

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6020 OF 2009

STATE OF KARNATAKAAPPELLANT(S)
VERSUS
M/S. TATA GLOBAL BEVERAGES LTD. . . .RESPONDENT(S)

WITH
CIVIL APPEAL NO.6141/2010

O R D E R

The respondents in these two appeals purchased coffee beans from coffee growers and had exported coffee beans after curing or cleaning the coffee beans.

Mr. M.L. Lahoty, learned counsel appearing for the respondent in appeal being C.A. NO.6020 OF 2009, contends that what was purchased by the respondent from coffee growers and what is exported was the same thing, that is to say coffee beans. Accordingly, Section 5(3) of the Central Sales Tax Act, 1956 was applicable.

Ms. Vanita Bhargava, learned counsel for the respondent in appeal being C.A. No.6141 of 2010, also contends that what was purchased was raw coffee beans, and after cleaning the coffee beans were exported. No manufacturing process was involved.

On the other hand, Mr. Devadatt Kamat, learned Senior Counsel appearing for the appellant - State, has contested and opposed the aforesaid contentions of the learned counsel for the respondents. He submits that what

was purchased was coffee beans and what was exported was cured coffee beans or coffee powder. Further, what was purchased could not have been consumed as a beverage, whereas what was exported could be consumed as a beverage.

Sections 5(1) and (3) of the Central Sales Tax Act, 1956, read as under :

"5. When is a sale or purchase of goods said to take place in the course of import or export.-(1)
.....

(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).....

(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."

The aforesaid section 5(3) begins with a *non-obstante* clause in relation to sub-section (1) of section 5. Section 5(1) deals with a situation where the sale or purchase itself occasions such export. Obviously, in the cases before us what is relevant is sub-section (3) of section 5 because the export was subsequent to the purchase. Sub-section (3) of section 5 requires the

assessee to produce the agreement or order for or in relation to such export.

We find that there is no material on record for us to determine the identity of the goods purchased and the goods that were exported. It is an admitted fact that the agreements under which the respondents have purchased goods from coffee growers and exports were made are not before us. The High Court appears to have decided the matter without taking into consideration the fact that agreement(s) was not before it.

In these circumstances, we consider it appropriate in the interests of justice to set aside the impugned judgment(s) and order(s) passed by the High Court and direct that the respondents shall be permitted to produce the agreement before the assessing authority at Karnataka. Thereafter, the assessing officer may decide the matter as expeditiously as possible in accordance with law.

Ordered accordingly. The appeals are allowed in the above terms.

.....CJI
[S.A. BOBDE]

.....J
[SANJIV KHANNA]

.....J
[SURYA KANT]

NEW DELHI;
NOVEMBER 20, 2019.

ITEM NO.104

COURT NO.1

SECTION IV-A

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

Civil Appeal No(s). 6020/2009

STATE OF KARNATAKA

Appellant(s)

VERSUS

M/S. TATA GLOBAL BEVERAGES LTD.

Respondent(s)

WITH C.A. No. 6141/2010 (IV-A)

Date : 20-11-2019 These appeals were called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s) Mr. Devadatt Kamat, Sr. Adv.
Mr. V. N. Raghupathy, AOR
Mr. Aditya Bhat, Adv.
Mr. Javedur Rahman, Adv.
Mr. Manendra Pal Gupta, Adv.
Mr. Rajesh Inamdar, Adv.
Mr. Ali A. Rahim, Adv.
Ms. Shrinidhi Rao, Adv.

For Respondent(s) Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Shweta Kabra, Adv.
M/s Khaitan & Co., AOR

Mr. M.L. Lahoty, Adv.
Mr. Anchit Sripat, Adv.
Mr. Himanshu Shekhar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending interlocutory applications, if any, stand
disposed of.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)