the contracts of sale entered into by the assessee with its various distributors and that, therefore, clearly it could not fall within the scope of Section 3 of the Act.

17. In this context, it is desirable to refer to another argument advanced by the learned counsel for the petitioner based upon an illustration given by the Supreme Court in *Balabhagas Hulaschand Vs. State of Orissa*, . At page 214 of the Reports, the Supreme Court observed :

Furthermore, we can hardly conceive of any case where a sale would take place before the movement of goods. Normally what happens is that

there is a contract between the two parties in pursuance of which the goods move and when they are accepted and the price is paid the sale takes

place. There would, therefore, hardly be any case where a sale would take place even before the movement of the goods. We would illustrate our

point of view by giving some concrete instances:

Case No. I.-A is a dealer in goods in State X and enters into an agreement to sell his goods to B in State Y. In pursuance of the agreement A

sends the goods from State X to State Y by booking the goods in the name of B. In such a case, it is obvious that the sale is preceded by the

movement of the goods and the movement of goods being in pursuance of a contract which eventually merges into a sale the movement must be

deemed to be occasioned by the sale. The present case clearly falls within this category.

Case No. II.-A, who is a dealer in State X, agrees to sell goods to B but he books the goods from State X to State Y in his own name and his

agent in State Y receives the goods on behalf of A. Thereafter, the goods are delivered to B in State Y and if B accepts them a sale takes place. It

will be seen that in this case the movement of goods is neither in pursuance of the agreement to sell nor is the movement occasioned by the sale.

The seller himself takes the goods to State Y and sells the goods there. This is, therefore, purely an internal sale which takes place in State Y and

falls beyond the purview of Section 3(a) of the Central Sales Tax Act not being an inter-State sale.

Case No. III.-B, a purchaser in State Y, comes to State X and purchases the goods and pays the price thereof. After having purchased the goods

he then books the goods from State X to State Y in his own name. This is also a case where the sale is purely an internal sale having taken place in

State X and the movement of goods is not occasioned by the sale but takes place after the property is purchased by B and becomes his property.

18. Basing himself on case No. II in the above extract, the learned counsel for the petitioner contended that even on the basis of our finding that

there must have been a contract between the petitioner through its Bombay agent and the allottee before 23rd May, 1964, still the movement of

the goods could not be said to be in pursuance of that contract and that, therefore, as in case No. II extracted above, the transaction . in question

could not be said to be an inter-State sale. We are of the opinion that this argument is misconceived. This argument assumes that in case No. II

extracted above, the contract or agreement to sell has preceded the movement of the goods, while actually in that illustration, though the order in

which the facts of the illustration are stated may make one to think that the agreement was first entered into and the movement of the goods took

place later, there is nothing to indicate positively that that was the case contemplated by that illustration. As a matter of fact that could not have

been contemplated is made clear by the very judgment itself in a subsequent paragraph. In a subsequent paragraph of that decision the decision of

the Supreme Court in *Kelvinator of India Ltd. Vs. The State of Haryana*, , already referred to was mentioned and thereafter it was stated :

In that case, however, on the facts found by the High Court, this court held that the sale was not an inter-State sale but an internal sale which took

place in Delhi. In that case there was no movement of the goods from one State to another in pursuance of the contract of sale. In other words, the

facts of this case clearly fell within case No. II, which has been described by us above.

19. We have already referred to the facts of the case in *Kelvinator of India Ltd. Vs. The State of Haryana*, and the fact found in that case was that

the movement of the goods preceded the contract of sale. Therefore, if we understand case No. II in this light, it will follow that the case will only

cover a situation where the movement of the goods had preceded the sale. In other words, in case No. III, A books his goods from State X to

State Y in his own name and his agent in State Y receives the goods- and thereafter by entering into agreement with the dealer in State Y sells the

goods. In this view, case No. II mentioned in the decision referred to above and relied on by the learned counsel for the petitioner, is not of any assistance to the present case of the petitioner.

20. With regard to the contention of the learned counsel for the petitioner that there should not be interruption by way of taking delivery of the goods by the seller's agent at Bombay and that the goods should be directly booked to the buyer concerned, we are unable to see any warrant for this proposition on the basis of any principle or authority. As a matter of fact, this Court in *English Electric Company of India Limited v. Deputy Commercial Tax Officer, Alandur Division, Madras-16* [1969] 23 S.T.C. 32, observed thus :

In an inter-State sale the goods have to be despatched by the seller to the buyer and such inter-State movement of goods should be as a result of a contract of sale. But a contract of sale need not necessarily be between the seller and the buyer direct. The incidents intricately woven with the movement of goods may suggest that the seller knew the buyer and the goods moved for satisfying a contract with the buyer and but for the identified and identifiable buyer there would have been no occasion for the ascertained goods to move at all. If there is a conceivable link between the movement and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus as above is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who antecedently initiated the contract may not make the matter ambulatory. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not tilt the issue either.

21. This decision of this court was affirmed by the Supreme Court in *English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others*, . In that judgment, the Supreme Court observed: When the movement of goods from one State to another is an incident of the

contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position.

22. Thus, it will be seen that the Supreme Court not only affirmed the decision of this Court, but also approved the law laid down in the terms extracted already. Consequently, there is no need that the goods must be despatched from one State to another, direct to the buyer concerned and once the goods are despatched from one State to another State to reach the buyer, it will be enough. In the present case, as we have pointed out already, admittedly, the allotment orders were made on the petitioner and,

therefore, pursuant to those allotment orders, the petitioner was under an obligation to supply art silk yarn to the allottees concerned. We have also referred to the fact that after the supply of yarn to Messrs. Ramesh

Silk Fabrics an endorsement has been made on the allotment order as to the fact of supply by the petitioner, represented by its agent at Bombay.

These things make it absolutely clear that the indent on 23rd May, 1964, was placed by the petitioner's Bombay agent for despatch of goods from

Sirumughai to Bombay only for the purpose of complying with the allotment orders and for the purpose of compliance of which the petitioner's

agent at Bombay had already entered into agreement with the allottees concerned for getting the goods from Sirumughai and delivering the same to them.

23. Under the above circumstances, we are clearly of the opinion that the transactions involved in the present tax revision cases fell within the

scope of Section 3(a) of the Act and that, therefore, they were rightly assessed to tax under that provision. Accordingly, these tax revision cases

are dismissed. But there will be no order as to costs.