IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6823 OF 2000

WITH

C.A.NO.6824/2000, C.A.NO.6825/2000

STATE OF HARYANA & ORS.
Appellant (s)

VERSUS

M/S. NIPHA EXPORTS PVT. LTD. Respondent(s)

O R D E R

These appeals are directed against the Division Bench judgment of the High Court in Civil Writ Petition Nos.6845/1986 dated 7.10.1998; 456/1990 dated 30.1.1997 and 6844/1986 dated 7.10.1998 whereby the High Court while reversing the decision of the Sales Tax Tribunal, Haryana, has held that purchase tax was not leviable under Section 9 of the Haryana General Sales Tax Act, 1973 (for short 'the Act') on the goods purchased by the respondents for the purpose of export out of India.

Respondent is a company registered under the Companies Act, 1956. Its

registered office is at Calcutta and a branch office and factory at Faridabad in the

State of Haryana. It is engaged in the manufacture and purchase of machinery and

parts thereof exclusively for the purpose of export out of the territory of India.

During the relevant period, the branch office of the respondent purchased

ginning machinery and spare components from registered dealers in the State of

Haryana and dispatched the same to its head office for export out of India in execution

of the orders booked from the foreign buyers. The consignments were sent from

Faridabad to Calcutta through train. It is said that no octroi was paid at Calcutta

because under the local laws no octroi is payable on the goods which are exclusively

meant for export.

Respondent filed its return. The Assessing Authority issued a notice for levy

of purchase tax rejecting the defence raised by the respondent. The Assessing Officer

held that the tax under Section 9 of the Act was leviable and the goods sent by the

branch office at Faridabad to its head office at Calcutta were not in the course of

export outside India. This order of the Assessing Officer was upheld in appeal by the

Appellate Authority. Further appeal filed before the Sales Tax Tribunal, Haryana

was also rejected. Aggrieved against the order of the Tribunal, the respondent filed

the writ petition which has been accepted. The order of the Tribunal has been set

aside and the sale has been held to be in the course of export of goods out of India and,

thus, not exigible to the levy of purchase tax under Section 9 of the Act. The High

Court after recording the finding held as under:-

"The orders passed by the Assessing Authority, the Appellate Authority and the Tribunal which have been impugned in this writ petition, clearly show that the petitioner-company has its registered office at Calcutta and the branch office at Faridabad. It has also been proved by the petitioner that the goods purchased by the branch office were sent to the head office at Calcutta for the purpose of export and the same were, in fact, exported. The Assessing Authority recorded a categorical finding that the record produced by the assessee showed that the orders were received directly by the head office from the foreign countries and the goods were not exported directly by the Faridabad dealer. The Tribunal did not record a finding that the head office at Calcutta and the branch office at Faridabad were two different entities. Rather, it held that this aspect of the case was not very much relevant. The Tribunal further observed that the State has not come out with a case that the goods were sold by the branch office at Faridabad to the head office at Calcutta; and, in fact, the movement of the goods from Faridabad to

Calcutta was made in the course of export of goods outside the territory of India within the meaning of Section 5(1) of the Central Sales Tax Act as it stood before 1.4.1976. However, the Tribunal rejected the claim of the petitioner on the ground that the movement of goods from branch office at Faridabad to the head office being a movement preceding the one which caused movement of goods from Calcutta to outside India, cannot be regarded as taking place in the course of export of the goods out of the territory of India. In our considered opinion, ... The Tribunal and other adjudicating authorities have seriously erred in holding that the movement of the goods from Faridabad to Calcutta was not occasioned in the course of export out of the territory of India. In our opinion, the Tribunal has seriously erred in invoking the ratio of the decision of the apex Court in Mohd. Sera Juddin's Case (supra) [(1975) 36 S.T.C. 136] without applying mind to the background in which the observations were made by the Supreme Court".

The High Court, while accepting the writ petitions, relied upon the decision of the Division Bench of the Punjab and Haryana High Court in State of Punjab Vs. International Cotton (Waste) Corporation, Bombay and Ors. (1970) 25 STC 496 (PH) and a judgment of this Court in English Electric Company of India Ltd. etc. etc. Vs. The Deputy Commercial Tax Officer and Ors. etc. etc. (1976) 4 SCC 460.

We agree with the view taken by the High Court that the movement of the goods from Faridabad to Calcutta was occasioned in the course of export out of India and there could be no sale between the branch office and the head office. Accordingly, we do not find any merit in these appeals and dismiss the same leaving the parties to bear their own costs.

.....J.

(ASHOK BHAN)

.....J.

(ARUN KUMAR)

New Delhi,

February 8, 2006.

ITEM NO.104 COURT NO.5 SECTION IIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6823 OF 2000

STATE OF HARYANA & ORS. Appellant (s)

VERSUS

M/S. NIPHA EXPORTS PVT. LTD. Respondent(s)

(With office report)

WITH

C.A.NO.6824/2000 (with office report),

C.A.NO.6825/2000 (with office report)

Date: 08/02/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s) Mr. Ajay Siwach, Adv.

Mr. Pardeep Dahiya, Adv.

Mr. Sandeep Sharma, Adv.

Mr. T.V. George, Adv.

For Respondent(s) Mr. F.S.P. Singh Chauhan, Adv.

Mr. Balaji Srinivasan, Adv.

Mr. V. Sudeer, Adv.

Mr. MBRS. Raju, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed leaving the parties to bear their own costs in terms

of the signed order.

(P.D. BALODI) (KANWAL S INGH)

A.R.-cum-P.S. Court Master

[signed order is placed on the file]