

Commissioner of Income Tax Delhi

Vs

Messrs. P. M. Rathod & Co.

Civil Appeal No. 373 of 1957

(M. Hidayatullah, J. L. Kapur, B. P. Sinha JJ)

20.05.1959

JUDGMENT

KAPUR J. –

This appeal on a certificate by the High Court is brought against the judgment of the High Court of Madhya Bharat in a Reference by the Income-tax Appellate Tribunal under s. 66(1) of the Income-tax Act. The appellant is the Commissioner of Income-tax and the respondents are a firm of manufacturers of perfumery and hair oils at Ratlam in Madhya Bharat and their goods are sold throughout India. At the relevant time Madhya Bharat was a Part B State and the sole question for determination is where were the income, profits and gains, received or were deemed to be received and on that would depend the rate at which the respondents would be liable to be assessed because of the concessional rates applicable to Part B States.

The facts lie in a short compass. The respondents, a registered firm, were assessed for the assessment year 1950-51, at the rate or rates applicable to income, profits and gains arising or accruing in Part A States. The course of their business was this : they sent out agents to various parts of India. They canvassed orders and sometimes took advance payments in full or in part and after deducting their expenses, remitted the balance to the respondents at Ratlam through Bank drafts etc. The goods ordered were sent to the customers either by V.P.P. or by rail. In the latter case the Railway Receipts in favour of self were sent through a Bank deliverable against payment of the Demand Draft drawn upon the buyers and sent with the Railway Receipts. This price when received by the Bank was sent by the Bank by means of Bank Draft to the respondents at Ratlam who sent them for being cashed and credited to their account at Bombay.

The Income-tax Officer held that the major quantity of goods was supplied to the customers in what was Part A & C States either by V.P.P. or by rail, the Railway Receipts being in favour of the respondents and payment was received as stated above.

The assessee's banker was the Bank of India Ltd., Bombay, and the sale proceeds were, according to the Income-tax Officer, mainly realised through this Bank. He held that the sales were effected in Part A & C States and the payments were also received there. He therefore made the assessment on an estimated profit of Rs. 1,60,340 on sales of Rs. 5,09,424 without allowing any rebate on account of concessional rates applicable to Part B States. On appeal the Appellate Asstt. Commissioner reduced the estimated profit by Rs. 20,000. The Income-tax Appellate Tribunal on further appeal reduced the total income from Part A & C States to Rs. 2,85,376. It found that the income received through the Post Office, i.e., by V.P.P. was Rs. 1,23,710 and that received in respect of goods sent by rail and realized by the Bank drafts was Rs. 2,85,376 making a total of Rs. 4,21,955. It also held

that the advances received with orders were income, profits and gains received at Ratlam and not in Part A & C States and similarly the price of goods sent by V.P.P. was also money received at Ratlam. In regard to the price received by Bank drafts it held that they were received at Ratlam but were sent to the assessee's banker in Bombay for being cashed and therefore they must be taken to have been received in a Part A State. This amount was Rs. 2,85,376. The Tribunal after referring to the decision of the Bombay High Court in Kirloskar Bros. Ltd. v. The Commissioner of Income-tax [[1952] 21 I.T.R. 82] said :-

"The facts, however, in this case are entirely different. It appears from the printed advice sent by the assessee to its bankers in every case that the bankers are to hand over the goods against 'payment of the enclosed demand draft'. It is not a case where the assessee gives unconditional discharge on the receipt of either a cheque or a bank draft. We agree with the Appellate Assistant Commissioner that sale proceeds to the extent of Rs. 2,85,376 were received at Bombay."

Both the assessees and the Commissioner applied for a reference to the High Court under s. 66(1) of the Income-tax Act and following two questions were referred :-

Q. 1 "Whether the receipt of sale proceeds at Ratlam (which included the assessee's profits) in respect of goods sent by the assessee to customers in Part A or C States by V.P.P. amounted to receipts of income, profits or gains at Ratlam in Part B States ?"

Q. 2. "Whether the bank drafts payable in Part A or C States but received at Ratlam and encashed through the assessee's bankers at Bombay constituted receipts in Part A State ?"

The High Court answered both these questions in favour of the assessees but gave a certificate and the appeal is therefore brought by the Commissioner of Income-tax.

Apart from the sales which were deemed to have taken place in Ratlam itself the goods were, as stated above, supplied to the customers in one of the following two ways. The goods were either sent from Ratlam through the post office by V.P.P. or they were sent from there by rail and the Railway Receipts in favour of self were sent through a Bank with the direction that the goods were to be handed over against 'payment of the enclosed demand draft'.

We shall first deal with that part in which the goods were sent by post under the V.P.P. system. The purpose of this system is given in Rule 133 of the Post Offices guide as under :-

"The V.P.P. system is designed to meet the requirements of persons who wish to pay for articles sent to them at the time of the receipt of the articles or of the bill or railway receipt relating to them and also to meet the requirements of the traders and others who wish to recover through the agency of the post office, the value of articles supplied by them."

In the case of delivery of goods by V.P.P. it is immaterial whether the buyer directs the goods to be sent by V.P.P. or the seller does so on his own accord because the goods handed over to the Post Office by the seller can only be delivered to the buyer against payment and this payment is received for and on behalf of the seller. The buyer does not pay till the goods are received by him and once he has paid the price it is the Post Office that is responsible for payment of the money received by it to the seller. The buyer has no longer any responsibility in regard to it. Therefore a payment to the

Post Office is payment to the seller and at the place where the goods are delivered and payment is made. Further before the goods are delivered to the buyer the seller has under the V.P.P. Rules the power to direct the Post Office to make the delivery to the addressee free or to deliver against a sum different from that originally specified. This would negative the Post Office being an agent of the buyer. This shows that whatever be the jural relationship between the seller and the post office in respect of carriage of goods sent by the seller under the V.P.P. system it becomes an agent of the seller for the recovery of the price and if it fails to recover the price and delivers the goods it is liable in damages to the seller : *Mothi Rungaya Chetty v. The Secretary of State for India* [(1904) I.L.R. 28 Mad. 213].

Under the V.P.P. system the seller retains control over the goods right up to the time the goods are delivered to the buyer against payment of price and therefore the contract would fall under s. 25 of the Indian Sale of Goods Act which provides :-

Section 25(1). "Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract to appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled."

The principle then is this that if the seller when sending the articles which he intends to deliver under the contract does so, with the direction that the articles are not to be delivered to the purchaser till the payment of price, the appropriation is not absolute but conditional and until the price is paid the property in the goods does not pass to the purchaser. *Mirabita v. Imperial Ottoman Bank* [(1878) 3 Ex. D. 164] at pp. 172-173 (Cotton, L.J.). See also *The Parchim* [[1918] A.C. 157] at pp. 170-171 (Per Lord Parker). And the goods pass at the place where the price is paid, i.e., which in the present case was in an A or C State. Thus the price was received by the seller in A or C State.

But it was submitted on behalf of the respondents that to the present case the judgment of this Court in *Commissioner of Income-tax v. Ogale Glass Works Ltd.* [[1955] 1 S.C.R. 185] applies. There the assessee was a company which was carrying on business in an Indian State (outside British India) and its liability to Indian Income-tax depended upon its receipt of money with British India. The assessee had to be paid for goods supplied to the Government of India and at his request the Government of India agreed to make payments by cheques which were drawn in Delhi on a Bombay Bank and were posted in Delhi and received by the assessee in the Indian State. It was held that the Post Office was the agent of the assessee. The principle of that case has no application to the facts of the present case. That case did not deal with sale of goods or receipt of price against delivery of goods or the place where the price of goods is received by the seller. Reference was also made by the respondents' counsel to a judgment of the House of Lords in *The Badische Anilin Und Soda Fabrik v. The Basle Chemical Works* [[1898] A.C. 200]. In that case a trader in England ordered goods from a manufacturer in Switzerland to be sent by post to England. The manufacturer addressed the goods to a forwarding agent who in turn addressed them to the trader in England and delivered them to the Swiss Post Office by whom they were forwarded to England. The goods were such that they invaded an invention protected by an English patent. It was held that the contract of sale was completed by delivery to the post office in Switzerland and as the post office was the agent of the buyer and not of the vendor the vendor could not be said to have contravened the invention within the ambit of the patent and that the patentee had no right of action against the vendor for an infringement of the patent. In that case also there was no question of the Swiss manufacturer

keeping control over the goods till the price was paid nor of any conditional delivery to the post office as in the present case and besides that was not a case dealing with the passing of the ownership in goods or the appropriation of goods to the contract of sale by delivery to a carrier.

The argument raised by counsel for respondents was that the respondents delivered the goods to the Post Office at the instance of the buyer and that the Post Office acted merely as a bailee for the purpose of transmission to the buyer. But even as such bailee it cannot act against the instructions of the bailor and deliver the goods to the buyer without receiving their price and when he does recover he recovers it on behalf of the bailor. Even a bailment for transmission would fall under s. 25 of the Sale of Goods Act and there is only a conditional appropriation and until the condition imposed is fulfilled the goods do not pass. Under s. 148 of the Indian Contract Act a 'bailment' is delivery of goods by one person to another upon a contract that they shall, than the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. A bailee's duty therefore is to deal with the goods according to the directions of the bailor and if the direction in the present case was that the goods were to be delivered to the buyer on payment then the bailee would receive the price on behalf of the seller at the place where the goods were delivered to the buyer.

Thus the principle governing a despatch of articles by V.P.P. is that the appropriation is conditional and goods only pass when the condition is fulfilled, i.e., the price is paid against delivery. The Post Office is an agent for the seller and receives the price from the buyer at the place of delivery for transmission to the seller. The income in the present case was therefore received in Part A or Part C States and not in Ratlam. In our opinion, the answer to the first question should have been in favour of the Commissioner. It should have been held that the income in respect of goods sent by V.P.P. was received in Part A and C States and not in a Part B State.

The next question is unfortunately not properly framed and therefore it is necessary to reframe it as was done in *Narain Swadeshi Weaving Mills v. The Commissioner of Excess Profits Tax*. [[1955] 1 S.C.R. 952]. The proper question that arises on the facts is : "Whether on the facts and circumstances of this case the payment received from a buyer by a banker in Part A or C States against delivery of Railway Receipt for goods sent by the seller is payment in these States or in Ratlam which was a Part B State". We have already set out the course of business in regard to the second mode of supply of goods, i.e., goods were sent by rail and the Railway Receipts in favour of self were sent through Bank with the direction that they were to be delivered against payment of demand drafts drawn and sent along with the Railway Receipts. Now in this case as in the case of goods sent by V.P.P. the Railway Receipts in favour of self could not be delivered to the buyer till the money was paid and although the goods had been handed over to common carrier the appropriation to the contract was only conditional and the performance was completed only when the monies were paid and the Railway Receipts delivered. These contracts also must be taken to have been performed in Part A or C States and the price paid to the Bank as agent of the seller at the place of payment and delivery of Railway Receipts. The income, profits and gains were therefore received in these States and not at Ratlam. This question should also have been answered in favour of the Commissioner and the income, profits and gains arising out of these transactions must be held to have been received by respondents in Part A or C States.

In both the cases the respondents would not be entitled to a concessional rate of taxation applicable to Part B States.

The appeal is therefore allowed. The respondents will pay the costs of the appellant of this Court

and of the High Court.

Appeal allowed.

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