
(2002) 08 AP CK 0024
In the Andhra Pradesh High Court
Case No : TRC No. 110 of 1999

State of A.P.

APPELLANT

Vs

Sri Vasavi Traders

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6
Central Sales Tax Act, 1956 — Section 5(1), 5(3), 7

Citation : (2002) 6 ALD 780

Hon'ble Judges : S. Ananda Reddy, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Special Government Pleader for the Taxes, for the Appellant; P. Srinivasa Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This batch of tax revision cases are filed by the State against the Common Order of the Sales Tax Appellate Tribunal dated 25th November, 1998. As common issues are involved in all these TRCs., they are heard together and are being disposed of by this common judgment for the sake of convenience.

2. The undisputed facts of the case are that the dealers in all these cases entered into contracts with the Exporters in Bombay to supply groundnut kernel as per the specifications, subject to other terms and conditions stipulated therein. In turn, the dealers purchased the groundnuts from the local vendors and in their turn sold the groundnut kernel to the exporters at Bombay. The Exporters at Bombay sold the same to a foreign buyer. The sales by the dealers to the exporters are considered by the revenue authorities as sales in the course of exports. However, the purchases made by the dealers were treated as last purchase in the State. Therefore, they were subjected to purchase tax as per Section 6 under item-6 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to "the APGST Act"). While doing so,

the assessing authority relied upon a Judgment of this Court in the case of Bismillah and Co. Vs. State of Andhra Pradesh, . The assessing authority, therefore, made provisional assessments for the assessment year 1996-97 and 1997-98 and levied tax accordingly under the provisions of the APGST Act. The dealers were unsuccessful before the Appellate Deputy Commissioner, but however, on further appeal before the Sales Tax Appellate Tribunal they were successful. The Tribunal accepted the contention of the dealers that by virtue of the explanation to Section 7(b) of the APGST Act, the benefit was held to have extended to a step further beyond what was contemplated u/s 5(3) of the Central Sales Tax Act (hereinafter referred to as "CST Act"). Therefore, the purchases effected by the dealers are not liable to tax under the provisions of the Act and accordingly granted the relief by majority, though the accountant Member disagreed with the said view and passed a dissenting order rejecting the claim of the dealer. The Tribunal also accepted the claim of exemption by virtue of G.O. Ms. No. 537 Revenue dated 24-3-1984 and held that the dealers in question are not liable to purchase tax. Aggrieved by the said orders, the Revenue is before us in this batch of TRCs.

3. The learned Special Government Pleader contended that the Tribunal erred in considering the provisions of the APGST Act, especially explanation to Section 7(b) of the Act. It is contended by the learned Counsel that originally only sale or purchase occasioned the movement of the goods to outside the State was treated as a sale in the course of inter-State trade, which was exempt from tax u/s 5(1) of the CST Act. However, subsequently, Sub-section (3) of Section 5 was inserted in the year 1976, as a result of which the benefit was extended to a step ahead of the sale or purchase effecting the movement of the goods in the course of inter-State trade. The learned Counsel also contended that Section 7(b) of the APGST Act refers to the relief that was extended u/s 5(1) of the CST Act in respect of the inter-State transactions. Similarly, the explanation refers to the relief that was granted u/s 5(3) of the CST Act and not beyond. Therefore, the learned Counsel contended that the Tribunal was clearly in error in presuming that the explanation was intended to give the benefit to a step further i.e., one more transaction of sale or purchase. The learned Counsel contended that the purchase of groundnuts are taxable under Item-6 of the Third Schedule at the point of the last purchase in the State by the dealers other than decorticating millers. The Dealers in question being the last purchasers in the State having sold the groundnuts to exporters in the course of inter-State transaction, they are liable to tax under the provisions of the APGST Act. The learned Counsel also contended that in the course of export sales to outside the territory of the State, there is a sale by the Exporter to the Importer, who is a foreign buyer. The exporter in turn purchased the goods from the dealers in the State. The said purchase or sale is exempt u/s 5(3) of the CST Act and the said benefit of exemption is not extended beyond i.e., to the purchases made by the dealers in the State. The learned Counsel also relied upon a decision of the Supreme Court in the case of Coffee Board v. Joint Commercial Tax Officer, 25 ITR 528 in support

of his contention that a sale by an exporter to an importer outside the country would be considered as a transaction which is exempt u/s 5(1) of the CST Act. To the same effect, the learned Counsel also relied upon another decision of the Supreme Court in the case of Serajuddin and Others Vs. The State of Orissa, where the Appellant dealer entered into contracts with the State Trading Corporation for the sale of mineral ore and in fact in the course of the said sale the Appellant had even effected the shipment in Calcutta harbour. Though it was claimed that the State Trading Corporation was only an agent and the Appellant dealer was real exporter, the said contention was rejected by the Supreme Court and held that the sale effected by the Appellant was not in the course of export and the exporter is only the State to which the appellant dealer has effected the sale. The learned Counsel also relied upon a decision of the Supreme Court in the case of K.G. Khosla and Co. Vs. Deputy Commissioner of Commercial Taxes, .

4. On the applicability of G.O. Ms. No. 537, dated 24-3-1984 the learned Government Pleader contended that the benefit of the exemption contemplated under the said government order would be available only when the assessee paid the tax under the provisions of the CST Act. The learned Government Pleader contended that admittedly the assessees have not paid the tax under the CST Act in view of the provisions of Sub-section (3) of Section 5 of the CST Act where the exemption was extended not only to the actual exporter but also to a transaction prior to it that is extending to the sales effected by the dealer in the State who has effected such sale in the course of inter-State trade or commerce. As the assessees have not paid the tax under the provisions of the CST Act the condition stipulated under the Government Order 537 dated 24-3-1984 was not complied with. Therefore, they are not entitled for the exemption that is provided under the G.O.537. The learned Government Pleader also relied on the decision of the Supreme Court in the case of State of M.P. and Others Vs. M/s. Indore Iron and Steel Mills Pvt. Ltd., According to the learned Government Pleader, the Apex Court had an occasion to consider similar notification under the provisions of the Madhya Pradesh General Sales Tax Act and interpreted the term "suffered" referred to in the notification issued under the said Act. In the light of the said decision of the Apex Court the dealers are not entitled for the exemption contemplated under G.O. Ms. No. 537, dated 24-3-1984 as no tax under the provisions of the CST Act was paid. The learned Counsel therefore, contended that the order of the Tribunal requires to be set aside and the orders of the assessing authority confirmed by the 1st appellate authority has to be restored.

5. The learned Counsel for the Dealers, Sri P. Srinivasa Reddy, on the other hand, supported the order of the Tribunal. It is contended by the learned Counsel that under Article 286 of the Constitution of India with reference to the inter-State transactions, the State has no power to levy tax and it is only the Central Act, which governs the transactions. The learned Counsel contended that though originally only the last of the transactions, which resulted in the movement of the goods in the course of export, alone was exempt from tax, but later, it was extended to a transaction preceding the export sale/ purchase. The learned

Counsel also contended that the State Government has got power to exempt or grant reduction in the rate of tax with reference to any of the transactions specified. The learned Counsel also contended that Section 7 of the APGST Act specifies the stage of levy of tax in respect of imported and exported goods, while Section 7(a) deals with the stage of levy of tax in respect of the imported goods; Section 7(b) deals with the exported goods outside the State to any place outside the territory of India or to any other State in India. The learned Counsel also contended that the Explanation to Section 7(b) was inserted by the Act 18 of 1985 with effect from 1.7.1985 extending the benefit of exemption of tax leviability to a transaction anterior to the one referred u/s 5(3) of the CST Act. As it was the intention of the State Government to extend the said benefit, the dealers are entitled to such relief, which was rightly construed by the appellate Tribunal. Therefore, the learned Counsel contended that the order of the Tribunal does not warrant any interference, The learned Counsel also contended that it was the State policy to give, the benefit of exemption from the levy of tax. It is also further contended that the Explanation to Section 7(b) was subsequently amended so as to deny the said benefit. Therefore, the said amendment also would indicate that the earlier position was that the State intended to extend the benefit of exemption to the transactions that were effected by the present dealers. The learned Counsel also contended that the goods would be exported without effecting any tax as contended by the Revenue is not a valid ground warranting interference with the order of the Tribunal. The learned Counsel also contended that merely because the last sale or purchase in the State was exempt from tax in terms of Section 5(3) of the CST and read with explanation to Section 7(b) of the APGST Act, the Revenue cannot shift the tax burden to a transaction earlier to it and fix the liability.

6. According to the learned Counsel, as per G.O. Ms. No. 537 the State Government granted exemption in respect of Items 4 to 9 of the third schedule in respect of tax payable under the provisions of the APGST Act but however subject to one condition that such goods are sold in the course of inter-State trade and tax due thereon has been paid under the CST Act. According to the learned Counsel, the stipulation or condition provided in the said G.O. is very clear that what is contemplated is only payment of tax due thereon. If no tax is payable the question of payment of tax does not arise and therefore there is no case for denial of the benefit of exemption granted by the Government in G.O. Ms. No. 537, dated 24-3-1984. The learned Counsel also relied on the explanation, which was inserted to Section 7(b) of the APGST Act with effect from 17-7-2001. The learned Counsel also relied on the decision of this Court in the case of Deccan Leathers Limited Vs. State of Andhra Pradesh and Another, where a Division Bench of this Court had an occasion to consider the very same G.O.537 though in the context of another G.O. Ms. No. 890 dated 31-7-1976 which was issued under Sub-section (5) of Section 8 of CST Act, 1956 prescribing a rate of two per cent on the inter-State sales of tanned and untanned hides and skins by a dealer in the State on condition that the turn over

in question is subject to tax under the provisions of the APGST Act, 1957. In that case, the tax payable under the APGST Act was exempted by the G.O. which is under consideration now in this batch of cases and therefore it was held that the transactions are liable to tax only at the rate of two per cent even though no tax was paid under the provisions of the APGST Act by virtue of the exemption. The learned Counsel therefore contended that the provisions are almost identical though in the above case rate of two per cent was prescribed on the inter-State transaction. In the present case, by virtue of the provisions of Section 5(3) of the CST Act no tax payable on the sales or purchases effected in the course of inter-State trade and commerce and thereto no tax is payable. Hence there is absolutely no justification for denial of the exemption granted by the State Government. The learned Counsel contended that the Tribunal having considered the ratio laid down by the Division Bench the above case rightly held in favour of the dealers. The learned Counsel also contended that the terms of the G.O. are totally different from the terms of the notification that was considered by the Apex Court in the case of Indore Iron and Steel Mills Private Limited, 111 STC 26. Therefore the ratio laid down in the said case is not at all applicable to the present case. Therefore it was contended by the learned Counsel that there is absolutely no case for interference.

7. The learned Government Pleader however in reply contended that if there is any ambiguity in the Government Order which provides exemption the benefit of ambiguity should be given to the State by levying the tax on the subject. In support of his contention the learned Counsel relied on the decision of the Apex Court in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, . He also relied on the decision of the Apex Court in the case of Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, wherein it was held that while interpreting taxing statute where strict literal construction leads to injustice or absurd result it should be interpreted on equitable construction.

8. Heard both sides and considered the material on record.

9. Coming to the first issue as to the liability of the dealers to the purchase tax in terms of Item-6 of the III Schedule to the Act, the groundnut kernel is liable to tax under the above entry, when purchased by an oil-miller other than a decorticating miller in the State at the point of purchase by such miller and in all other cases at the point of purchase by the last dealer, who buys in the State and the tax is at 4 paise in rupee.

10. Before considering the merits of the rival contentions, it would be appropriate to refer to the relevant provisions of the APGST Act and CST Act.

Section 5 of the CST Act reads as follows:

"When is a sale or purchase of goods said to take place in the course of import or export:--(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or

purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

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

(3) Notwithstanding anything contained in Sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with, the agreement or order for or in relation to such export."

Section 7(b) and Explanation &

"7(b): in the case of goods exported out of the State to any place outside the territory of India or to any other State in India, be deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods.

Explanation :--The provision contained in Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 shall apply for the purpose of Clause (b)."

"Section 38: Not to apply to sales or purchases outside the State, in the course of import or export;--Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place :

(i) outside the State; or

(ii) in the course of the import of the goods into, or export of the goods out of the territory of India; or

(iii) in the course of inter-State trade or commerce.

Explanation :--The provisions of Chapter II of the Central Sales Tax Act 1956 (Central Act 74 of 1956), shall apply for the purpose of determining when a sale or purchase takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export".

11. A perusal of the above provisions shows that in terms of Section 5 of the CST Act where a sale or purchase was effected in the course of inter-State trade or commerce, it is governed by the provisions of the CST Act and no tax is payable under the provisions of the APGST Act. In terms of Section 5(1) of the CST Act, a sale or purchase, which had resulted in the movement of the goods to a place outside the territory of India or to an outside State, the said transaction is covered by Section 5(1) of the CST Act. However, subsequently, in the year 1976 Sub-section (3) of Section 5 was inserted extending the benefit to a transaction effected in the course of inter-State trade in respect of a sale or purchase

effected preceding the sale or purchase resulted in the Export. Similarly, under the APGST Act, Section 7 deals with stage of levy of tax in respect of imported or exported goods. Section 7(b) deals with the export of goods. As per the said provision, the export is deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods, which is almost identical to what is contemplated u/s 5(1) of the CST Act. Though Sub-section (3) of Section 5 was inserted in the CST Act as early as in the year 1976, there was no corresponding provision in the APGST Act to cover a similar provision/transaction. But, however, the explanation was added by Act 18 of 1985 with effect from 1.7.1985. As per the said explanation, for the purpose of Clause (b), the sale or purchase effected immediately before the export of such goods shall include the last sale or purchase of any such goods preceding the sale or purchase effected immediately before the export of such goods, as referred in Section 5(3) of the CST Act. The said explanation is nothing but extending the transactions of sale or purchase, i.e., one step prior to the actual sale or purchase resulted in export. In fact, a reference to Section 5(3) of the CST Act in the explanation also makes it clear that the explanation was inserted only to cover the transactions referred to in Section 5(3) of the CST Act and nothing more.

12. Coming to the decisions relied upon by the learned Special Government Pleader, in the case of *Coffee Board v. Joint Commercial Tax Officer* (supra) the Supreme Court had an occasion to consider the term "Sale in the course of export".

"In that case, the Appellant Coffee Board was a statutory Board functioning under the Coffee Board Act, 1942, which controls the sale and export of coffee. Coffee for export was specially screened and selected by the Board and exposed in auctions specially held for the purpose. The bidders in those auctions were required to be registered with the Board. As per the conditions of the auction, the purchaser in the auction had to export the coffee purchased within a stipulated period of three months, which may to be extended by the Chief Coffee Marketing Officer. The buyer was also under an obligation to produce evidence of the export of coffee within 60 days of the period allowed for export. Penalties as well as confiscation of the coffee for failure to comply with the conditions is also provided to the Board. In the assessments, the Coffee Board claimed that the sale of coffee at those auctions were export sales and are not liable to tax. But, however, the Sales Tax Officer treated them as sales within the State of Madras and demanded provisional tax under the Madras General Sales Tax Act, 1959. The Board thereupon approached, the Supreme Court under Article 32 of the Constitution of India, claiming that the sales were exempt from sales tax on the ground that they were export sales within the meaning of Article 286(1)(b) of the Constitution read with Section 5 of the CST Act. Negating the said contention, it was held that the sales affected by the Coffee Board were not sales in the course of export, as those sales did not occasion the export of the goods. There were two independent sales involved in the export programme. The first was a sale

between the Coffee Board as seller to the export-promoter and then the second sale by the export promoter to a foreign buyer. Of the latter sale, the Coffee Board did not have any inkling when the first sale took place. The Coffee Board's sale was not in anyway related to the second sale. Therefore, the first sale had no connection with the second sale which was in the course of export, that is to say, movement of goods between an exporter and an importer. The Apex Court further held that the phrase "sale in the course of export" comprises in itself three essentials: (i) there must be a sale, (ii) goods must actually be exported, and (iii) the sale must be a part and parcel of the export. Therefore, either the sale must take place when the goods are already in the process of being exported, which is established by their having already crossed the customs frontiers, or the sale must occasion the export. The word "occasion" means "to cause" or "to be the immediate cause of. Read in this way sale, which is to be regarded, as exempt is a sale which causes the export to take place or is the immediate cause of the export. The export results from the sale and is bound up with it. The word "course" in the expression "in the course of means "progress or process of or shortly "during". The phrase expanded with this meaning reads "in the progress or process of export" or "during export". Therefore, the export from India to a foreign destination must be established and the sale must be a link in the same export for which the sale is held. To establish export a person exporting and a person importing are necessary elements and the course of export is between them. Introduction of a third party dealing independently with the seller on the one hand and with the importer on the other breaks the link between the two, for then there are two sales, one to the intermediary and the other to the importer. The first sale is not in the course of export for the export begins from the intermediary and ends with the importer. Therefore, the tests are that there must be a single sale which itself causes the export or is in the progress or process of export. There is no room for two or more sales in the course of export. The only sale which can be said to cause the export is the sale, which itself results in the movement of the goods from the exporter to the importer.

13. Similar issue was also considered with reference to the provisions of Section 5(1) of the CST Act by the Apex Court in the case of Mohd. Serajuddin v. State of Orissa (supra).

"In this case, the Appellant entered into two contracts with the State Trading Corporation for the sale of mineral ore and the Corporation in its turn entered into similar contracts with foreign buyers for sale of the identical goods purchased by the Corporation from the Appellant. Under the terms of the contract between the Appellant and the Corporation the price was expressed in U.S. dollars per long ton, f.o.b. ocean liner vessel, Calcutta, and the material should be ready in Calcutta harbour for shipment by a particular steamer. The final sampling and moisture determination and the final ascertainment of weight should be done at the port of discharge by certain named persons and their certificate should be final and binding on both the buyer and the seller. The

clause in the contract regarding payment was as follows:

"90 per cent payment against shipping documents as described in buyers" corresponding sale contract. Buyers will assign the relevant foreign letter of credit, which is to be opened in their name by their foreign buyer, Messrs. Associated Metals and Minerals Corporation, on receipt from the sellers of a bank draft for difference between buyers" f.o.b. purchase value and f.o.b. sale value, that is, \$1.00 per dry long ton for a bank guarantee from a scheduled bank guaranteeing that sellers will pay buyers immediately upon shipment/ shipments the difference between buyers" f.o.b. purchase value as shown in this contract and buyers" f.o.b. sale value as shown in foreign letter of credit, that is, \$ 1.00 per dry long ton by bank draft for each shipment and the buyers will endorse the bills of lading and deliver the same to sellers to negotiate against the above mentioned letter of credit. Balance after destination weight and analysis on the basis of documents mentioned in S.T.C.'s corresponding sale contract with the buyers. If the balance 10 per cent is insufficient to cover shortfall in weight and analysis at destination or any penalty imposed by the S.T.C.'s foreign buyers, the additional amount shall be payable by sellers to buyers on demand." The Appellant claimed that the sales of the mineral ore by the Appellant to the Corporation were "sales in the course of export" and were therefore exempt from tax u/s 5 of the Central Sales Tax Act, 1956. The High Court held that the sales were liable to tax. The Appellant therefore appealed to the Supreme Court and raised the following contentions:

The Appellant had entered into negotiations with foreign purchasers and settled all the conditions of the contract and thereafter the Corporation entered into an f.o.b. contract with the Appellant and with the foreign buyer on identical terms. All the necessary steps including the payment of customs duty for shipment and export had been done by the Appellant. Therefore, the sale by the Appellant to the Corporation and the export by the corporation to the foreign buyer constituted one integrated transaction. Second, the export could not be made except by the Corporation which could not have diverted the goods to a buyer in India without violating export and import control order. Therefore, the sale was in the course of export. Third, there was no sale in the taxable territory inasmuch as the contract between the Appellant and the Corporation being on f.o.b. basis, the property in the goods passed only on shipment when the goods were on the stream of export. Fourth, even if it was held that the Appellant did not have any contract with the foreign buyer and that privity was essential the rigid rule of privity of contract should be relaxed in consideration of equity and justice and a realistic approach should be adopted. The nature of entering into contracts through the channel of the Corporation raised in reality and presumption of the Corporation being an agent of the Appellant in the integrated transaction.

Negating the contention of the Appellant, it was held that the Corporation agreed to sell the goods to the foreign buyer and was the exporter of the goods. There was no privity of contract between the Appellant and the foreign buyer.

The privity of contract was between the Corporation and the foreign buyer. The immediate cause of the movement of goods and export was the contract between the foreign buyer who was the importer and the Corporation who was the exporter and shipper of the goods. All relevant documents were in the name of the Corporation whose contract of sale was the occasion of the export. The expression "occasions" in Section 5 of the Act means the immediate and direct cause and, but for the contract between the Corporation and the foreign buyer, there was no occasion for export. Therefore, the export was occasioned by the contract of sale between the Corporation and the foreign buyer and not by the contract of sale between the Corporation and the Appellant. Holding so, the Apex Court affirmed the view of the High Court.

14. In the case of K.G. Khosla and Company (supra), the Apex Court considered the scope of Section 5(2) of the CST Act with reference to the import.

"In that case an assessee entered into a contract with the Director General of Supplies and Disposals, New Delhi for the supply of axle-box bodies. The goods were to be manufactured in Belgium according to specifications and the D.G.I.S.D. London, or his representative had to inspect the goods at the works of the manufacturers and issue an inspection certificate. Another inspection was provided for at Madras. The assessee was entirely responsible for the execution of the contract and for the safe arrival of the goods at the destination. The contract provided that notwithstanding any approval or acceptance given by an inspector, the consignee was entitled to reject the goods, if it was found that the goods were not in conformity with the terms and conditions of the contract in all respects. The question was whether the sales by the assessee to the Government departments were in the course of import and exempt from taxation u/s 5(2) of the C.S.T. Act. It was held (i) that the expression " occasions the movement of goods" occurring in Section 3(a) and Section 5(2) had the same meaning; (ii) that before a sale could be said to have occasioned the import it was not necessary that the sale should have preceded the import; (iii) that the movement of goods from Belgium into India was incidental to the contract that they would be manufactured in Belgium, inspected there and imported into India for the consignee, and was in pursuance of the conditions of the contract between the assessee and the Director General of Supplies. There was no possibility of the goods being diverted by the assessee for any other purpose and therefore, the sales took place in the course of import of goods within Section 5(2) of the Act and exempt from taxation.

15. A Division bench of this Court had an occasion to consider the issue of exemption from the purchase tax under almost identical circumstances but without reference to Section 7(b) and its explanation of APGST Act.

"In that case, the Petitioner in the tax revision cases was the dealer in raw hides and skins who purchased the same and sold them to Bharat Skins Corporation in Madras. The said Madras Corporation exported them to a foreign country. The question is whether the purchase of raw hides and skins by the Petitioner within

the State attracts the tax under the provisions of the A.P.G.S.T. Act, 1957? Raw hides and skins are taxable at purchase point under Item 9 of the Third Schedule to the APGST Act. Column 3 of the Schedule says " When purchased by a tanner in the State at the point of purchase by the tanner and in all other cases at the point of purchase by the last dealer who buys them in the State". According to them since the petitioner is the last purchaser in the State, he is liable to pay the tax. But his contention was that he is exempt from paying so by virtue of Sub-section (3) of Section 5 of the CST Act, 1956 read with Section 38 of the APGST Act, 1957. It was held by this Court that under Sub-section (1) of Section 5 of the CST Act the purchase of the goods which occasions the export is exempted. This sub-section does not further exempt the purchase by the exporter. That is done by Sub-section (3) of Section 5 of the CST Act. Sub-section (3) of Section 5 of the CST Act extends the exemption to the purchase preceding to the purchase referred to in Sub-section (1) of Section 5 of the CST Act. In other words, by virtue of Sub-section (3) of Section 5 of the CST Act, the purchase by the exporter is also exempted. But Sub-section (3) of Section 5 of the Central Sales Tax cannot be extended to the purchase of the said goods by the Petitioner, since the purchase by the Petitioner is not a purchase preceding the export-purchase, but is a purchase removed by one more step. Therefore, the claim of exemption was negated.

16. From the above decisions it is clear that it is only the last purchase or sale which occasioned the movement of the goods in the course of inter-State trade is covered by Section 5(1) of CST Act while Section 5(3) extends to a transaction anterior to it and not beyond. If we apply the said ratio to the facts of the present case, admittedly the dealers in question are not the exporters. The exporter is the dealer who is stationed in Bombay who purchased the goods from the dealers in question. From the said exporter the importer who is a foreign trader purchased the groundnuts, which had occasioned the movement of the goods outside the territory of India. Therefore, there are two purchases, one by the importer who is a foreign trader and another by exporter who purchased from the dealers which are covered by Section 5(1) and 5(3) of CST Act respectively. This position is also from the decision in the case of Bismilla and Company (supra). Therefore, the dealers in question are not covered by the provisions of Section 5(1) or 5(3). However, their contention is that they are covered by the Explanation to Section 7(b) by virtue of which the benefit of exemption is extended even to the purchase effected by them. In support of their contention they have also stated that originally the Explanation which was inserted by Act 18 of 1985 was substituted by an amended Explanation restricting the scope of exemption only to cases covered by Sub-section (3) of Section 5 of the CST Act. Therefore, according to the dealers, the benefit of exemption is extended to a step further that is beyond the exemption contemplated u/s 5(3) of CST Act. However, a perusal of the Explanation as it stood prior to the amendment by Act 30 of 2001 according to us does not support the said argument of the dealers, in fact as per Section 7(b) of the

APGST Act only the transactions contemplated u/s 5(1) of the CST Act are covered. Therefore the explanation was inserted to extend the benefit of exemption to cases covered by Section 5(3) of the CST Act but not intended to extend the benefit to a step further as was held by this Court in the case of Bismilla and Company (supra). Under the above circumstances, the dealers in question are not entitled to the benefit of exemption with reference to the purchases effected by them as they are removed by one more step than what was covered by Section 5(3) of CST Act. Under the above circumstances, the view taken by the Sales Tax Appellate Tribunal is incorrect and accordingly the same is set aside and the view taken by the assessing officer as affirmed by the first appellate authority is restored on this issue.

17. Coming to the second issue the Tribunal accepted the contentions of the dealers that they are entitled for exemption under the provisions of the AEGST Act by virtue of the exemption granted by the issue of Notification under Sub-section (1) of Section 9 of the APGST Act in G.O. Ms. No. 537 Revenue, dated 24-3-1984. According to the Tribunal, though a condition was stipulated in the said government order in order to grant exemption; under the provisions of the APGST Act that such goods are sold in the course of inter-State trade and tax due thereon has been paid under the CST Act, but as no central sales tax is payable in respect of the transactions of sales effected in the course of inter-State trade by virtue of the provisions of Sub-section (3) of Section 5, the dealers in question need not comply the conditions stipulated in the said Government order. The Tribunal therefore held that the dealers are entitled for exemption under the said Government order.

18. The learned Government Pleader contended that though the Government Order issued under Sub-section (1) of Section 9 of the APGST Act, 1957, grants exemption in respect of Items 4, 5, 6, 7, 8 and 9 of the Third Schedule, that exemption is not absolute but conditional that such sales are to be effected in the course of inter-State trade and tax due thereon under the CST Act has already been paid. According to the learned Government Pleader, as no tax was paid the dealers in question are not entitled for exemption as they failed to comply the condition required to avail the benefit of exemption under the said government order. On the other hand, the contention of the dealers is that as no tax is payable under the provisions of the CST Act by virtue of Section 5 of the said Act, the condition stipulated in the Government Order in question is deemed to have been complied with and therefore they are entitled for exemption.

19. Under the scheme of the Act, groundnuts which are specified at item 6 of the Third Schedule are liable to tax at the point of last purchase in the State when purchased by dealers other than the decorticating millers at the rate of 4%. But however the Government issued notification under Sub-section (1) of Section 9 in G.O. Ms. No. 537 Revenue, dated 24-3-1984, The relevant portion of the Government Order reads as under:

"In exercise of the powers conferred by Sub-section (1) of Section 9 of the

Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the Governor of Andhra Pradesh hereby exempts, with effect from 1st April, 1984 from the tax payable by any dealer u/s 6 read with Items 4, 5, 6, 7, 8 and 9 of the Third Schedule of the said Act which are liable to tax at the point of last purchase in the State as described hereunder:

Provided that such goods are sold in the course of inter-State trade and tax due thereon, has been paid under the Central Sales Tax Act, 1956 (Central Act 1956)"

20. A perusal of the notification issued by the State Government shows that the tax payable in terms of Section 6 read with items 4 to 9 of the Third Schedule which are liable to tax at the point of last purchase in the State are exempt from the tax with effect from 1-4-1984 but the said exemption however is subject to the condition that the goods specified in the above items are sold/in the course of inter-State trade and tax/due thereon has been paid under the CST Act. But under the provisions of the Section 5(1) a sale or purchase effected in the course of export are exempt from tax under the provisions of the CST Act. Though originally that was the position, later the said benefit of exemption was extended to a transaction anterior to the transaction, which had resulted in the export by virtue of Sub-section (3) of Section 5 of the CST Act. That means the benefit of exemption was extended to a transaction prior to the actual export. Here it is not in dispute that the dealers in question have effected sales in the course of inter-State trade to a dealer who is the actual exporter of the goods to outside the territory of India. Therefore, the transactions in question are clearly exempt from tax under the provisions of the CST Act by virtue of Section 5(3) of the said Act. The question therefore that arises for consideration in this batch of tax revision cases is whether the dealers are exempt from the tax payable under the APGST Act by virtue of G.O. Ms. No. 537, dated 24-3-1984 even though they did not actually pay the tax under the provisions of the CST Act. According to the, learned Government Pleader, the intention of the Government in issuing exemption notification was only to reduce the tax liability and not to grant total exemption. Therefore, a condition was imposed in the said exemption that tax payable under the provisions of the APGST Act is exempt provided the tax due under the provisions of the CST Act is paid. As no tax was paid in the present transactions under the CST Act, therefore they are not entitled to the exemption as they failed to fulfil the conditions stipulated under the said government order. On the other hand, the dealers' contention is that the government order intends to grant benefit of exemption under the provisions of the State Act so as to make the goods exported competitive in the international market. If the said benefit of exemption is denied on the ground that the dealers are not liable to pay any tax under the provisions of the CST Act, the same would frustrate the purpose for which the said Government order was issued.

21. At this stage it would be appropriate to refer to the decisions relied on by the learned Government Pleader, in the case of Indore Iron and Steels Private Limited (supra) the Apex Court had an occasion to consider the notification dated

840-1978 issued u/s 12 of the Madhya Pradesh General Sales Tax Act, 1958. As per the said notification the State exempted in whole or in part the purchases of the class of goods specified in column No. 1 of the Schedule from the payment of tax u/s 7 of the said Act so as to reduce it to the total rate of tax specified in column 2 for the purpose specified in column 3 of the said schedule subject to the restrictions and conditions specified in column 4 thereof. The Apex Court considered item 2(b) of the schedule in the said notification which relates to purchases of iron and steel, which was specified in Clause 4 of Section 14 of CST Act. With reference to the above item, the reduction in the tax rate was to zero per cent but the said reduction was subject to the further condition of the goods referred to in column 1 had suffered entry tax under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesch Par Kar Adhjiniyam, 1976 before they were purchased by the registered dealers. The effect of it was the goods in question, which was iron and steel was exempt to tax subject to the condition that it had suffered entry tax under the above referred Act. By another notification dated 9-2-1977 under the said Act the State exempted in whole the class of dealers specified in column 1 of the schedule thereto from the payment of entry tax for the period and subject to the condition stated therein. The exemption therefore applied to the new industries and by reason thereof, the Respondents before the Apex Court were exempt from payment of entry tax in respect of the period with which the dispute relates. The High Court, while accepting the contention of the dealers took the view that it was, "a matter of no consequence that the Petitioner had not actually to pay, by virtue of the exemption granted u/s 10 of the Entry Tax Act any amount by way of entry tax. That means that although the petitioner would otherwise have been liable to pay entry tax under the provisions of the Act at the rate of 2.5 per cent, it is exempted from doing so by virtue of the notification issued by the State Government granting such exemption to a class of dealers to which the Petitioner belongs for a period of five years by virtue of incentives. When the provisions of the Sales Tax Act talk of the rate on which the purchase tax would be payable by a registered dealer as one which is prescribed under the notification for our present purpose it is a different matter altogether that the Petitioner has not actually had to discharge the liability of payment Entry Tax Act". The claim was accordingly allowed by the High Court. It was contended before the Apex Court that in order to avail benefit of exemption under the notification in question the condition that had to be satisfied was that the goods had suffered entry tax under the Entry Tax Act. The Apex Court after considering the rival contentions with reference to various decisions referred by it earlier, concluded "in our view the words of the said notification under the State Sales Tax Act are so clear that they leave no doubt whatsoever and cannot be subject to any construction but one namely that only the goods upon which entry tax under the Entry Tax Act has been paid are entitled to the exemption thereunder and there has to be actual payment and the impact of the entry tax upon the goods for which the exemption is sought has to be felt only then is the exemption available and the use of the word "suffered" makes this plain." Holding so the benefit of exemption that was granted by the High Court was

reversed.

22. In the case of Deccan Leathers Limited (*supra*) the Division Bench of this Court had an occasion to consider the very same government order which is under question but with reference to the another Government order that was issued by the State Government under Sub-section (5) of Section 8 of the CST Act. The dispute in that case relates to the assessment year 1984-85. In that case this Court considered the effect of the G.O. Ms. No. 890, dated 31-7-1976 issued under Sub-section (5) of Section 8 of the CST Act as well as G.O. Ms. No. 537, dated 24-3-1984 issued under Sub-section (1) of Section 9 of the APGST Act with reference to the item 9 of Third Schedule "tanned hides and skins" which were sold in the course of inter-State trade. By virtue of G.O. Ms. No. 890 the turn over on the sales of tanned hides and skins is liable to Tax at the rate of two per cent, provided the turn over subjected to tax under APGST Act. By virtue of G.O. Ms. No. 537 all tax payable under the provisions of Section 6 of APGST Act is exempt from tax in respect of items 4 to 9 of the III Schedule to the State Act which are liable to tax at the point of last purchase in the State. But the said exemption is subject to the condition that the sales are effected in the course of inter-State trade and tax due thereon under the provisions of the CST Act is paid. In that case originally assessing officer made the assessment subjecting the turnover to tax at the rate of two per cent but the assessment was revised by the Deputy Commissioner by exercising revisional powers u/s 20 of the State Act and enhanced the rate of tax to four per cent on the ground that the turn over did not suffer tax under the provisions of the APGST Act . The unsuccessful assessee before the appellate Tribunal, came before this Court contending that non- payment of tax under the provisions of the APGST Act on the disputed turn over does not arise as the turn over stood exempted by virtue of the G.O. Ms. No. 537. Therefore, the revisional order confirmed by the appellate Tribunal was illegal. This Court held that payment of tax under the provisions of the APGST Act cannot be taken as a condition precedent for the payment of lower rate tax under the CST Act inasmuch as the State Government had exempted the sales tax under the said government order in respect of tanned hides and skins. This Court therefore accepted the contention of the assessee that when there was exemption granted under the notification, the non compliance of the condition of payment of tax under the provisions of the Act does not arise and therefore the benefit of exemption was granted.

23. If we examine the terms of the notification in question in the light of the above decisions, what is contemplated under the notification as condition precedent to avail the benefit of exemption is that the goods are sold in the course of inter-State trade and tax due thereon has been paid under the CST Act. In so far as the first condition is concerned that the sale was effected in the course of inter-State trade the said condition is complied with as there is no dispute. Coming to the other condition that tax due thereon has been paid under the CST Act. The contention of the petitioners is that as tax under the CST Act is exempt by virtue of Sub-section (3) of Section 5, no tax is due in respect of the

transactions in question. Hence non compliance of the said condition does not arise to deny the benefit of exemption. We do not see any ground for not accepting the said contention. In the case of Indore Iron and Steel Mills Private Limited, the terms of the notification that fell for consideration of the Apex Court are different, There as per the terms of notification the goods in question have to "suffer" entry tax in order to get tax exemption but the dealers claimed exemption on deemed sufferance of entry tax by virtue of exemption of entry tax. The Apex Court negated the said contention and held that the word "suffered" means goods in question must suffer or felt the effect of the tax payment and the said term does not give any scope to include deemed sufferance. Here the term used in the notification in question is "tax due thereon". Whatever the tax due thereon has to be paid. If there is no tax due the question of payment does not arise. Therefore a reasonable interpretation could be that in such situations the conditions should be deemed to have been fulfilled or complied with. In fact similar interpretation has been given by this Court in Deccan Leathers Private Limited. Under the above circumstances we do not find any merit in the contentions of the learned Counsel for the State warranting interference with the view taken by the Tribunal.

24. In the result, though the order of the Tribunal is reversed on the first issue, but by virtue of affirming the view of the Tribunal on the second issue the tax revision cases filed by the State have to fail and accordingly they are dismissed.