

TAX FLASH NEWS

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Sales tax – Bond to bond sale does not qualify as high seas sale, hence liable to tax – Bombay High Court

Background

Recently, the Bombay High Court¹ while determining what constitutes the term 'crossing the customs frontiers of India' held that presenting of a bill of entry for home consumption or for warehousing denotes that goods which are imported have been cleared and accordingly have crossed the customs frontiers.

Facts of the case

The premises of Radhasons International (appellant) was visited by the enforcement department to examine the validity of turnover of sales claimed as 'high sea sales' exempt from tax under the second limb of the Central Sales Tax Act, 1956 (CST Act). On the basis of the findings of the enforcement department, the case was adjudicated and the exemption claim of the appellant was disallowed. The demand was also confirmed by the first appellate authority.

Thereafter, relying on the Madras High Court judgement in case of State Trading Corporation (12 STC 294) where the term 'crossing the customs frontiers of India' was interpreted to mean 'the clearance of goods for home consumption on payment of duty' the Maharashtra State Tribunal held that sales made by the appellant by transfer of document of title while the goods were in a bonded warehouse would qualify as exempt sale, as these have been made before the goods have crossed the customs frontier.

Aggrieved by the order of the tribunal, revenue had requested the tribunal to refer certain questions of law before the Bombay High Court for its opinion and interpretation. The gist of the question referred were as under –

- Interpretation of the definition of the term 'crossing of customs frontiers of India'; and
- Whether the tribunal was justified in holding that bonded sales are exempt from tax as sales in the course of import under the second limb of section 5(2) of the CST Act.

High Court order

Section 5 of the CST Act deals with sale or purchase of goods in the course of import or export. Sub-section (2) therein provides that sale or purchase of goods shall be deemed to take place in the course of 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. The sub-section expressly contains the words 'crossing the customs frontiers of India'.

The Customs Act, 1962, has defined the term customs station to mean any customs port, customs airport or land custom station. Accordingly, if the goods are stated to be crossing the customs frontiers then it would mean crossing the limits of the area of customs station in which the imported goods or export goods are ordinarily kept before clearance by the custom authorities.

¹ Radhasons International [2019-VIL-62-BOM]

Once the goods arrive in India they are governed by the provisions of the Customs Act. The Customs Act require imported goods to be unloaded in a customs area to remain in the custody of the customs authorities until they are cleared for home consumption or are to be warehoused. Once the bill of entry for home consumption or warehousing are presented, it denotes that the goods are been cleared.

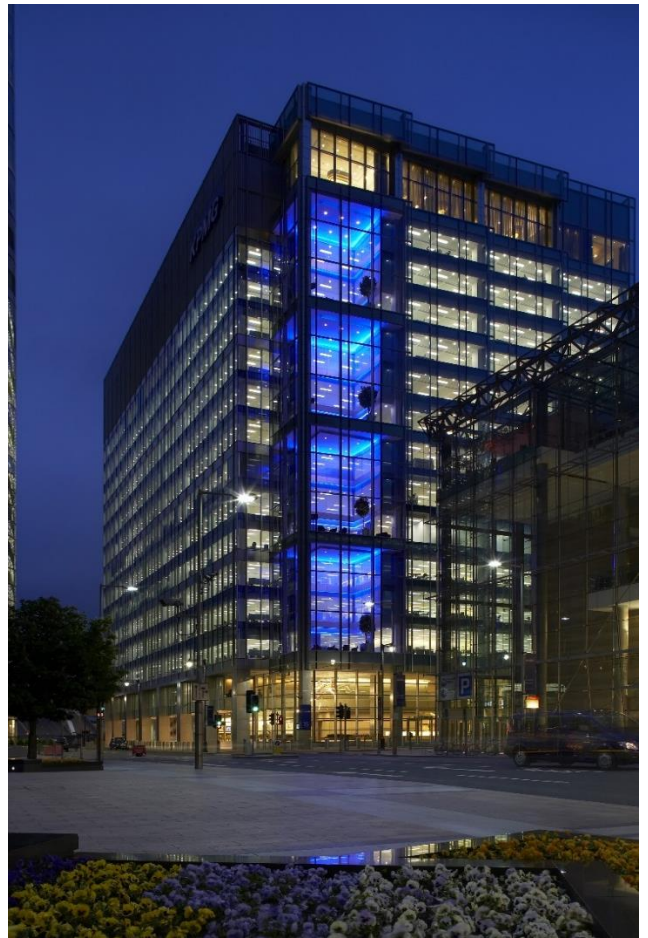
Thus for the purpose of determining what constitutes 'crossing of customs frontiers of India', the court held that once bill of entry has been filed either for home consumption or for warehouse, the goods would said to have crossed the customs frontiers.

Accordingly in the instant case, since the appellant had executed the agreement for sale before the goods were cleared for home consumption but after BOE for warehousing the goods was filed, the said sale is treated as local sale and hence subject to levy of sales tax.

Our comments

The said ruling contradicts the ruling of the Madras High Court in case of State Trading Corporation where it was held that 'crossing of customs frontiers of India' would mean clearance of goods for home consumption either under section 47 or clearance of warehouse goods under section 68 of the Customs Act. This may impact past pending assessments under the erstwhile law where exemption under section 5(2) of CST Act has been availed by taxpayers on in-bond sale.

The above ruling however will not impact in-bond supplies under the GST regime after the amendment to Schedule III of the CGST Act.



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