

State of Maharashtra and Another

Vs

Champalal Kishanlal Mohta

Review Petition No. 29 of 1969

(J. C. Shah, K. S. Hegde JJ)

17.03.1970

JUDGMENT

SHAH, J. -

1. Appeal No. 1878 of 1967 was ordered to be dismissed by this Court on July 17, 1969. The Court held that the sale of standing trees is not sale of goods chargeable to sales tax under the Bombay Sales Tax Act, 1959.

2. A petition for review of judgment has been filed by the State contending that after the judgment of the High Court and before the appeal was heard, the Bombay Sales Tax Act, 1959 was amended by the Maharashtra Act 15 of 1967 with retrospective operation, and by the amendment standing timber was included in the definition of timber, but counsel for the State failed to invite the attention of the Court to that Act. Since the judgment of this Court it is claimed suffers from an error apparent from the face of the record, we have granted review of judgment.

3. The expression "goods" was defined in Section 2(13) of the Bombay Sales Tax Act, 1959. By Maharashtra Act 15 of 1967 by Section 2 the definition of "goods" was altered by providing that :

"In Section 2 of the Bombay Sales Tax Act, 1959 x x x in clause (13), after the words 'and commodities' the following shall be, and shall be deemed always to have been, added, namely :-

'and all standing timber which is agreed to be severed before sale or under the contract of sale'."

The definition was retrospective in operation and the expression "goods" included at all relevant times standing timber agreed to be severed before sale or under the contract of sale.

4. The expression "sale of goods" in Entry 54, List II of Schedule VII of the Constitution has the same connotation as it has in the Sale of Goods Act, 1930. This Court in *The State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.*, ((1959) SCR 379) observed that the expression "sale of goods" was, at the time when the Government of Indian Act, 1935, was enacted, a term of well-recognised legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and must be interpreted in Entry 48 in List II in Schedule VII of the Act as having the same meaning as in the Sale of Goods Act, 1930 : see also *Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh*. ((1959) SCR 427) The expression "sale of goods" in Entry 54 in List II of Schedule VII of the Constitution has also the same meaning as that expression had in Entry 48

in List II of the Government of India Act, 1935. The State Legislature may not therefore extend the import of the expression "sale of goods" so as to impose liability for tax on transactions which are not sales of goods within the meaning of the Sale of Goods Act.

5. By Article 366(12) of the Constitution the expression "goods" is defined as inclusive of "all materials, commodities and articles". That is, however an inclusive definition and does not throw much light on the meaning of the expression "goods". But the definition of "goods" in the Sale of Goods Act, 1930, as meaning "every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale". Standing timber may ordinarily not be regarded as "goods", but by the inclusive definition given in Section 2(7) of the Sale of Goods Act things which are attached to the land may be the subject-matter of contract of sale provided that under the terms of the contract they are to be severed before sale or under the contract of sale.

6. In the present case it was expressly provided that the timber agreed to be sold shall be severed under the contract of sale. The timber was therefore "goods" within the meaning of Section 2(7) of the Sale of Goods Act and the expression "sale of goods" in the Constitution in Entry 54, List II having the same meaning as that expression has in the Sale of Goods Act, sale of timber agreed to be severed under the terms of the contract may be regarded as sale of goods.

7. The appeal is allowed and the petition filed by the respondent must be dismissed. Since the State succeeds in this appeal, relying upon a statute which was passed after the judgment of the High Court there will be no order as to costs throughout.

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