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 The Lokmanya
 Mills
 v.
 The Barsi
 Borough
 Municipality
 Shah J.

These appeals must be allowed and the decrees passed by the High Court set aside and the decrees passed by the District Court of Sholapur restored with costs in this court and the High Court. One hearing fee.

Appeals allowed.

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 March 14.

ENDUPURI NARASIMHAM AND SON

v.

THE STATE OF ORISSA AND OTHERS

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,
 J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Sales Tax—Transactions intra-State and inter-State—Test—Constitution of India, Art. 286(2)—Orissa Sales Tax Act, 1947 (XIV of 1947), s. 5(2)(a)(II).

The petitioner who was a registered dealer under the Orissa Sales Tax Act, 1947, was carrying on the business of purchasing and reselling castor seeds, etc., in the State of Orissa. Under a declaration given by him for the purpose of obtaining his registration certificate the goods purchased by him in Orissa were to be resold in that State. He purchased certain commodities inside the State but in contravention of his declaration sold the goods to dealers outside the State. The Sales Tax Officer included in the taxable turnover of the petitioner the purchase made by him inside the State in accordance with s. 5(2)(a)(II) of the Act. The contention of the petitioner was that the purchase was in course of inter-State trade and was exempted under Art. 286(2) of the Constitution of India.

Held, that the transaction of sale which has been taxed was wholly inside the State of Orissa and was distinct and separate from the sale made by the purchaser to dealers outside the State. The former transaction was taxable under s. 5(2)(a)(II) of the Act while the latter was exempted under Art. 286(2) of the Constitution.

Messrs. Mohanlal Hargovind Das v. The State of Madhya Pradesh, [1955] 2 S.C.R. 509, distinguished.

In order that a sale or purchase might be inter-State, it is essential that there must be transport of goods from one State

to another under the contract of sale or purchase. A purchase made inside a State, for sale outside the State cannot itself be held to be in the course of inter-State trade and the imposition of tax thereon is not repugnant to Art. 286(2) of the Constitution.

Bengal Immunity Company Limited v. The State of Bihar, [1955] 2 S.C.R. 603 and *State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory*, [1954] S.C.R. 53, followed.

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*Endupuri
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ORIGINAL JURISDICTION: Petition No. 12 of 1959.

Petition under Art. 32 of the Constitution of India for enforcement of fundamental rights.

R. Gopalakrishnan, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the petitioners.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and T. M. Sen, for the respondents.

1961. March 14. The Judgment of the Court was delivered by

VENKATARAMA AIYAR, J.—The petitioner is a joint Hindu family firm carrying on business at Berhampur in the State of Orissa, and registered as a dealer under the provisions of the Orissa Sales Tax Act, 1947, hereinafter referred to as the Act. Its business consists in the purchase of castor seeds, turmeric, gingili and other commodities locally, and selling them to dealers outside the State. The Sales Tax Officer, Berhampur, included in the taxable turnover of the petitioner the purchase of goods made by it inside the State but sold, as aforesaid, to dealers outside the State and imposed a tax of Rs. 27,161-13-0 on account of such sales during the sixteen quarters commencing from April 1, 1952, and ending with March 31, 1956. In the present application filed under Art. 32, the petitioner challenges the validity of the tax on the ground that the purchases in question were made in the course of inter-State trade, and that a tax thereon was in contravention of Art. 286(2)

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The impugned tax has been levied under s. 5 of the Act, which, omitting what is not relevant, runs as follows:—

5. (1) The tax payable by a dealer under this

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Act shall be levied at the rate of one quarter of an anna in the rupee on his taxable turnover:

(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom:

(a) his turnover during that period on—

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa or for use by him in the execution of any contract in Orissa, and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration the price of goods so utilised shall be included in his taxable turnover.

It will be seen that under this section when a sale takes place, the seller has to include it in his taxable turnover; but when the sale is to a registered dealer who declares that his purchases are for resale in Orissa, then it is excluded from the seller's turnover. If the registered dealer-purchaser sells the goods outside the State in breach of the condition, the purchases by him are liable to be included in his turnover, and assessed to sales tax. That precisely is what has happened in this case. The sales to the petitioner were not included in the taxable turnover of the sellers by reason of the registration certificate which the petitioner had obtained on a declaration that the goods were to be resold in Orissa. But in violation of this declaration he sold the goods to dealers outside the State, and so he became liable to be taxed under s. 5(2)(a)(ii) of the Act.

The contention of the petitioner is that these purchases were made in the course of inter-State trade, and that the imposition of sales tax thereon is, in

consequence, *ultra vires*. The provision applicable is Art. 286(2), as it stood prior to the sixth amendment, and it ran as follows:

“Except in so far 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.”

The argument on behalf of the petitioner is that as the goods were purchased for the purpose of being sold to dealers outside the State, and they were in fact so sold, the purchases were in the course of inter-State trade, and the levy of tax thereon was within the prohibition enacted by Art. 286(2). We do not agree with this contention. The transactions of sales which have been taxed were wholly inside the State of Orissa. They were sales by persons in the State of Orissa to persons within the State of Orissa, of goods which were in Orissa. The fact that the purchaser sold those very goods to dealers outside the State is not relevant, as those sales are distinct and separate from the sales on which the taxes in question have been imposed. The present levy is not on the sales by the petitioner to persons outside the State, but on the purchases by him inside the State. The former sales are in the course of inter-State trade, and are not taxable under Art. 286(2), but the latter are purely intra-State sales, and a tax imposed thereon does not offend Art. 286(2).

In support of his contention that the purchases are hit by Art. 286(2), the petitioner relies on the decision of this Court in *Messrs. Mohanlal Hargovind Das v. The State of Madhya Pradesh* (1). In that case, the petitioners who were registered dealers under the Central Provinces and Berar Sales Tax Act, 1947, were carrying on business in the manufacture and sale of bidis in Madhya Pradesh. For the purpose of their business, they imported processed tobacco from the State of Bombay in large quantities, rolled them into bidis and sold them to dealers in other States.

(1) [1955] 2 S.C.R. 509.

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The sales tax authorities imposed a tax on the purchases made by them, on the ground that they had, in breach of the declaration in the registration certificate, sold them to merchants outside Madhya Pradesh. The contention of the petitioners was that the purchases by them were in the course of inter-State trade, and that the imposition of tax thereon was therefore repugnant to Art. 286(2). It was this contention that was accepted by this Court. It will be noticed that in this case the assessment of sales tax was on the very purchases from dealers in Bombay, under which the goods were transported from the State of Bombay to Madhya Pradesh. In the present case, the purchases which are sought to be assessed involved no movement of the goods outside the State of Orissa. In order that a sale or purchase might be inter-State, it is essential that there must be transport of goods from one State to another under the contract of sale or purchase. In the *Bengal Immunity Company Limited v. The State of Bihar* ⁽¹⁾ occur the following observations which are apposite:

“A sale could be said to be in the course of inter-State trade only if two conditions concur: (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade.”

With reference to the analogous provision under Art. 286(1)(b) prohibiting the imposition of tax on the sale or purchase of goods in the course of import or export, it has been held by this Court that it is only a sale or purchase which occasions the export or import of the goods out of or into the territory of India or a sale in the State by the exporter or importer by transfer of shipping documents, while the goods are beyond the customs barrier, that is within the exemption, and that a sale which precedes such export or import or follows it is not exempted, vide *State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory* ⁽²⁾. On the same principles, a purchase made inside a State, for sale outside the State cannot itself be held

(1) [1955] 2 S.C.R. 603, 784-785.

(2) [1954] S.C.R. 53.

to be in the course of inter-State trade, and the imposition of a tax thereon is not repugnant to Art. 286(2) of the Constitution. In the result this petition is dismissed with costs.

Petition dismissed.

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B. K. KAR

v.

THE CHIEF JUSTICE AND HIS COMPANION
 JUDGES OF THE
 HIGH COURT OF ORISSA AND ANOTHER

(K. SUBBA RAO, RAGHUBAR DAYAL and
 J. R. MUDHOLKAR, JJ.)

1961
 March 14.

Contempt of Court—Order of Superior Court—Not duly communicated to subordinate court—Subordinate court acting contrary to order—If guilty of contempt—Practice—Conviction for contempt by High Court—Whether Chief Justice and Judges of High Court should be made parties in appeal.

Under an order passed by the appellant, a Magistrate, one G was put in possession of some property on October 14, 1955. In revision the order was set aside by the High Court on August 27, 1957, and the opposite party S applied, on November 20, 1957, to the appellant for redelivery of possession. G applied to the High Court for a review of its previous order and on November 25, 1957, the application was admitted and an interim stay was granted of the proceedings before the appellant. On November 26, 1957, an application bearing an illegible signature and not supported by an affidavit was filed before the appellant indicating that the High Court had stayed the proceedings. A telegram addressed to a pleader, not the counsel for G, was filed along with the application. The appellant refused to act on this application and telegram and on November 27, 1957, he passed an order allowing the application of S for restitution. On November 28, 1957, a copy of the order of the High Court was received and thereupon the writ for redelivery of possession was not issued. The High Court convicted the appellant for contempt of court for passing the order for restitution on November 27, when the High Court had stayed the proceedings. The appellant appealed to the Supreme Court and impleaded the Chief Justice and Judges of the High Court as respondents.