

The General Fibre Dealers Ltd.

Vs

Commissioner of Income-Tax (Central), Calcutta

Civil Appeal No. 1735 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

17.04.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Calcutta High Court in an Income-tax Reference. During the assessment year 1954-55, the previous year being from January 20, 1953 to February 7, 1954, the assessee who is the appellant entered into a contract for supply of 10,000 tons of Hessian cloth at 136-19-9 per metric ton with a party in Buenos Aires in South America which will hereinafter be referred as the "I.A.P.I." The contract was entered into through the agency of Panos Morosini S.R.L, On June 10, 1953, the agent wrote to I.A.P.I. confirming the sale as per the sales terms of the Calcutta Jute Fabric Shippers Association. The printed form of this Association contained a note regarding the payment of export duty which was as follows :

"Export Duty was based on current rates; any alterations to be on buyers' account."

Before September 1953, 6,250 tons of Hessian cloth had been shipped. The Export Duty then payable was Rs. 275/- per ton. With effect from September 15, 1953, the duty was reduced to Rs. 120/- per ton. For the balance quantity of Hessian cloth, namely, 3,750 tons, the export duty was paid at the reduced rate. With regard to each shipment of goods the assessee prepared an invoice in duplicate with the full sale price charged on it. A copy of this invoice along with the bill of lading was presented by the assessee, to the bankers and the entire amount was realized. For the purpose of accounting the assessee prepared another invoice in which the full amount of the stipulated sale price was first calculated and deduction was given on account of reduction in the Export Duty at the rate of Rs. 155/- per ton. The reduced net sale price was then credited to the shipment account and the amount of deduction made from the sale price on account of the reduction in Export Duty was credited to the "duty account of I.A.P.I." All such credits in this account aggregated to Rs. 5,72,081/- and it was this amount which was sought by the income-tax authorities to be included in the income of the assessee for the year in question.

2. The Income-tax Officer found that the assessee had contracted to sell the goods at the fixed price of 136-19-9 per ton and that the contract did not specifically provide for any fluctuation in the sale price consequent on the variation in the rate of Export Duty. It was further found that the assessee had received payment upon full invoice price from the buyers who never made any claim on account of the reduction in the export duty. The sum of Rs. 5,72,081/- was treated as revenue receipt and included in the income of the assessee. The Appellate Assistant Commissioner confirmed the disallowance. The Tribunal referred to the entire evidence including the documents relating to the contract and the correspondence that passed between the assessee and the agent and came to the

conclusion that at no stage during the course of the execution of the contract or thereafter the I.A.P.I. made any demand from the appellant on account of reduction in Export Duty. In all the bills which had been presented by the assessee to the I.A.P.I. the full amount of the sale price was charged without any reduction and the I.A.P.I. made the entire payments without any demur or protest although it was fully aware that the export duty had been reduced. The Tribunal put its conclusions in the following words :

"The course of dealings between the parties would thus show clearly as to what was intended by them when they had entered into a contract. It is evident that the appellant entered into the contract on the footing that the price to be paid was not subject to any variation and that the I.A.P.I. also understood the contract in the same sense."

The assessee sought reference of the following question which was allowed by the Tribunal :

"Whether on the facts and in the circumstances of the case the sum of Rs. 5,72,081/- was rightly treated as the income of the assessee of the relevant previous years?"

The High Court answered the question in the affirmative and against the assessee. The High Court gave a summary of its conclusions as follows :

"(1) Liability in terms of contract did certainly arise when there was a variation in the rate of export duty but since the contractual liability was not accepted and admitted it cannot be said to have arisen.

(2) As the assessee had no intention of accepting the liability and as the assessee by its own conduct disowned the liability by realising full price, nothing was deductible from the money received as contractual price, during the accounting year.

(3) The Tribunal came to finding of fact that the second set of invoices prepared for accounting purposes were fictitious and that they were created for the purpose of avoiding tax liability. No material was placed before this Court from the record for discountenancing this finding of fact and accordingly the said second set of invoices cannot show that contractual liability was subsequently accepted.

(4) The factum of billing for the contractual price as many as on 19 occasions after the decrease in the rate of Export Duty as found by the Tribunal as a fact and the total withdrawal of the same from the bank would inevitably go to show that the assessee treated the contractual price as inflexible.

(5) The express terms in the contract 'export duty based on current rates; any alterations to be on buyer's account' were finally disregarded by the assessee as will be evident from correspondence; accordingly it cannot be said that it was holding the disputed money on behalf of the buyer in a fiduciary capacity".

The principal contention addressed before us on behalf of the assessee is that since according to the terms of the contract a liability had been incurred by it to the extent of the amount by which the Export Duty was reduced it could not be treated as income earned during the relevant year at any subsequent stage. In other words, the liability being contractual obligation to pay the amount of the rebate arose from the contract and unless its terms were varied by mutual assent it could not be said

that the amount in question could be treated as income accruing to the assessee from its trading account. In our opinion the High Court was bound by the finding of fact given by the Tribunal and since no question had been referred involving a challenge to those findings it was hardly open to the High Court to express any views of its own on the points of fact. As stated before, the Tribunal had found, on a consideration of the evidence, that according to the terms of contract the stipulated price of 136-19-9 was the net price payable by the I.A.P.I. to the assessee and that there was no intention of varying it on increase or decrease of export duty. The assessee itself had interpreted the contract in that sense and had sent as many as 19 bills to the buyers at the full contractual price despite reduction in the duty. It had received payment of the full amount charged for in all the bills. In the opinion of the Tribunal the set of invoices charging the sale price as reduced by the amount of reduction in export duty were fictitious and were prepared by the amount of reduction in export duty were fictitious and were prepared only to avoid taxation. The I.A.P.I. never made any demand from the assessee on account of reduction in export duty although it was fully aware of such reduction. The assessee was, therefore, entitled under the contract to receive the entire amount of the money paid by the I.A.P.I. On these findings which were based on the materials which have been placed before the Tribunal by the parties the only conclusion possible was that a sum of Rs. 5,72,081/- formed a part of the price which the assessee received for the sale of the Hessian cloth. On that view no question of any liability on the part of the assessee to pay the aforesaid amount to the buyers could arise. We have no doubt that the answer given by the High Court to the question referred was correctly given although we are not inclined to concur in all its conclusions or reasoning.

3. The appeal fails and it is dismissed with costs.

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