

M/s. Carona Sahu Co. Ltd.

Vs

State Maharashtra

Civil Appeal No. 275 of 1964

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

02.12.1965

JUDGMENT

RAMASWAMI, J. -

This appeal is brought by Special Leave against the judgment of the High Court of Judicature at Bombay dated April 23, 1962 on a reference by the Bombay Sales Tax Tribunal under s. 34(1) of the Bombay Sales Tax Act, 1953.

The appellant is a manufacturer of footwear in Bombay. During the assessment year April 1, 1954 to March 31, 1955, the appellant purchased rubber from certain dealers residing in the State of Cochin. These purchases were assessed to purchase tax by the Sales Tax Officer under s. 10(a) of the Bombay Sales Tax Act (Bombay Act III of 1953 - hereinafter referred to as the Act) as they were made "from a person who is not a registered dealer". The Cochin sellers had their agents in Bombay who received orders on behalf of the appellant. The orders of the appellant were accepted by the agents in Bombay and the goods were shipped by the sellers from Cochin to Bombay. After the goods were shipped, the demand drafts were forwarded along with the Bills of Lading by the vendors to their bankers in Bombay. The bankers endorsed the bill of lading in Bombay and handed it over to purchasers in Bombay in exchanges for the price. The price was also paid in Bombay. In the Bills of Lading the sellers in Cochin were described as both consignors and consignees. After the goods were shipped, an invoice was drawn on the appellant in which were printed the following words :

"Shipped per S.S..... from Cochin to Bombay on account and risk of Messrs Carona Sahu Co. Ltd., 15-A, Elphinstone Circle, Fort, Bombay."

For the period April 1, 1954 to March 31, 1955, the appellant was assessed to purchase tax by the Sales Tax Officer, Licence Circle, Bombay by his assessment order dated March 31, 1956 under cl. (a) of s. 10 of the Act. The appellant preferred an appeal under s. 30 of the Act to the Assistant Collector of Sales Tax, Appeals II, Bombay Circle, Bombay but it was dismissed. A revision application to the Additional Collector of Sales Tax was dismissed. The appellant therefore moved the Sales Tax Appellate Tribunal at Bombay for revision of the order passed by Additional Collector of Sales Tax. By its judgment dated September 4, 1959 the Bombay Sales Tax Tribunal dismissed the revision application and confirmed the order made by the Sales Tax authorities. At the instance of the appellant, the Sales Tax Tribunal referred the following questions of law for decision of the Bombay High Court under s. 34(1) of the Act :

1. Whether on the facts and circumstances of the case, the property in the rubber consignments passed to the application in Cochin i.e. outside the State of Bombay ?
2. Whether the purchase tax under s. 10(a) is leviable in respect of the purchases in dispute ?

By its judgment dated April 23, 1962 the Bombay High Court answered both the questions of law in favour of the State and against the appellant.

The first question that arises for determination in this case is, whether, on the facts and circumstances of the case, the property in the rubber consignments passed to the appellant in Cochin i.e. outside the territorial limits of the State of Bombay. In this connection the facts found by the Sales Tax Tribunal are that the Cochin sellers had their agents in Bombay who received the orders of the appellant and arranged for the shipping of the goods. In accordance with these orders the goods were shipped by the Cochin sellers from Cochin to Bombay. The Bills of Lading were in the name of the sellers as consignors and consignees. The invoices however showed that the goods were shipped at the "risk and on account of M/s. Carona Sahu and Company (P) Ltd." The insurance charges were borne by the appellant who also paid freight and other charges. The bills of lading were sent by the sellers through the bank to be delivered to the buyers in Bombay on payment of the price of the goods. In view of these facts, the High Court held that the property was intended by the parties to pass in Bombay and the endorsement in the invoice that the goods were being shipped "on account of and at the risk of the buyers" did not mean anything more than that the insurance charges were to be paid by the buyers. On behalf of the appellant, Mr. Donde submitted that the property in the rubber consignments had passed to the appellant in Cochin. In our opinion, there is no warrant for this submission and the view taken by the High Court is correct.

The law is well established that in the case of a contract for sale of unascertained goods the property does not pass to the purchaser unless there is unconditional appropriation, of the goods in a deliverable state to the contract. In the case of such a contract, delivery of the goods by the vendor to the common carrier is an appropriation sufficient to pass the property. But there is a difference in the legal effect of delivering goods to a common carrier on the one hand and shipment on board a ship under a bill of lading on the other hand. Where goods are delivered on board a vessel to be carried, and a bill of lading is taken, the delivery by the seller is not delivery to the buyer, but to the captain as bailee for delivery to the person indicated by the bill of lading. The seller may therefore take the bill of lading to his own order. The effect of this transaction is to control the possession of the captain and make the captain accountable to deliver the goods to the seller as the holder of the bill of lading. The bill of lading is the symbol of property, and by so taking the bill of lading the seller keeps to himself the right of dealing with property shipped and also the right of demanding possession from the captain, and this is consistent even with a special term that the goods are shipped on account of and at the risk of the buyer. In *Gabarron v. Kreeft* ((1875) L.R. 10 Ex. 274.) Lord Parker laid down the principle as follows :

"The English cases, however, on which the Sale of Goods Act was founded seem to show that the appropriation would not be such as to pass the property if it appears or can be inferred that there was no actual intention to pass it. If the seller takes the bill of lading to his own order and parts with it to a third person, not the buyer, and that third person, by possession of the bill of lading, get the goods, the buyer is held not to have the property so as to enable him to recover from the third party, notwithstanding that the act of the seller was a clear breach of the contract."

Ss. 23 and 25 of the Indian Sale of Goods Act are identical in language to the corresponding provisions of the English Sale of Goods Act. S. 25 states as follows :

"(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 or 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.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

....."

On behalf of the appellant it was contended that the goods were shipped "on account and at the risk of Messrs. Carona Sahu and Company (P) Ltd." and therefore the property in the goods must be held to have passed to the appellant on shipment in Cochin. We do not think there is any substance in this argument. The endorsement in the invoice merely indicated that the insurance charges were to be paid by the appellant and the clause has no bearing on the question of the passing of title. In *Shepherd v. Harrison* (1871 L.R. (V) H.L. 116.) the plaintiff in England sent an order to P and Co. at Pernambuco to buy cotton for the plaintiff. P and Co. bought cotton on account of the plaintiff and made out an invoice "on account and risk of M/s. John Shepherd & Co." but the bills of lading were taken deliverable to P and Co.'s order or assigns paying freight. The invoice was sent directly to the plaintiff but the bills of lading were endorsed in blank by P and Co. and sent with the bill of exchange to their own agents in England. The English agents forwarded the bills of lading with the bills of exchange to the plaintiff requesting him to accept the bill of exchange. The plaintiff retained the bill of lading but returned the bill of exchange unaccepted on the ground that P and Co. had not complied with the plaintiff's order. The plaintiff then presented the documents to the defendants who refused to deliver the cotton in view of the instructions from the agents of the consignor. On these facts, it was held by the House of Lords that the property in the goods did not pass to the plaintiffs although they had retained the bill of lading because no property was intended to pass until the plaintiff had accepted the bills of exchange. It was strongly argued for the plaintiff that the goods were shipped on account and at the risk of the consignees, but the House of Lords unanimously dismissed the appeal holding that the property in the goods did not pass to the purchaser either in Pernambuco or in Liverpool. Dealing with the argument that the transfer of risk was an indication of the transfer of property, Lord Cairns held as follows :

"In the invoice, the goods are described as being shipped on account and at the risk of the plaintiff. But along with the invoice, a bill of lading was taken from the Captain, making the cotton deliverable, not to the plaintiff, but to the shipper on board. It is perfectly well settled that, in that state of things, the entry upon the invoice, stating that the goods are to be shipped on account and at the risk of the consignee, is not conclusive but may be overruled by the circumstance of the *jus disponendi* being reserved by the shipper through the medium of the bill of lading."

Applying this principle to the present case, we are of the opinion that the High Court rightly held,

upon the facts found, that the property in the rubber consignment passed to the appellant in the State of Bombay.

We pass on to consider the second question of law arising in this case - whether the purchase tax under s. 10(a) was leviable in respect of the purchases in dispute. It is necessary at this stage to reproduce the relevant provisions of the Bombay Sales Tax Act, 1953 as it stood at the material time. Section 2(6) of the Act defines a "dealer" as meaning any person who carries on the business of selling or buying goods in the pre-Reorganisation State of Bombay excluding the transferred territories, whether for commission, remuneration or otherwise and includes a State Government which carries on such business and any society, club or association which sells goods to or buys goods from its members. Section 2(11) defines a "registered dealer" to mean a dealer registered under s. 11 or deemed to be a registered dealer under s. 12-B. According to s. 2(13) "sale" means a sale of goods, made within the pre-Reorganisation State of Bombay, excluding the transferred territories for cash or deferred payment or other valuable consideration and includes any supply by a society or club or an association to its members on payment of price or fees or subscription, but does not include a mortgage, hypothecation, charge or pledge. Section 6 of the Act is to the following effect :

"(1) Subject to any rules made under s. 18-B there shall be paid by every dealer who is liable to pay tax under this Act -

(ia) sales tax or purchase tax on his sales or purchases in accordance with the provisions of section 7-A,

(a) a sales tax on his sales levied in accordance with the provisions of section 8,

(b) a general sales tax on his sales levied in accordance with the provisions of section 9, and

(c) a purchase tax on his purchases levied in accordance with the provisions of section 10,

(d) a tax on his purchases levied in accordance with the provisions of section 10-AA.

(2) The tax payable by a dealer under any clause of sub-section (1) shall be paid in addition to the tax or taxes, if any, payable by such dealer under any other clause or clauses of the said sub-section."

Section 10(a) states as follows :

"10. Subject to the provisions of section 7, there shall be levied a purchase tax on the turnover of purchases of goods specified in column 1 of Schedule B at the rates, if any, specified against such goods in column 4 of the said schedule, -

(a) where such goods are purchased from a person who is not registered dealer;"

Section 10-C reads :

"In the case of such goods as may be specified by the State Government by notification in the Official Gazette from time to time, which have been despatched or

brought from any place in India outside the State of Bombay and are actually delivered as a direct result of a purchase to a buyer in the State of Bombay for consumption therein, there shall be paid by such buyer on such purchase an outside goods purchase tax levied at such rate not exceeding twenty-one pies in the rupee as may be specified in such notification, unless the buyer produces a declaration made by the seller of such goods in the prescribed form certifying that the seller is a registered dealer and shall pay the tax on such sale in due course :

Provided that no such tax shall be levied on the purchase of any goods by a registered dealer if after the purchase the goods are sold by him or used by him in the prescribed manner in the manufacture or processing of any goods for sale."

It is argued by Mr. Donde that the term "person" in s. 10(a) should be read as meaning a dealer who carries on business in Bombay but who is not registered under the Act. In other words, it is contended that the person referred to in s. 10(a) must be a dealer within the definition of s. 2(6) of the Act but who is not registered either because he failed to get himself registered or because his turnover is less than the specified limit. We are unable to accept the argument put forward by Mr. Donde as correct. We see no reason for placing any limitation or qualification on the term "person" which occurs in s. 10(a). There is nothing in the context or language of the section for importing any qualification on the plain meaning of that expression. That section plainly states that purchases made by a dealer from a person who is not a registered dealer will be subject to purchase tax. The appellant is a dealer and it has made the purchases in question from the sellers who are not registered dealers. The provisions of s. 10(a) of the Act are satisfied in the present case and the purchases in question accordingly are liable to tax.

The next contention of Mr. Donde is that the provisions of s. 10(a) cannot apply to transactions of purchase where the purchased goods have been brought from outside the State of Bombay for consumption in that State because s. 10-C of the Act would apply to such transactions. We do not think there is any warrant in this argument. S. 10-C reproduces the Explanation to Art. 286(1)(a) of the Constitution and it would apply where under general law the sale takes place outside the State but the goods are delivered as a direct result of the sales for consumption within the State of Bombay. The buyer referred to in s. 10-C need not necessarily be a dealer under the Act, because so far as the dealers are concerned they are only liable to three types of taxes, viz., sales tax, general tax and purchase tax, enumerated in s. 6 which is the charging section. On the other hand, s. 10-C applies to a "buyer" who brings into the State of Bombay goods which are notified in the Official Gazette. It should also be noticed that s. 10-C deals only with certain specific goods to be notified by the State Government, whereas s. 10(a) includes all purchases made from persons other than registered dealers. It is manifest that the scope and ambit of these two sections are different. We are of opinion that Mr. Donde is unable to make good his submission on this aspect of the case and the High Court has rightly answered this question of law also in favour of the State and against the assessee.

For the reasons expressed, we hold that this appeal fails and must be dismissed with costs.

Appeal dismissed.

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