[2010] 12 S.C.R. 895

STATE OF KARNATAKA

v.

AZAD COACH BUILDERS PVT.LTD. & ANR.

(Civil Appeal Nos. 5616-5617 of 2000 etc.)

SEPTEMBER 14, 2010

[S.H. KAPADIA,CJI., B. SUDERSHAN REDDY, K.S. PANICKER RADHAKRISHNAN, SURINDER SINGH NIJJAR AND SWATANTER KUMAR, JJ.]

Central Sales Tax Act, 1956 – s. 5(3) r/w Article 286 of the Constitution – Exemption of tax on sale of goods as penultimate sale in the course of export – Held: When the local sale or purchase between the parties is inextricably linked with the export of the goods, then the claim for exemption u/s. 5(3) is justified – In such a case, the 'Same Goods' theory has no application – The connection between the penultimate sale and export of goods should be real, intimate and inter-linked and not casual, accidental or fortuitous – The burden to establish such link is on the assessee – In the facts of the case, the assessee has established that the transaction between the assessee and the exporter is inextricably connected with the export of the goods, and, as such, hence eligible for exemption u/s. 5(3) – Constitution of India, 1950 – Article 286.

The assessee was requested to build bus bodies, by the exporter, in accordance with the specifications provided by the foreign buyer. The assessee was asked to fabricate bus bodies on the chassis supplied by the exporter, in accordance with the specifications. The assessee, after manufacturing the bus bodies, mounted the same on the chassis made available by the exporter, making it as a complete bus, ready for export. The assessee claimed exemption on sale of the bus bodies.

A The Assessing Authority rejected the claim on the ground that the 'bus bodies' and the 'buses' were two different commodities and the export was not of the 'bus bodies' but that of the 'buses' and thus the transaction could not amount to penultimate sale eligible for
B exemption u/s. 5(3) of Central Sales Tax Act. In appeal, the appellate authority upheld the levy of tax. The appellate tribunal also upheld the levy. The High Court held that the assessee was eligible for the benefit of exemption u/s. 5(3) of the Act.

C

In appeal, the Division Bench of Supreme Court felt that the judgments passed by Supreme Court in *Sterling Foods vs. State of Karnataka* and *Vijaylaxmi Cashew Company vs. Deputy Commercial Tax Officer* cases needed fresh look in the light of the judgment in *K.Gopinath Nair*
D *vs. State of Kerala* and referred the matter to larger Bench. The larger Bench further placed the matter before the Constitution Bench.

Answering the reference and dismissing the
E appeals, the Court

HELD: 1. Article 286(1)(b) of the Constitution of India states that no law of a State shall impose, or authorize the imposition of sales tax on the sale or purchase of the goods when such sale or purchase takes place in the
F course of export of goods. Article 286(2) authorizes Parliament to formulate principles for determining when the sale is in the course of import/export. The sale or purchase of goods is deemed to be in the course of export of goods out of the territory of India only if the
G 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. Therefore, under Article 286(1) of the Constitution, the Court has to examine whether any tax is being

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imposed by the State Legislature on the sale or purchase of goods "in the course of the import of the goods into or export of the goods out of the territory of India". In order to resist imposition of sales tax by the State, the assessee will have to establish the identity of the goods sold to be exported out of the territory of India. In order to fulfill an export obligation, if an exporter purchases goods and as a result of some processing, the identity and character of the goods change, then it will not be a case of export of the same goods. [Para 18] [908-G-H; 909-A-D]

2. The phrase 'sale in the course of export' comprises in itself three essentials: (i) that there must be a sale: (ii) that the goods must actually be exported and (iii) that the sale must be a part and parcel of the export. The word `occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. Therefore, the words `occasioning the export' mean the factors, which were immediate cause of export. The words `to comply with the agreement or order' mean all transactions which are inextricably linked with the agreement or order occasioning that export. The expression `in relation to' are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed. Therefore, the test to be applied is, whether there is an in- severable link between the local sale or purchase on export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim u/s. 5(3) for exemption from State Sales Tax is justified, in which case, the 'same goods' theory has no application as advocated in the **Sertling Foods* and ***Vijaylaxmi Cashew Company* cases. [Paras 24 and 25] [913-A-E]

A **Sterling Foods, A Partnership Firm represented by its Partner ShriRamesh Dalpatram v. State of Karnataka and Anr.* **(1986) 3 SCC 469;*****Vijayalaxmi Cashew Company and Ors. v. Deputy Commercial Tax Officer and Anr.* **(1996) 1 SCC 468, held inapplicable.**

B

3. On an analysis of the decisions of the Supreme Court and in the light of the Statement of Objects and Reasons of the Amending Act 103 of 1976 whereby s. 5(3) of the Central Sales Tax Act was added and on the C **interpretation placed on Section 5(3) the following principles emerge:**

- **To constitute a sale in the course of export, there must be an intention on the part of both the buyer and the seller to export;**

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- **There must be obligation to export, and there must be an actual export.**

- **The obligation may arise by reason of a** E **statute, the contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export.**

- **To occasion export, there must exist such a** F **bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it, without which a transaction sale cannot be called a sale in the course of export of goods** G **out of the territory of India. [Para 23] [912-D-H; 913-A]**

4. The burden is entirely on the assessee to establish the link in transactions relating to sale or purchase of H **goods and to establish that the penultimate sale is**

inextricably connected with the export of goods by the exporter to the foreign buyer, which in the instant case, the assessee has succeeded in establishing. [Para 27] [914-C-D]

5. It is not correct to say that any penultimate sale made in furtherance of export, irrespective of the nature of the goods, would also be covered. It all depends on the question as to whether the sale or purchase is inextricably connected with the export of goods and not a remote connection. The connection between the penultimate sale and the export of goods should not be casual, accidental or fortuitous, but real, intimate and inter-linked, which depends upon the nature of the agreement the exporter has with the foreign buyer and the local manufacturer, the integrated nature of the transactions and the nexus between the penultimate sale and the export sale. In the facts and circumstances of the instant case, the assessee has succeeded in satisfying these tests and hence, eligible for exemption under sub-section (3) of Section 5 of the CST Act. [Paras 28 and 29] [914-D-H]

6. The facts of the instant case clearly reveal that the transaction between the assessee and the exporter is inextricably connected with the export of the goods. The communication between the foreign buyer and the exporter reveals that the foreign buyer wanted the bus bodies to be manufactured by the assessee under the specifications stipulated by the foreign buyer. The bus bodies constructed and manufactured by the assessee could not be of any use in the local market, but were specifically manufactured to suit the specifications and requirements of the foreign buyer. In the Purchase Order placed on the assessee by the exporter, it is specifically indicated that the bus bodies have to be manufactured in accordance with the specifications provided by the

foreign buyer, failure to do so might result in cancellation of the export order. The assessee, in the instant case, has succeeded in showing that the sale of bus bodies have occasioned the export of goods. When the transaction between the assessee and the exporter and the transaction between the exporter and foreign buyer are inextricably connected with each other, the 'same goods' theory has no application. [Para 26] [913-F-H; 914-A-C]

K. Gopinathan Nair and Ors. v. State of Kerala **(1997) 10 SCC 1;***Deputy Commissioner of Agricultural Income Tax and Sales Tax,Ernakulam v. Indian Explosives Ltd.* **(1985) 4 SCC 119, upheld**

Md. Serajuddin and Ors. v. State of Orissa **(1975) 2 SCC 47;***Consolidated Coffee Ltd. and Anr. v. Coffee Board, Bangalore* **(1980) 3 SCC 358;** *Binani Brothers (P) Ltd. v. Union of India and* Ors. **(1974) 1 SCC 459;** *Satnam Overseas (Export) through its Partner and Ors. v. State of Haryana and Anr.* **(2003) 1 SCC 561;** *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras and Anr.* **(1969) 3 SCC 349 – referred to.**

Case Law Reference:

(1975) 2 SCC 47	**Referred to.**	**Para 2**
(1980) 3 SCC 358	**Referred to.**	**Para 3**
(1986) 3 SCC 469	**held inapplicable.**	**Para 3**
(1996) 1 SCC 468	**held inapplicable.**	**Para 4**
(1997) 10 SCC 1	**upheld.**	**Para 5**
(1974) 1 SCC 459	**Referred to.**	**Para 12**
(2003) 1 SCC 561	**Referred to.**	**Para 12**
(1969) 3 SCC 349	**Referred to.**	**Para 12**

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(1985) 4 SCC 119 upheld. Para 21 A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5616-5617 of 2000.

From the Judgment and order dated 9.2.1999 of the High Court of Bombay at Nagpur in C.A. No. 1518 of 1998 and 1546 to 1553 of 1998. B

WITH

C.A. Nos. 6594-6598 of 2000. C

Goolam E. Vahanvati, AG, Soli J. Sorabjee, Dhruv Mehta, S.K. Bagaria, P.S. Narasmha, Nishanth Patil, Mihir Chatterjee, Rohit Sharma, Nalla Jung, Sanjay R. Hegde, Ramesh K. Mishra, Kratin Joshi, Ramesh S. Jadhav, Vikrant Yadav, Abhishek Malviya, M.N. Shankargowda, E.C. Vidya Sagar, D Nitin Meshram, Bramhjeet Mishra, Preetesh Kapoor, E.R. Kumar, N. Prasad, Nitya Bagaria, Sumit Goel, Rukmini Bobde (for Parekh & Co.,) Yashodhara Anand, R.K. Gautam and Sarva Mitter (for Mitter and Mitter Co.) for the appearing parties.

E

The Judgment of the Court was delivered by

K. S. PANICKER RADHAKRISHNAN, J. 1. The question that falls for consideration in this case is whether an assessee (local manufacturer) is eligible to get exemption under sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 (for F short 'CST Act'), if the penultimate sale effected in favour of the exporter is inextricably connected with the export of goods outside the territory of India.

2. This Court in *Md. Serajuddin & Others v. State of* G *Orissa* (1975) 2 SCC 47, held that, under Article 286 of the Constitution, the sale which was not liable to tax under the State Sales Tax was only the actual sale by the exporter, but the benefit of export sale did not extend to the penultimate sale to the Indian exporter for the purpose of export. This led to the H

A insertion of sub-section (3) of Section 5 of the CST Act by the Amending Act 103 of 1976 with effect from 1.4.1976, whereby the last sale or purchase occasioning the export of goods was granted exemption from the State levy.

B 3. The scope of the Amending Act later came up for consideration before a Constitution Bench of this Court in *Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore* (1980) 3 SCC 358 and a contention was raised that sub-section (3) of Section 5 of the CST Act was ultra vires Article 286(2) of the Constitution of India and that the C expression "shall also be deemed to be in the course of such export" occurring in Section 5(3) was intended to convey that the penultimate sale shall also be regarded as being in the course of such export. The Court held that the above expression intends to convey that the penultimate sale shall also D be regarded as being in the course of such export and held that sub-section (3) of Section 5 is intra vires Article 286(2) of the Constitution. A three Judges Bench of this Court in *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram v. State of Karnataka & Another* (1986) E 3 SCC 469, also examined the scope of the above mentioned provision. The question raised in that case was whether the assessee was entitled to exemption from tax under Section 5(3) of the CST Act in respect of purchase of shrimps, prawns and lobsters, the purchase being of the same commodities which F were exported. The Court held that in order to attract sub-section (3) of Section 5 of the CST Act it is necessary that the goods which are purchased by an assessee for the purpose of complying with the agreement or order for or in relation to export, must be the same goods which are exported out of the G territory of India. The Court further held that the test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as

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distinct in identity from the original commodity or it is regarded, commercially and in the trade, the same as the original commodity.

4. In *Vijayalaxmi Cashew Company & Others v. Deputy Commercial Tax Officer & Another* (1996) 1 SCC 468, the question raised was whether the export of cashew kernels obtained out of raw cashew nuts would amount to export of those goods which had been purchased. The Court held that, since the raw cashew nuts can be used for so many purposes and the process of extracting the kernels so elaborate, it cannot be said that the goods (raw cashew nuts) purchased in the penultimate sale were the same goods (cashew nut kernels) which were sold to the exporter. The Court, therefore, concluded that cashew nut kernels are not the same goods as raw cashew nuts.

5. *Sterling Foods* (supra) and *Vijayalaxmi Cashew Company* (supra) were essentially advocating the "same goods" theory of course in different fact situations. Later, in *K. Gopinathan Nair & Others v. State of Kerala* (1997) 10 SCC 1, a three Judges Bench of this Court examined the question whether the purchase of African raw cashew nuts made by the assessees from the Cashew Corporation of India (for short 'CCI') are in the course of import and, therefore immune from liability to tax under Kerala General Sales Tax Act, 1963. In that case, on facts the Court found that there was no privitiy of contract between the local users on the one hand and the foreign exporter on the other and held that those two transactions could not be said to be so integrally interconnected as to represent one composite transaction in the course of import of raw cashew nuts. The Court held that those sales by the CCI to the local users go out of the sweep of the exemption provisions engrafted by Section 5(2) of the CST Act, reason being that there was no privity of contract between the local users and the foreign exporters.

6. M/s Azad Coach Builders Pvt. Ltd., the assessee was

A requested to build bus bodies, by the exporter, Tata Engineering Locomotive Co. Ltd. in accordance with the specifications provided by the foreign buyer, Lanka Ashok Layland Ltd., Colombo. The specimen copy of the Purchase order dated 11.7.1988 placed on the assessee by the exporter
B revealed that the assessee was asked to fabricate bus bodies on the chassis supplied by the exporter in accordance with the specifications given by the foreign buyer. In one of the communications received from the foreign buyer it was stipulated that the steel and aluminium panels of the bus bodies
C be built by the assessee since the customers in Sri Lanka preferred them. The assessee accordingly manufactured the bus bodies, in accordance with the specifications stipulated by the foreign buyer and mounted the same on the chassis made available by the exporter making it as a complete bus ready
D for export.

7. The assessee claimed exemption on sales of bus bodies as penultimate sales in the course of export made to their customers like Telco Bombay and others which was rejected by the Assessing Authority, treating the transactions
E as interstate sales, on the ground that the 'bus bodies' and 'buses' are two different commodities and the bus bodies as such were not exported, but complete buses. The Assessing Authority held that the transactions could not amount to penultimate sale eligible for exemption under sub-section (3)
F of Section 5 of CST Act.

8. Aggrieved by the assessment order dated 21.3.1995, the assessee approached the Joint Commissioner of Commercial Taxes (Appeals), Bangalore Division under
G Section 20(5) of the Karnataka Sales Tax Act, 1957. The appeal was rejected upholding the levy of tax by the Assessing Authority on the ground that the goods exported was different from the goods purchased and hence, the assessee was not entitled to exemption under Section 5(3) of the CST Act. The matter was taken up in appeal before the Karnataka Appellate
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Tribunal and the appeal was rejected vide order dated 14.8.1996. A

9. Feeling aggrieved by the order passed by the Tribunal, the assessee took up the matter before the Division Bench of the Karnatka High Court vide S.T.R.P. No. 4 of 1997. After examining the agreement between the exporter and the foreign buyer and also the order placed by the exporter on the assesseee, the High Court came to the conclusion that the bus bodies supplied by the assessee to the exporters was in the course of exports and the words "in relation to such export" extended the scope of the exemption to the extent that even if there is no agreement or order but they are in relation to such exports, the exemption could still be claimed under Section 5(3) of the CST Act. The High Court, therefore, allowed the Revision Petition and held that the assessee is eligible for the benefit of exemption from tax under Section 5(3) of the CST Act. B C D

10. Aggrieved by the order of the High Court, the State of Karnataka has come up with these appeals. A Division Bench of this Court felt that the judgments of this Court in *Sterling Foods* (supra) and *Vijayalaxmi Cashew Company* (supra) need a fresh look in the light of a later judgment of this Court in *K. Gopinathan Nair* (supra) and hence the matter was referred to a larger Bench, the reference order is reported in (2006) 3 SCC 338. The larger Bench then placed this matter before the Constitution Bench and hence the matter has been placed before us for consideration. E F

11. Mr. Sanjay Hegde, learned counsel appearing for the State of Karnataka submitted that the High Court has committed a grave error in holding that the assessee is entitled to the exemption under Section 5(3) of the CST Act. The learned counsel submitted that in order to attract Section 5(3) of the CST Act, it is necessary that the goods which are sold by the assessee for the purpose of complying with the agreement or export order for or in relation to export, must be the same goods which are exported out of the territory of India. The G H

A learned counsel submitted that the words "those goods" in Section 5(3) of the CST Act are clearly referable to "any goods" mentioned in the preceding part of this sub-section. The learned counsel submitted that the goods supplied by the assessee and the goods actually exported by the dealer to the B foreign buyer were not the bus bodies but buses itself, hence, the benefit of exemption under Section 5(3) of the CST Act is not available to the assessee.

12. Learned counsel has, in support of his contentions, placed reliance on the Constitution Bench judgments of this C Court in *Sterling Foods* (supra) and *Vijayalaxmi* (supra). Reference was also made to the judgments of this Court in *Consolidated Coffee Company* (supra), *Md. Serajuddin* (supra), *Binani Brothers (P) Ltd. v. Union of India & Others* (1974) 1 SCC 459, *Satnam Overseas (Export) through its* D *Partner & Others v. State of Haryana & Another* (2003) 1 SCC 561 and *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras & Another* (1969) 3 SCC 349.

13. Mr. P. S. Narasimha, the learned senior counsel appearing for Respondent No. 2 submitted that the exemption under taxation law will have to be purposefully and widely construed. In that context, the learned senior counsel submitted that, under Section 5(3) of the CST Act, those penultimate sales are also given exemptions, if such sale was for the purpose of F complying with the agreement or order for or in relation to such export. The learned senior counsel submitted that any penultimate sale made in furtherance of an export order, irrespective of nature of the goods, would be covered and any other construction would render the use of those words otiose.

G 14. Mr. Soli J. Sorabjee, learned senior counsel appearing for the respondents submitted that Section 5(3) of the CST Act should be given a purposive interpretation keeping in mind the Statement of Objects and Reasons of the Amendment Act 103 of 1976. The learned senior counsel submitted that the only H requirement of Section 5(3) is that the goods sold to the

exporter should be exported as such without loss of identity and if that happens, the penultimate sale gets the benefit of Section 5(3) of the CST Act.

15. Shri Goolam E. Vahanvati, learned Attorney General, assisting the Court submitted that if the penultimate sale is inextricably connected with the export of goods outside the territory of India, then such a sale is eligible for exemption under sub-section (3) of Section 5 of the CST Act. The only pre-condition is that the exemption be linked to the penultimate sale, preceding the export.

16. Before examining the rival contentions of the parties, it would be appropriate to refer to the Statement of Objects and Reasons of the Amending Act 103 of 1976 by which Section 5(3) of the CST Act was added. The relevant portion of the Statement of Objects and Reasons reads as under:

> ".....According to the Export Control Orders, exports of certain goods can be made only by specified agencies such as the State Trading Corporations. In other cases also, manufacturers of goods, particularly in the small scale and medium sectors, have to depend upon some experienced export house for exporting the goods because special expertise is needed for carrying on export trade. A sale of goods made to an export canalizing agency such as the State Trading Corporation or to an export house to enable such agency or export house to export those goods in compliance with an existing contract or order is inextricably connected with the export of the goods. Further, if such sales do not qualify as sales in the course of export, they would be liable to States sales tax and there would be a corresponding increase in the price of the goods. This would make our exports uncompetitive in the fiercely competitive international markets. It is, therefore, proposed to amend, with effect from the beginning of the current financial year, Section 5 of the Central Sales Tax Act to provide that the last sale or purchase of any goods

A preceding the sale or purchase occasioning 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
B to, such export."

17. The relevant portions of Section 5 are also extracted hereunder for easy reference:

"5. **When is a sale or purchase of goods said to**
C **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
D the goods after the goods have crossed the customs frontiers of India.

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xxx xxx xxx
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(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
F 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.

xxx xxx xxx

G xxx xxx xxx"

18. Article 286(1)(b) of the Constitution of India states that no law of a State shall impose, or authorize the imposition of a the sales tax on the sale or purchase of goods when such sale
H or purchase takes place in the course of export of goods.

Article 286(2) prohibits imposition of sales tax on import and export by the State Government. Article 286(2) authorizes the Parliament to formulate principles for determining when sale is in the course of import/export. The sale or purchase of goods is deemed to be in the course of export of 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. Therefore, under Article 286(1) of the Constitution, the Court has to examine whether any tax is being imposed by the State Legislature on the sale or purchase of goods "in the course of the import of the goods into or export of the goods out of the territory of India". In order to resist imposition of sales tax by the State, the assessee will have to establish the identity of the goods sold to be exported out of the territory of India. In order to fulfill an export obligation, if an exporter purchases goods and as a result of some processing the identity and character of the goods change, then it will not be a case of export of the same goods.

19. In *Sterling Foods* (supra), this Court had advocated the "same goods" theory of course in a different situation. In that case, on facts the Court found no essential difference between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters, especially when the dealer and the consumer regarded both as shrimps, prawns and lobsters and that they continued to possess their original character and identity as shrimps, prawns and lobsters, notwithstanding the removal of heads and tails, peeling, deveining and cleaning. It is in that context that this Court held that the processed or frozen shrimps, prawns and lobsters were not a new and distinct commodity and they retained the same character and identity as the original shrimps, prawns and lobsters.

20. In *Vijayalaxmi Cashew Company* (supra), we have already stated that the question was whether the purchase of raw goods made by the appellants after which the cashew

A kernels were extracted and exported to foreign countries could be subjected to the State Sales Tax Act. The Court elaborately examined, in what manner the raw cashew nuts were processed. After getting the detailed report from the High Court as to how the edible kernels were extracted from raw cashew
B nuts and having examined minutely the whole process, the Court came to the conclusion that the kernels were not the same goods as raw cashew nuts purchased by the dealers. What was exported were the edible kernels and what was purchased for the purpose of export were raw cashew nuts. The Court noticed
C that since raw cashew nuts could be used for so many purposes and the process of extracting the kernels so elaborate, it could not be said that the goods (raw cashew nuts) purchased in the penultimate sale were the same goods (cashew nut kernels) which were sold for export.

D 21. In this connection, it is useful to refer to the judgment of this Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam v. Indian Explosives Ltd.* (1985) 4 SCC 119, wherein this Court was dealing with the question whether the respondent-assessee was concerned with
E sale transactions in the course of import of chemicals, dyes etc. The modus operandi of the assessee in that case was to the effect that local purchasers used to place orders with the respondent quoting their Import Licence Numbers in accordance with their pre-existing contracts with the
F respondent. The respondent then placed orders with the foreign supplier for the supply of the goods and in such orders the name of the local purchaser who required the goods as also its licence numbers, were specified; the actual import was done on the strength of two documents like (a) the Actual Users'
G Import Licence and (b) Letter of Authority issued by Chief Controller of Imports and Exports whereunder the local purchaser was authorized to permit the respondent-assessee on his behalf to import the goods, to open letters of credit and make remittance of foreign exchange against the said licence
H to the extent of value specified therein. The Court held that there

was an integral connection between the sale to the local purchaser and the actual import of the goods from the foreign supplier. The movement of goods from foreign country like United States to India was in pursuance of the conditions of the pre-existing contract of sale between the respondent-assessee and the local purchaser. It was noticed that the import of the goods by the respondent assessee was for and on behalf of the local purchaser and the respondent-assessee could not, without committing a breach of the contract, divert the goods so imported for any other purpose. The Court, therefore, concluded that in order that the sale should be one in the course of import it must occasion the import and to occasion the import there must be integral connection or inextricable link between the first sale following the import and the actual import provided by an obligation to import arising from statute, contract or mutual understanding or nature of the transaction which links the sale to import which cannot, without committing a breach of statute or contract or mutual understanding, be snapped.

22. Now, let us refer to the Constitution Bench judgment of this Court in *K. Gopinath Nair* (supra) on which strong reliance was placed in the order of reference. The question raised was whether the purchase of African raw cashew nuts made by the assessees from CCI was in the course of import and, therefore immune from liability to tax under Kerala General Sales Tax Act, 1963. The Court rejected that contention observing that there was no direct and inseverable link between the transaction of sale and the import of goods on account of the nature of the understanding between the parties as also by reason of the canalizing scheme pertaining to the import of cashew nuts. In that case, the Court was mainly concerned with the interpretation of sub-section (2) of Section 5 of the CST Act. In the facts and circumstances of that case, the Court observed that the transactions between the foreign exporter and the local users in India got transmitted through an independent canalizing import agency which entered into back to back contracts and there was no direct linkage or causal connection between the

A export by foreign exporter and the receipt of the imported goods in India by the local users and hence the integrity of the entire transaction got disrupted and substituted by two independent transactions, one between the canalizing agency and the foreign exporter which made the canalizing agency the B owner of the goods imported and the other between the canalizing agency and the local users for whose benefit the goods were imported by the canalizing agency. In such a situation, the Court held that the sale by the canalizing agency to the local users would not be a sale in the course of import C but would be a sale because of or by import which would not be covered by the exemption provision of Section 5(2) of the Central Sales Tax Act. The Court further noticed that a sale or purchase can be treated to be in the course of import if there is a direct privity of contract between the Indian importer and D the foreign exporter and the intermediary through which such import is effected merely acts as an agent or a contractor for and on behalf of Indian importer.

23. When we analyze all these decisions in the light of the Statement of Objects and Reasons of the Amending Act 103 E of 1976 and on the interpretation placed on Section 5(3) of the CST Act, the following principles emerge:

To constitute a sale in the course of export there must be an intention on the part of both the buyer and the seller to F export;

There must be obligation to export, and there must be an actual export.

The obligation may arise by reason of statute, contract G between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export.

To occasion export there must exist such a bond between the contract of sale and the actual exportation, that each H

link is inextricably connected with the one immediately preceding it, without which a transaction sale cannot be called a sale in the course of export of goods out of the territory of India. A

24. The phrase 'sale in the course of export' comprises in itself three essentials: (i) that there must be a sale: (ii) that goods must actually be exported and (iii) that the sale must be a part and parcel of the export. The word 'occasion' is used as a verb and means 'to cause' or 'to be the immediate cause of'. Therefore, the words 'occasioning the export' mean the factors, which were immediate cause of export. The words 'to comply with the agreement or order' mean all transactions which are inextricably linked with the agreement or order occasioning that export. The expression 'in relation to' are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed. B C D

25. Therefore, the test to be applied is, whether there is an in-severable link between the local sale or purchase on export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim under Section 5(3) for exemption from State Sales Tax is justified, in which case, the same goods theory has no application. E F

26. The facts of this case clearly reveal that the transaction between the assessee and the exporter is inextricably connected with the export of the goods to Sri Lanka. The communication between the foreign buyer and the exporter reveals that the foreign buyer wanted the bus bodies to be manufactured by the assessee under the specifications stipulated by the foreign buyer. The bus bodies constructed and manufactured by the assessee could not be of any use in the local market, but were specifically manufactured to suit the G H

A specifications and requirements of the foreign buyer. In the Purchase Order placed on the assessee by the exporter, it is specifically indicated that the bus bodies have to be manufactured in accordance with the specifications provided by the foreign buyer, failure to do so might result in cancellation B of the export order. The assessee in this case has succeeded in showing that the sale of bus bodies have occasioned the export of goods. When the transaction between the assessee and the exporter and the transaction between the exporter and foreign buyer are inextricably connected with each other, in our C view, the 'same goods' theory has no application.

27. We may also indicate that the burden is entirely on the assessee to establish the link in transactions relating to sale or purchase of goods and to establish that the penultimate sale is inextricably connected with the export of goods by the D exporter to the foreign buyer, which in this case the assessee has succeeded in establishing.

28. Mr. T. S. Narasimha, learned counsel appearing for Respondent No. 2 contended that any penultimate sale made E in furtherance of export, irrespective of the nature of the goods, would also be covered, is too tall a proposition to be accepted. It all depends on the question as to whether the sale or purchase is inextricably connected with the export of goods and not a remote connection as tried to be projected by the counsel. The F connection between the penultimate sale and the export of goods should not be casual, accidental or fortuitous, but real, intimate and inter linked, which depends upon the nature of the agreement the exporter has with the foreign buyer and the local manufacturer, the integrated nature of the transactions and the G nexus between the penultimate sale and the export sale.

29. In the facts and circumstances of this case, we are satisfied that the assessee has succeeded in satisfying those tests and hence, eligible for exemption under sub-section (3) of Section 5 of the CST Act.

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30. We, therefore, find no error in the decision rendered by the High Court in declaring that the assessee is entitled to exemption under Section 5(3) of the CST Act. The Reference is accordingly answered and the appeals stand dismissed. In the facts and circumstances of the case, there will be no order as to costs.

K.K.T. Appeals dismissed.