

Commissioner of Income-Tax, Bombay City

Vs

S. K. F. Ball Bearing Co. Ltd.

Civil Appeal No. 9 of 1958

(S.K. Das, M. Hidayatullah, J.C. Shah JJ)

10.08.1960

JUDGMENT

SHAH, J. -

Aktiebolaget Svenska Kullakerfabriken of Gothenburg is a company incorporated under the laws of Sweden, and is engaged in the manufacture of ball bearing equipment. S. K. F. Ball Bearing Co. Ltd. which will hereinafter be referred to as "the S. K. F.". Is a company registered under the Indian Companies Act, 1913. By an agreement dated January 1, 1939, the S. K. F. was appointed by the Swedish company as its sole selling agent in India. On account of the commencement of hostilities in the second world war, a corporation known as the Panrope Corporation was incorporated in the Republic of Panama in 1940, to take over as a war-time arrangement the assets and business of that Swedish company. With effect from July 1, 1947, the Panrope Corporation conveyed the property and business to the Swedish company. In the year 1947, 1948, 1949 and 1950 the S. K. F. sold in India as the agent of the Swedish and Panamanian companies which will hereinafter be collectively referred to as the "foreign corporations" t

Clauses 13, 22 and 23 of the agreement dated January 1, 1939, between the S. K. F and Swedish company which are material for the purpose of this appeal are as follows :

Clause 13 : The agent shall render before the tenth day of each month a true and detailed statement of the said products that have been sold by him or his sub-agents during the preceding month. This statement is to be prepared in accordance with the instructions that are to be given by S. K. F. and it shall contain the names and addresses of the parties to whom the said products have been supplied, together with a description of the products and the prices at which they have been sold.

Clause 22 : The agent shall sell the said products either for cash or on credit. Notwithstanding the fact that permission is hereby granted by S. K. F. to the agent to sell on credit, any credit given by the agent to the buyer of the said products shall be deemed to have been given by the agent for his own account and on his own responsibility. If the buyer has not paid the agent the amount that is owing by the date on which the agent is to render a statement and make payment to S. K. F. in accordance with the terms and conditions that are defined in this agreement.

Clause 23 : The agent shall pay to S. K. F. the net sales value of the said products that are sold each month, after deduction of the commission that has been agreed upon (cf. 20) and the import expenses that have been paid (cf. 21). Payment shall be made in Sweden thirty (30) days, at the

latest, following the last day of the month in which the sales have been effected.

The Income-tax Appellate Tribunal has found that for rendering accounts of the net sales and also for making payments according to the terms of clause 13 of the agreement, the S. K. F. maintained for the relevant periods a current account in the names of the foreign corporations in respect of goods "received on consignment". When goods were sold by the S. K. F. the accounts of the principal was credited with the price and the account of the buyers to whom the goods were sold on credit was debited. In a majority of cases of sales, remittances of "sale value" after deducting commission were made after sale of the goods to the buyers but before the sale proceeds were recovered. In a few cases, remittances were made even before the goods were sold, and in the remaining, remittances were made after the sale proceeds were realized from the buyers.

The Income-tax Officer assessed the foreign corporations under section 4(1)(a) of the Indian Income-tax Act for payment of tax on the profits included in the price realized by the S. K. F. by sale of goods "received on consignment" without making any distinction between sales in respect of which remittances were made before recovery of the sale proceeds. The order passed by the Income-tax Officer was confirmed by the Appellate Assistant Commissioner and also by the Income-tax Appellate Tribunal. AT the Instance of the S. K. F. the following questions were referred to the High Court of Judicature at Bombay under section 66(1) of the Indian Income-tax Act, 1922 :

- (1) Whether there was evidence on which the Tribunal could have held that the Panrope Corporation and the non-resident company had a business connection in the taxable territories in the years of account ?
- (2) Whether the profits of the Panrope Corporation and the non- resident company in respect of the consignment goods were received in the taxable territories on their behalf ?

At the hearing of the reference before the High Court, counsel for the assessee having concede that the S. K. F. was not a purchaser of the goods "received on consignment" from the foreign corporations but was their agent for sale of the goods, an answer in the affirmative was recorded on the first question. On the second question, the High Court opined that as the remittances by the S. K. F. pursuant to the terms of clause 23 of the agreement before the sale proceeds were realized from the buyers were received by the foreign corporations outside the taxable territories, the same could not be taken into account under section 4(1)(a) only if the taxing authority established that the foreign corporations had received the sale proceeds within the taxable territories; that the sale proceeds were received by the foreign corporations when the S. K. F. made remittances under clause 23 of the agreement, but somewhat inconsistently the High Court observed that the remittances made by the S. K. F. before the sale proc

We are unable to agree with the reasoning and the conclusion of the High Court. The terms of the agreement make it abundantly clear that the goods "received on consignment" from the foreign corporations were received by the S. K. F. as their selling agent and not as purchaser. The goods, it is true, were sold by the S. K. F. on its won name and not in the name of the foreign corporations, but the goods were still sold for and on behalf of the foreign corporations and the sale proceeds received by the S. K. F were received not on its own behalf but for and on behalf of its principles. Clauses 9, 12, 13, 14, 17, 18 and 20 of the agreement clearly show that the gods received by the S. K. F. continued to remain the property of the foreign corporations till they were sold to the buyers. In the price received for sale of the goods, the profits of the owner was in truth embedded and the

profit was liable to be taxed under section 4 (1) (a) of the Indian Income-tax Act if it was received in the taxable territories.

The price for the goods sold was received only when the buyer paid it and not before, and when the price was received by the S. K. F. the income was received. The remittances by the S. K. F. to the foreign corporations before the price was received did not include income, because income, in fact, was never received till the price was realized. Again, we are unable to agree with the contention of counsel for the S. K. F. that there was a contract of suretyship between the foreign corporations and the S. K. F. and the receipt by the former of the remittances amounted to receipt of the price of the goods. It is not pretended that there was a tripartite contract and the foreign corporations sold the goods directly to the purchaser in India, the S. K. F. having guaranteed payment of the price by the buyers to whom the goods had been sold.

The price received by the S. K. F. being received within the taxable territories for and on behalf of the foreign corporations in respect of goods sold, we are unable to hold that the realization of the price in which is embedded the profit is not liable to tax under section 41 (1) (a) as income received, merely because under an independent obligation, the S. K. F. has rendered itself liable to pay the amount equivalent to the price (less commission) even before the price has been realized and has discharged that obligation.

In the view taken by us, the second question will be answered in the affirmative in respect of sale of all goods where the price has been received by the S. K. F. in the taxable territories. and irrespective of whether the remittance has been made in respect of the goods sold before or after the price was received.

The appeal is accordingly allowed to the extent indicated. The appellant will be entitled to his costs in this court and also the costs of the reference in the High Court.

Appeal allowed in part.

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