IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

W.P.Nos.21938, 31057, 31060, 31066, 31067,31068,31086, 31087, 31089, 31095, 31107, 31111, 31114, 31116, 31119 of 2024

&

14434, 14436, 14439, 28349, 28351, 28354, 28355, 28356, 28362, 28363, 28365 of 2025

W.P.No.21938 of 2024

Between:

M/s. SEIL Energy India Limited, (Formerly M/s. SEMCORP Energy India Limited), Pynampuram/Nelatur Village, Muthukur Mandal, Nellore, Andhra Pradesh-524344, Rep. by its General Manager-Finance, Mr. Amitkumar Patal.

…Petitioner

AND

$1. The Principal Commissioner of Central Tax, Guntur, CGST Commissionarate, Central Revenue Building, K.V. Thota, Guntur-522 004.

2. The Additional Commissioner of Central Tax GST Appeals, D.No.3-30-15, Ring Road, Guntur, Andhra Pradesh-522 006.

3. The Deputy Commissioner of Central Tax, Central G.S.T Division, Nellore G.S.T. Bhavan, D.No.24-7-205/2, Plot No.121, 12th Road, Magunta Layout, Nellore-524003.

4. The Union of India, through Principal Secretary to the Government, Ministry of Finance, Department of Revenue, Udyog Bhavan, North Block, New Delhi-110 001.

… Respondents

Date of Judgment pronounced on : 31-12-2025

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether the Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

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… Respondents

! Counsel for petitioner : Sri Raghavan Ramabhadran, Rep. Sri Lakshmi Kumaran Sridharan

^Counsel for Respondents : Sri Y.N. Vivekananda

<GIST :

>HEAD NOTE:

? Cases referred:

[1] AIR 1963 SC 1405
[2](1969) 2 SCC 554
[3] (2003) 5 SCC 705
[4](2024) 2 SCC 613
[5](2019) 20 SCC 1
[6](2015) 4 SCC 136
[7] AIR 1963 SC 1405

APHC010424302024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3559]**
(Special Original Jurisdiction)

WEDNESDAY,THIRTY FIRST DAY OF DECEMBER TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

W.P.Nos.21938, 31057, 31060, 31066, 31067,31068,31086, 31087, 31089, 31095, 31107, 31111,31114, 31116, 31119 of 2024

&

14434, 14436, 14439, 28349, 28351, 28354, 28355, 28356, 28362, 28363, 28365 of 2025

W.P.No.21938 of 2024

Between:

1. M/S. SEIL ENERGY INDIA LIMITED, (FORMERLY M/S. SEMBCORP ENERGY INDIA LIMITED), PYANAMPURAM/NELATUR VILLAGE, MUTHUKUR MANDAL, NELLORE, ANDHRA PRADESH - 524344, REP. BY ITS GENERAL MANAGER - FINANCE, MR. AMITKUMAR PATEL

...PETITIONER

AND

1. THE PRINCIPAL COMMISSIONER OF CENTRAL TAX, GUNTUR CGST COMMISSIONERATE, CENTRAL REVENUE BUILDING, K.V. THOTA, GUNTUR - 522 004
2. THE ADDITIONAL COMMISSIONER OF CENTRAL TAX GST

APPEALS, D. NO. 3-30-15, RING ROAD, GUNTUR, ANDHRA PRADESH - 522 006

3. THE DEPUTY COMMISSIONER OF CENTRAL TAX, , CENTRAL G.S.T DIVISION, NELLORE G.S.T.BHAVAN, D. NO. 24-7-205/2, PLOT NO. 121, 12TH ROAD, MAGUNTA LAYOUT, NELLORE - 524 003

4. THE UNION OF INDIA, THROUGH PRINCIPAL SECRETARY TO THE GOVERNMENT, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, UDYOG BHAVAN, NORTH BLOCK, NEW DELHI - 110 001

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased tomay be pleased to issue a Writ, Order or direction particularly one in the nature WRIT OF MANDAMUS a) Setting aside the impugned order issued by the Respondent No.2- b) Directing the Respondents to grant the differential refund Rs. 11,39,62,916/- in respect of refund application filed for the month of March, 2023 in full with interest from the date of application i.e., 16.06.2023 at the applicable rate, and c) Pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to order provisional refund of 90% of the refund amount in terms of sub-section (6) of section 54 of the COST Act read with Rule 91 of the COST Rules and Circular No. 125/44/2019 dated 18.11.2019 and pass

Counsel for the Petitioner:

1. LAKSHMI KUMARAN SRIDHARAN

Counsel for the Respondent(S):

1. Y N VIVEKANANDA

Date of Reserved : 05.11.2025

Date of Pronouncement : 31.12.2025

Date of Upload : 31.12.2025

The Court made the following common order:
(per Hon'ble Sri Justice R. Raghunandan Rao)

As all these writ petitions have been filed by the same petitioner and raise identical questions of fact and law, they are being disposed of, by way of this common order.

2. Heard Sri Raghavan Ramabhadran, learned counsel representing Sri Lakshmi Kumaran Sridharan, learned counsel for the petitioner and Sri Y.N. Vivekananda, learned counsel appearing for the respondents.

3. The petitioner herein is involved in the generation and supply of electricity, to its purchasers. The petitioner owns and operates thermal power plants in the State of Andhra Pradesh.

4. The petitioner, in the course of its business purchases various goods, including coal, inputs and capital goods as well as obtains services. The petitioner also pays applicable GST on the purchases of these goods and services and is given input tax credit for these payments.

5. The petitioner, in the course of its business, had been supplying electricity to M/s. Bangladesh Power Development Board (hereinafter referred to as 'Bangladesh Board'). The said supply of electricity is done by the petitioner, directly to the Bangladesh Board, by way, of an agreement. Apart from this, the petitioner had supplied electricity to M/s. Power Trading Corporation India Limited (hereinafter referred to as 'PTC'), which supplied

this electricity to the Bangladesh Board. In this case, PTC had entered into an agreement with the Bangladesh Board for supply of electricity, on 09.10.2018. PTC had also entered into an agreement with M/s Meenakshi Energy Limited, to supply the said power to PTC which would supply the power to the Bangladesh Board. The terms of the agreement between the Bangladesh Board and PTC specifically records that the power, that would be supplied by PTC, would be sourced from M/s Meenakshi Energy Limited.

6. As Meenakshi Energy Limited was unable to supply electricity, PTC had entered into a power purchase agreement with the petitioner, on 03.02.2022 and the petitioner was substituted for Meenakshi Energy Limited, in the power purchase agreement, executed between PTC and the Bangladesh Board. This substitution was done by way of an amendment agreement, dated 03.02.2022, between PTC and the Bangladesh Board.

7. The petitioner, had sought refund of the input tax credit, which accrued on account of the purchase of goods and services from various third parties, in the course of generation of electricity on the ground that the supply of electricity made by the petitioner to the Bangladesh Board directly as well as the supply made by the petitioner to the Bangladesh Board, through PTC, would be export supply, which are zero rated supplies, under the provisions of Section 16 of the IGST Act, 2017.

8. Section 54 of the CGST Act, 2017 provides for grant of refund of any tax including input tax, subject to satisfaction of the conditions set out in Section 54. The method of calculating the input tax that would have to be refunded, was also reduced to a formula in Rule 89(4) which reads as follows:

> (4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -
>
> Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover
>
> Where, -
>
> (A) "Refund amount" means the maximum refund that is admissible;
> (B) ,,
> (C) ,,
> (D) ,,
> (E) …….

9. The term ‘Adjusted Total Turnover’, defined in clause (E) of Rule 89(4), was further explained by way of Circular No.175/07/2012-GST, dated 06.07.2022, in the following manner:

> “4.4 Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably

verify that no ITC has been availed on the inputs and inputs services utilized in making domestic supply of electricity".

10. The applications of the petitioner, for refund of input tax credit for different periods, commencing from March, 2019, were partially rejected by the authorities, on two grounds. The grounds were (i) The values of turnover pertaining to supplies made to PTC are to be excluded from the adjusted total turnover, as the electricity supplied to PTC was domestically supplied electricity and (ii) the amounts received as reimbursement towards transmission charges of electricity are to be excluded in the zero rated turnover. These grounds of rejection have been elaborated by the petitioner, in the affidavit filed in support of the writ petition in the following manner:

a) Electricity supplied to PTC (an Indian Company) and delivery thereof has been made in the domestic tariff area, and accordingly it is found that it does not meet the criterion to treat the same as "zero rated supply of goods" under the GST Law. Therefore, there is no merit in the arguments of the petitioner that supplies made to PTC shall be considered as export as the said supply does not qualify as export under the GST provisions.

b) In the refund application, the petitioner itself has recognized the position that supplies to PTC are not exports in as much as refund application is only in respect of supplies made by it on it's own to Bangladesh. Whilst

in the submissions the petitioner claims inclusion of turnover of the supplies made to PTC by considering the same as zero rated.

c) Verification of the refund calculations of the petitioner shows that refund amounts are arrived at by inclusion of the supplies made to PTC in the numerator as ‘zero rated supplies’.

d) In cases of refund of ITC on account of export of electricity, turnover of electricity supplies domestically would be excluded and no IPC is to be availed on the inputs and input services utilized in making such domestic supply of electricity. Therefore, exclusion of value of domestic supplies is contemplated in terms of Rule 89(4)(E) and it is on such principle that the petitioner should not have availed the ITC. However, the petitioner has not followed the said procedure. Therefore, exclusion of the said supplies made to PTC from Adjusted Total Turnover as claimed by the petitioner is against the clarification issued by the Board.

e) The petitioner has paid the applicable tax on interstate transmission charges and losses from injection point to the delivery point separately and these services have also been shown separately as taxable supplies and not zero-rated supplies, which itself shows that the petitioner is making arguments, contrary to their actions. Since the impugned services have been rendered separately the same cannot be treated as export of services. Therefore, there is no merit in the argument that export transactions are a composite supply.

11. The petitioner, being aggrieved by the said orders of rejection, filed appeals before the Appellate Authority and the same came to be dismissed. The appellate authority had taken the same view, as the primary authority, and dismissed the appeals. Aggrieved by these orders, of rejection and dismissal of appeals, the petitioner has approached this Court, by way of these writ petitions, on the ground that the GST Appellate Tribunal is not functioning and the petitioner is unable to avail of the alternative remedy of appeal before the Tribunal.

12. As can be seen from the grounds raised by the petitioner and the view taken by the tax authorities, the primary and central issue, before this Court is whether the supply of electricity to the Bangladesh Board, on account of the contracts between the petitioner, P.T.C and the Bangladesh Board, should be treated as a zero rated supply, entitling the petitioner to a refund of appropriate input tax, credited to the ledger of the petitioner.

13. Sri Raghavan Ramabhadran, the learned Counsel for the petitioner, has taken us through a review of the provisions of section 5 of the CST Act and the leading judgments, interpreting this provision, to assist us in understanding the provisions of the IGST Act.

14. The learned counsel, for the petitioner, has taken this Court through the judgments of the Hon'ble Supreme Court, where these provisions were interpreted, in the cases of **K.G. Khosla and Co.(P) Ltd. Vs. Deputy**

Commissioner of Commercial Taxes Madras Division, Madras[1]**., Md. Serajudin vs. The State of Orissa**[2]**., Union of India & another vs. K.G. Khosla & Co. (P). Ltd.,**[3] and **M/s. Indure Limited vs. Commercial Tax Officer**[4]**.**

15. Sri Raghavan Ramabhadran, would submit that the Constitution bench, in **Serajuddin vs. The State of Orissa**, on the facts of the case, held that the sale in question was not a sale in the course of export, as there was no privity of contract, between the Petitioner therein and the foreign buyer. He would submit that in the present case, there was a meeting held on 16th and 17th November, 2021 between Bangladesh Board, PTC and the petitioner herein for settling the terms on which the supply of electricity was to be made by the petitioner to PTC for onward supply to the Bangladesh Board. The learned counsel contends that the minutes of the meeting signed by the representatives of all the parties had effectively created privity of contract between the petitioner and the Bangladesh board. The learned counsel would specifically rely upon the fact that clause 10 of the first amendment to the power purchase agreement, executed on 03.02.2022, stipulated that the Bangladesh Board would have the right to terminate the agreement, if PTC fails to commence supply from the power Generation Station of the petitioner within 90 days of the amendment. The learned counsel would also rely upon

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[1] **(1966) 17 STC 473**
[2] **(1975) 2 SCC 47**
[3] **(1979) 2 SCC 242**
[4] **(2010) 34 VST 509 (SC)**

the letter of PTC to the Bangladesh Board stating that the generation source, for PTC, for supply of electricity under the agreement would be the petitioner herein.

16. The learned counsel would contend, on the basis of these documents and terms, that both the agreements are so intertwined and dependent on each other, that they would, in effect, have to be treated as a single document and that the agreements should be treated as a tripartite agreement. The learned counsel would contend that, in the light of the above facts, the contentions of the respondents that the contracts between the petitioner and the PTC on one hand and the contract between PTC and the Bangladesh Board on the other hand are two separate agreements, cannot be accepted.

17. The learned counsel has also drawn the attention of this Court to a letter, dated 30.11.2024, from PTC to the petitioner. In this letter, PTC informed the petitioner that it had not claimed any GST refund, on the electricity procured till date, from the petitioner, under the Power Purchase Agreement, dated 03.02.2022, which had been supplied to Bangladesh.

18. Sri Raghavan Ramabhadran would also raise an alternative argument that the definition and clauses contained in the CST Act would not be applicable as the IGST Act itself defines export of goods under Section 2(5) and export of services under Section 2(6). The learned counsel would

contend that the definitions, set out in Section 2(5) and 2(6), are at variance with the definitions set out under the CST Act. The learned counsel would contend that Section 2(5) defines export of goods to mean taking goods out of India to a place outside India. He would submit that any sale transaction which causes such goods to move out, irrespective of the point of sale, would have to be treated as export of goods, stipulated under Section 16 of the IGST Act. The learned counsel would draw the attention of this Court to Section 2(6) which defines export of services. The learned counsel would point out that the definition of export of services stipulates that the supplier of service should be in India while recipient should be outside India and that place of supply of service should be outside India. He would submit that the legislature while stipulating such conditions, in relation to export of services did not deliberately apply such conditions for export of goods. He would submit that this can only mean that the point of sale was not relevant, for the purposes of Section 2(5), as long as the supply of goods results in the goods being taken out of India to a place outside India.

19. Sri Y.N. Vivekananda, the learned standing Counsel, appearing for the respondents would contend that the supply of electricity had been completed within India itself as the delivery point, defined under the relevant agreements, where the transfer of electricity was to be done, is situated within India. He would further contend that the principle set out in **SERAJUDIN** would be applicable and only the supply, which actually caused the movement

of electricity out of India, would be a zero rated supply. He would submit that the penultimate supply made by the petitioner to PTC would not qualify as a zero rated supply.

Consideration of the Court:

20. The power to levy tax, on sale of goods, was conferred on the state legislatures, by way of entry 54 of the 2nd list in the Schedule VII of the Constitution. However, Article 286 (1) of the Constitution placed certain restrictions on the power to tax sales taking place outside the State or those involved in export of goods and other transactions. Further, Article 286 (2) enabled Parliament to formulate the principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Article 286 (1). Article 286, as it originally stood, reads as follows:

> "**286. *Restrictions as to imposition of tax on the sale or purchase of goods***.—(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—
>
> *(a)* outside the State; or
>
> *(b)* in the course of the import of the goods into or export of the goods out of, the territory of India.
>
> *Explanation*.—For the purposes of sub-clause (*a*), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that

> State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.
>
> (2) Except insofar as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:
>
> Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.
>
> (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

21. In **State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory.,**[5] which was decided even before any principles were formulated, by Parliament, Dealers, in the State of Travancore were importing Cashew from Africa as well as purchasing Cashew locally and from persons in the State of Madras and were exporting the Cashew, after treating the Cashew. These dealers, after the advent of the Constitution, relying upon Article 286, extracted above, had sought exemption of the purchases made locally as well

[5] **(1953) 1 SCC 826 : (1953) 4 STC 205 : 1953 SCC OnLine SC 89 at page 844**

as from the State of Madras, on the ground that these purchases were sales, made in the process of export and covered by Article 286 (1) (b). This contention was upheld by the Hon'ble High Court. On appeal, a Constitution Bench of the Hon'ble Supreme Court, initially sent back some cases for ascertaining the facts, and decided some cases , where the facts were clear, in the case of **State of Travancore-Cochin Vs. Bombay Co. Ltd.,**[6]. A second judgment was delivered, by the Constitution Bench, after the remanded cases came back with the ascertained facts, in **State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory.**A Constitution Bench, of the Hon'ble Supreme Court, in the 2nd judgment, after considering the aforesaid question, by a majority of 4:1, held as follows:

> **5.** Before considering how far the cashewnut purchases made by the respondents are, on the findings returned by the High Court, entitled to the protection of Article 286(1)(*b*), it is necessary first to ascertain the scope of such protection. That clause, so far as it is material here, reads thus:
>
> "**286. Restrictions as to imposition of tax on the sale or purchase of goods**.—(1) No law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place—
>
> *(a)* ***
>
> *(b)* in the course of the import of the goods into, or export of the goods out of, the territory of India."

[6]**AIR 1952 SC 366**

In the previous decision this Court referred to four different views then adumbrated in the course of the argument as to the meaning and scope of the said sub-clause as follows:

> "(*1*) The exemption is limited to sales by export and purchases by import, that is to say, those sales and purchases which occasion the export or import, as the case may be, and extends to no other transactions however directly or immediately connected, in intention or purpose, with such sales or purchases, and wheresoever the property in the goods may pass to the buyer.
>
> (*2*) In addition to the sales and purchases of the kind described above, the exemption covers the last purchase by the exporter and the first sale by the importer, if any, so directly and proximately connected with the export sale or import purchase as to form part of the same transaction.
>
> (*3*) The exemption covers only those sales and purchases under which the property in the goods concerned is transferred from the seller to the buyer during the transit, that is, after the goods begin to move and before they reach their foreign destination.
>
> (*4*) The view which found favour with the learned Judges of the High Court, namely, "the clause is not restricted to the point of time at which goods are imported into or exported from India; the series of transactions which necessarily precede export or import of goods will come within the purview of this clause."

This Court, however, found it unnecessary for the purpose of the cases then before it to go any further than to hold that "whatever else may or may not fall within Article 286(1)(*b*), sales and purchases which themselves occasion the export or import of the goods, as the case may be, out of or into the territory of India come

within the exemption" and that the third view set out above, which was put forward on behalf of the State of Bombay and which seeks to limit the operation of the clause exclusively to sales and purchases effected during the transit of the goods, was too narrow and could not be accepted.

8. The only question debated before us was whether in addition to the export-sale and import-purchase, which were held in the previous decision to be covered by the exemption under clause (1)(*b*), the following two categories of sale or purchase would also fall within the scope of that exemption:

(1) The last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business, and the first sale by the importer to fulfil orders pursuant to which the goods were imported or orders expected to be received after the import.

(2) Sales or purchases of goods effected within the State by transfer of shipping documents while the goods are in the course of transit.

9. As regards the first mentioned category, we are of opinion that the transactions are not within the protection of clause (1)(*b*). What is exempted under the clause is the sale or purchase of goods taking place in the course of the import of the goods into or export of the goods out of the territory of India. It is obvious that the words "import into" and "export out of" in this context do not mean the article or commodity imported or exported. The reference to "the goods" and to "the territory of India" make it clear that the words "export out of" and "import into" mean the exportation out of the country and importation into the country respectively. The word "course" etymologically denotes movement from one point to

another, and the expression “in the course of” not only implies a period of time during which the movement is in progress but postulates also a connected relation. For instance, it has been held that the words “debts due to the bankrupt in the course of his trade” in Section 15(5) of the English Bankruptcy Act, 1869, do not extend to all debts due to the bankrupt during the period of his trading but include only debts *connected with the trade* (see *Pryce, In re, ex p Rensburg* [*Pryce, In re, ex p Rensburg*, (1877) LR 4 Ch D 685 and *Williams on Bankruptcy*, 16th Edn. p. 307.]). A sale in the course of export out of the country should similarly be understood in the context of clause (1)(*b*) as meaning a sale taking place not only *during* the activities directed to the end of exportation of the goods out of the country but also *as part* of or connected with such activities. The time factor alone is not determinative. The previous decision proceeded on this view and emphasised the integral relation between the two where the contract of sale itself occasioned the export as the ground for holding that such a sale was one taking place in the course of export. It is, however, contended that on this principle of connected or integrated activities a purchase for the purpose of export must be regarded as covered by the exemption under clause (1)(*b*). We are unable to agree.

10. The phrase “integrated activities” was used in the previous decision to denote that “such a sale” (i.e. a sale which occasions the export) “cannot be dissociated from the export without which it cannot be effectuated, *and the sale and the resultant export form parts of a single* transaction”. It is in that sense that the two activities — the sale and the export — were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act done “in the course of the export of the goods out of the territory of India”, any more than the other two activities can be so regarded. As pointed out by a recent writer “From the legal point of view it is essential to distinguish the contract of sale which has as its object the

exportation of goods from this country from other contracts of sale relating to the same goods, but not being the direct and immediate cause for the shipment of the goods.… When a merchant shipper in the United Kingdom buys for the purpose of export goods from a manufacturer in the same country the contract of sale is a home transaction; but when he resells these goods to a buyer abroad that contract of sale has to be classified as an export transaction [Schmitthoff, *Export Trade* (2nd Edn.) 3.] ." This passage shows that, in view of the distinct character and quality of the two transactions, it is not correct to speak of a purchase for export, as an activity so integrated with the exportation that the former could be regarded as done "in the course of" the latter. The same reasoning applies to the first sale after import which is a distinct local transaction effected after the importation of the goods into the country has been completed, and having no integral relation with it. Any attempt therefore to invoke the authority of the previous decision in support of the suggested extension of the protection of clause (1)(*b*) to the last purchase for the purpose of export and the first sale after import on the ground of integrated activities must fail.

15. Our conclusions may be summed up as follows:

(*1*) Sales by export and purchases by import fall within the exemption under Article 286(1)(*b*). This was held in the previous decision.

(*2*) Purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption.

(*3*) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption, assuming that the State power of taxation extends to such transactions.

22. At this stage, Article 286 was amended, by way of the 6th Amendment Act. Under this Amendment Act, the explanation to Article 286 (1) was deleted and Article 286 (2) was substituted with the following:

> "(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)"

23. Thereafter, the Central Sales Tax Act, 1956 was enacted and brought into force. Section 5, of this Act, formulated the principles relating to sales in the course of exports and imports, in the following manner:

> 5. 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.

24. In **K.G. Khosla and C. (P) Ltd. Vs. Deputy Commissioner of Commercial taxes Madras Division**, the appellant dealer had entered into a contract with the Director-General of Supplies and Disposals, New Delhi, for supply of axle-box bodies which were to be manufactured in Belgium. The terms of payment included the requirement of inspection of the goods by the representative of DGISD, London at the work place of the manufacturer or

inspection subsequently in Madras. The appellant dealer claimed that these sales would be sales in the import. This contention was rejected by the revenue leading to the matter reaching the Hon'ble Supreme Court. The Constitution Bench of the Hon'ble Supreme Court after considering the previous judgments on the issue and the facts of the case held that the movement of axle-box from Belgium to Madras was the result of a covenant in the contract of sale between the appellant dealer and DGISD. The Constitution Bench also took the view that the terms of the contract precluded the possibility of the goods being diverted by the appellant dealer for any other purpose. On the basis of these findings, the Constitution Bench held that the sale of axle-box bodies by the appellant dealer to DGISD would be sale in the course of import of goods under Section 5(2) of the CST Act.

25. In the case of **Md. Serajudin vs. The State of Orissa,** a Constitution Bench of the Hon'ble Supreme Court, after considering the earlier judgment in **K.G. Khosla and C. (P) Ltd. Vs. Deputy Commissioner of Commercial taxes Madras Division**, had taken the view that any sale, which is inextricably linked to the movement of goods out of India, whether the said sale had been completed in India or not, would be a sale in the course of export, which was exempted from State taxation. The Hon'ble Supreme Court, after taking that view, then went into the question of whether the penultimate sale transaction, under which the exporter had purchased the goods, for the purposes of sending them out of India pursuant to its agreement with a foreign

party, would also fall within the ambit of the term ‘sale’ in the course of export. The Hon’ble Supreme Court took the view that such penultimate sale transactions cannot be treated to be part of a sale in the course of export inasmuch as such a sale transaction was an independent sale transaction, though it was undertaken for the purposes of fulfilling the export obligation between the exporter and the foreign party. The Hon’ble Supreme Court had taken the clear view that it would only be the sale transaction which actually results in movement of goods, for export that would be treated as a sale in the course of export. The Hon’ble Supreme Court held that the earlier sale transaction, cannot be treated to be an inextricable part of the export process. The relevant contentions and findings of the Hon’ble Supreme Court are as follows:

> **10.** The appellant relied on the decisions in *State of Travancore-Cochin* v. *Bombay Co. Ltd.* [(1952) 2 SCC 142 : 1952 SCR 1112 : AIR 1952 SC 366 : (1952) 3 STC 434] [Hereinafter referred to as the First Travancore-Cochin case] and *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333 : 1954 SCR 53 : (1953) 4 STC 205] [Hereinafter referred to as the Second Travancore-Cochin case] in support of two propositions extracted from those decisions. First, a sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities which together constitute an export sale whichever first occurs can well be regarded as taking place in the

course of the other. Even in cases where the property in the goods passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey from the State, the sales must be regarded as having taken place in the course of the export, and, therefore, exempt under Article 286(1)(*b*). Second, the word "course" denotes movement from one point to another, and the expression "in the course of" not only implies a period of time during which the movement is in progress but also postulates a connected relation. A sale in the course of export out of the country should be understood as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities.

25. The contention on behalf of the appellant that the contract between the appellant and the Corporation and the contract between the Corporation and the foreign buyer formed integrated activities in the course of export is unsound. The crucial words in the section are that sale or purchase of goods shall be deemed to take place in the course of the export of the goods only if the sale or purchase occasions such export. The various decisions to which reference has been made illustrate the ascertainment of the pre-eminent question as to which is the sale or purchase which occasions the export. The *Coffee Board case* (supra) as well as the case of *Binani Bros*. (supra) clearly indicates that the distinction between sales for export and sales in the course of export is never to be lost sight of. The features which point with unerring accuracy to the contract between the appellant and the Corporation on the one hand and the contract between the Corporation and the foreign buyer on the other as two separate and independent contracts of sale within the ruling in the *Coffee Board case* and the *Binani Brothers case*, are these. The Corporation entered on the scene and entered into a direct contract with the foreign buyer to export the goods. The Corporation alone agreed to sell the goods to the foreign buyer. The Corporation was the exporter of the goods. There was no privity of contract between the appellant and the

foreign buyer. The privity of contract is 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. 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.

26. The appellant sold the goods directly to the Corporation. The circumstance that the appellant did so to facilitate the performance of the contract between the Corporation and the foreign buyer on terms which were similar did not make the contract between the appellant and the Corporation the immediate cause of the export. The Corporation in regard to its contract with the foreign buyer entered into a contract with the appellant to procure the goods. Such contracts for procurement of goods for export are described in commercial parlance as back to back contracts. In export trade it is not unnatural to find a string of contracts for export of goods. It is only the contract which occasions the export of goods which will be entitled to exemption. The appellant was under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the appellants were against the Corporation. Similarly the obligations of the appellant were to the Corporation. The foreign buyer could not claim any right against the appellant nor did the appellant have any obligation to the foreign buyer. All acts done by the appellant were in performance of the appellant's obligation under the contract with the Corporation and not in performance of the obligations of the Corporation to the foreign buyer.

27. The expression “sale” in Section 5 of the Act has the same meaning as in Sale of Goods Act. String contracts or chain

> contracts are separate transactions even when there is similarity relating to quantity, quality of goods, shipment, sampling and analysis, weighment and force majeure etc. or other similar terms. A contract of sale is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for the money consideration called the price. There were two separate contracts. The price was different in the two contracts. This difference also dissociates the two contracts from each other. The High Court was right in holding that the sales of the appellant to the Corporation were exigible to tax because the appellant's sales to the Corporation were not sales in the course of export.
>
> **35.** The expression "in the course" implies not only a period of time during which the movement is in progress but postulates a connected relation. Sale in the course of export out of the territory of India means sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities. In *Burmah Shell Oil Storage & Distributing Co.* v. *Commercial Tax Officer* [AIR 1961 SC 315 : (1961) 1 SCR 902 : (1960) 11 STC 764] it was said that the word "export" did not mean a mere taking out of the country but that the goods may be sent to a destination at which they could be said to be imported. The directions given by the Corporation to the appellant to place the goods on board the ship are pursuant to the contract of sale between the appellant and the Corporation. These directions are not in the course of export, because the export sale is an independent one between the Corporation and the foreign buyer. The taking of the goods from the appellant's place to the ship is completely separate from the transit pursuant to the export sale.

26. In **Indure Ltd. vs. Commercial Tax Officer,** the dealer had entered into an EPC contract with M/s. NTPC, for constructing and installing a complete ash handling plant package on a turnkey basis. As part of this contract, the dealer had to import M.S pipes from Korea. The dealer, in terms

of the contract between the dealer and M/s. NTPC had submitted an application before the Director-General, Trade Development for issuance of an import licence to import the said pipes. Subsequently, M.S pipes were imported from South Korea and were sold to M/s. NTPC. The dealer claimed that these sales would have to be treated as sales covered under Section 5(2) of the CST Act, as these were sales, in the course of import. This stand of the petitioner was rejected by the tax authorities resulting in the matter reaching the Hon'ble Supreme Court. A Division Bench of the Hon'ble Supreme Court, after considering the earlier judgments including **K.G. Khosla and Co.(P) Ltd. Vs. Deputy Commissioner of Commercial Taxes Madras Division, Madras**[7]**.,** and **Md. Serajudin vs. The State of Orissa.,** had held that the sale should be treated as a sale in the course of import falling within the ambit of Section 5(2) of the CST.

27. In Section 5 of the CST Act, the requirement was that the sale must occasion the movement. In view of the law laid down by the Hon'ble Supreme Court, in **Md. Serajudin vs. The State of Orissa**, that only the last sale would meet the requirement of an export sale, Section 5 was amended to introduce Section 5 (3) and subsequently Section 5 (4), which read as follows:

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

[7] **(1966) 17 STC 473**

(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.] [Inserted by Act 103 of 1976, Section 3 (w..e.f. 1.4.1976).]

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

28. These amendments, while granting exemption to penultimate sales, are also an indication that Parliament has implicitly, accepted the view of the Hon'ble Supreme Court, that penultimate sales do not fall within the principles formulated in Section 5 (1) of the CST Act and consequently, the exception contained in Article 286 (1) (b).

29. The principles that have been set down by the Hon'ble Supreme Court, can be summarized in the following manner:

"15. Our conclusions may be summed up as follows:

(*1*) Sales by export and purchases by import fall within the exemption under Article 286(1)(*b*). This was held in the previous decision.

(*2*) Purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption.

> (*3*) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption, assuming that the State power of taxation extends to such transactions."

30. However, the Hon'ble Supreme Court had taken a different view in **K.G. Khosla and Co.(P) Ltd. Vs. Deputy Commissioner of Commercial Taxes Madras Division, Madras**[8]**., Union of India & another vs. K.G. Khosla & Co. (P). Ltd.,**[9]and **M/s. Indure Limited vs. Commercial Tax Officer**[10]**.** In these cases the Hon'ble Supreme Court had held that penultimate sales would also fall within the ambit of Article 286 (1) (b). At first blush, it appears that there is a conflict of opinion. A closer look would show that there is no conflict. One of the grounds on which the Hon'ble Supreme court, in **SERAJUDIN's** Case had held against the dealer was the lack of privity of contract. In the cases cited in these cases the dealer was the common factor in both the export or import sale and the subsequent sale, and as such the issue privity of contract did not come up.

31. The aforesaid judgments were rendered in the context of Article 286 read with Section 5 of the CST Act. However, this Court is called upon to decide this case on the basis of the provisions, in the IGST Act. Though the GST regime seeks to tax supply of goods or services, Section 5 of the GST

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[8] **(1966) 17 STC 473**
[9] **(1979) 2 SCC 242**
[10] **(2010) 34 VST 509 (SC)**

Act defines Supply of Goods to include Sale of Goods. Any supply of goods , in the nature of sale of goods, claiming exemption on the ground of being export of goods, would have to meet the requirements of Article 286 (1) (a) or (1) (b). Apart from this, such supply/sale would have to meet the requirements formulated by Parliament, under the enabling provision of Article 286(2). Such formulation is contained in Section 2 (5) and section 16 of the IGST Act. “Zero rated supply” is defined, in Section 16 of the Integrated Goods and Services Tax Act, 2017 in the following manner:

> **Section 16. Zero rated supply.-**
>
> (1) "zero rated supply" means any of the following supplies of goods or services or both, namely: -
>
> (a) export of goods or services or both; or
>
> (b) supply of goods or services or both [1][for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.
>
> (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
>
> [2][(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

32. The term ‘Export of Goods’ is defined, in Section 2(5) of the IGST Act, as follows:

> 2(5)"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

33. Section 2(6) also requires to be noticed as certain submissions had been made on this provision also.

> "export of services" means the supply of any service when,-
>
> (i) the supplier of service is located in India;
>
> (ii) the recipient of service is located outside India;
>
> (iii) the place of supply of service is outside India;
>
> (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [1][or in Indian rupees wherever permitted by the Reserve Bank of India]; and
>
> (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation* 1 in section 8;

34. While Section 2 (5) defines export of goods, Section 2 (6) defines export of services. Under Section 2 (6) a supply of services would be treated as an export of services only when all the conditions, set out in Section 2 (6), are complied. One of the conditions, as can be seen above, is that the supply of service must be outside India. None of the conditions set out in Section 2 (6), including the requirement that the supply should be outside India, need to be complied for treating a supply of goods as export supply of goods. The absence of such conditions, in Section 2 (5), can only mean that the legislature, in it's wisdom, had stipulated that mere movement of goods, out of

India, would be sufficient to treat such supplies as “export of goods”. The absence of any requirement that the supply of goods should occur outside India is a sufficient guideline to hold that any supply of goods, within India, which result in the goods being taken out of India, is an export of goods, which would be a zero rated supply. The test is not whether the supply of goods occurred in India or outside India. The test is whether the supply was for taking the goods out of India and the goods were taken out of India.

35. The supply of electricity, in the present case, would be a sale and Article 286 would be applicable. This would mean that any sale of electricity, in the course of export would be an export supply. However, one difference between the CST regime and the IGST regime is that, the principles formulated, in section 5 of the CST Act would not be applicable and only such principles, as can be discerned from a reading of Article 286 and Section 2 (5) and 16 of the IGST Act would have to be applied. Section 2 (5) of the IGST Act, read with Article 286 (1) (b) would mean that all supply of goods, in the course of taking goods out of India, would be export of goods. The further requirement, of Section 5 (2) of the CST Act, that only such sales which occasion the movement of goods, would amount to export sales, would not apply. All the judgments, cited above, except **State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, (1953) 1 SCC 826 : (1953) 4 STC 205 : 1953 SCC OnLine SC 89 at page 844**were based on an interpretation of Section 5 of the CST Act. It is only in **State of Travancore-Cochin v.**

Shanmugha Vilas Cashewnut Factory, (1953) 1 SCC 826 : (1953) 4 STC 205 : 1953 SCC OnLine SC 89 at page 844that the Hon'ble Supreme Court interpreted Article 286, without taking into account Section 5 of the CST Act.

36. In the present case, PTC had entered into a contract with the Bangladesh Board to supply electricity. That agreement specifically mentioned that the electricity would be sourced from the petitioner. A separate agreement was executed between PTC and the petitioner. Under the agreement between PTC and the petitioner, the electricity would be loaded into the Grid at the interconnection point, in Andhra Pradesh, to be wheeled to the Delivery point, which is the Bohronpur sub-station, in West Bengal. It is at this point that the electricity would stand transferred from the petitioner to PTC and from PTC to the Bangladesh Board. The term "delivery point" has been defined in both the agreements as follows:

> "Delivery Point" – means the location at the 400 kv side at Bohronpur Sub-station, Murshidabad, India at which the electrical energy output is measured and transferred from Company to BPDB".

37. The meeting between the representatives of the petitioner, PTC and the Bangladesh Board, on 16th and 17th November 2021, also goes to show that the agreement between the petitioner and PTC is only for the purpose of supplying electricity to the Bangladesh Board. The further fact that

PTC had chosen not to seek refund of input tax credit, is also pressed into service.

38. In both agreements, Bohronpur sub-station, in India, is specified as the delivery point, which would be the place of supply. This would mean that the supply of electricity happened in India itself. However, as held above, the supply of electricity, by PTC to the Bangladesh Board, is an export supply of goods, as the supply moves the electricity out of India. However, the supply of electricity, by the petitioner to PTC, is a separate supply. The contention that this supply is so integral to the export supply that it should be treated as a part of the export supply, cannot be accepted for various reasons. A supply in contemplation of a separate export supply has been held, in **State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, (1953) 1 SCC 826 : (1953) 4 STC 205 : 1953 SCC OnLine SC 89 at page 844** to be a separate supply which does not get the benefit of the exception given in Article 286 of the Constitution. The relevant extract, at the cost of repetition, is set out below:

> **10.** The phrase "integrated activities" was used in the previous decision to denote that "such a sale" (i.e. a sale which occasions the export) "cannot be dissociated from the export without which it cannot be effectuated, *and the sale and the resultant export form parts of a single* transaction". It is in that sense that the two activities — the sale and the export — were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act

> done “in the course of the export of the goods out of the territory of India”, any more than the other two activities can be so regarded. As pointed out by a recent writer “From the legal point of view it is essential to distinguish the contract of sale which has as its object the exportation of goods from this country from other contracts of sale relating to the same goods, but not being the direct and immediate cause for the shipment of the goods.… When a merchant shipper in the United Kingdom buys for the purpose of export goods from a manufacturer in the same country the contract of sale is a home transaction; but when he resells these goods to a buyer abroad that contract of sale has to be classified as an export transaction [Schmitthoff, *Export Trade* (2nd Edn.) 3.].” This passage shows that, in view of the distinct character and quality of the two transactions, it is not correct to speak of a purchase for export, as an activity so integrated with the exportation that the former could be regarded as done “in the course of” the latter. The same reasoning applies to the first sale after import which is a distinct local transaction effected after the importation of the goods into the country has been completed, and having no integral relation with it. Any attempt therefore to invoke the authority of the previous decision in support of the suggested extension of the protection of clause (1)(*b*) to the last purchase for the purpose of export and the first sale after import on the ground of integrated activities must fail.

39. Even if the judgments in **K.G. Khosla and Co.(P) Ltd. Vs. Deputy Commissioner of Commercial Taxes Madras Division, Madras**[11]**., Union of India & another vs. K.G. Khosla & Co. (P). Ltd.,**[12]and **M/s. Indure Limited vs. Commercial Tax Officer**[13]**,** are pressed into service, the dealer there, was common in both transactions and the question of privity of contract

[11] **(1966) 17 STC 473**
[12] **(1979) 2 SCC 242**
[13] **(2010) 34 VST 509 (SC)**

did not come up. The minutes of the meetings held between the representatives of the petitioner, PTC and the Bangladesh Board do not make out privity of contract as these meetings were held to ensure smooth supply of electricity and there was no variation in the contracts to create a direct relationship between the petitioner and the Bangladesh Board. The supply, of electricity, between the petitioner and PTC can only be called a supply for export of goods and not, per se, an export of goods. The petitioner, though mentioned in the agreement, is not a party to the contract of supply of electricity, by PTC to the Bangladesh Board. The inevitable conclusion is that the supply of electricity, by the petitioner, to PTC is not a exports supply of goods and is a supply within India.

40. In such circumstances, these writ petitions are dismissed, leaving it open to the petitioner, to resubmit it's applications, within a period of four weeks from today, for refund of ITC, relating to the supply made by the petitioner to the Bangladesh Board directly, by treating the supply of electricity to PTC, as domestic supply of electricity, in the formula set out in Rule 89. Upon such resubmission, the respondent authorities shall consider the applications, without going into the question of limitation, and pass orders within a period of six weeks from the date of submission. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R RAGHUNANDAN RAO,J

SUBHENDU SAMANTA,J

RJS

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

W.P.Nos.21938, 31057, 31060, 31066, 31067,31068,31086, 31087, 31089, 31095, 31107, 31111,31114, 31116, 31119 of 2024

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(per Hon'ble Sri Justice R Raghunandan Rao)

31.12.2025

RJS