

State of Bihar and Others

Vs

M/S. Ashok Industries and Others

Civil Appeal Nos. 2245-49 of 1985

(O. Chinnappa Reddy, V. Khalid JJ)

10.02.1987

JUDGMENT

KHALID, J. -

1. In these appeals, by special leave, the short question that falls for decision is as to how Explanation to Section 2(p)(i) inserted by the Bihar Agricultural Produce Markets (Amendment) Act, 1982, should be read with the Explanation to Section 27 also inserted by the same Act. Before the High Court, the vires of Explanation to Section 2(P)(i) was challenged on the ground that it encroached upon entry 42 of List I of the Seventh Schedule. The Division Bench of the High Court after considering the various authorities dealing with the concept of sale, refrained from declaring the Explanation bad but read it down and held that it should be read in harmony with the Explanation to Section 27 and directed the marketing committee concerned to make assessment of fees after giving the petitioners an opportunity as provided in the Explanation to Section 27.

2. In the judgment, we do not propose to go into there question whether sale as explained in the Explanation to Section 2 (p)(i) would include interstate trade etc. and on that reasoning strike down the Explanation. We propose to consider the scope of the two Explanations to see whether they can co-exist.

3. The original Act was called the Bihar Agricultural Produce Markets Act, 1960, (for short the Act). This Act was enacted to regulate the buying and selling of crops by proving suitable and regulated markets, to claimant middlemen and to help the cultivators and the buyers in the disposal of the commodities. The Act enabled the marketing committee to levy a fee for transactions taking place in the market area. To get at persons who manage to escape the levy of market fee by ingenious transactions, the Act was amended by inserting a new definition Section 2(p) (i) alongwith an Explanation and also adding an Explanation to Section 27. What we have to decide in this case is as to how these two Explanations have to be construed. In other words whether one Explanation excludes the other or whether one is the complement of the other.

4. It is necessary first to quote the two provisions under consideration. Section 2(p)(i) along with the Explanation reads as follows :

2(p)(i) 'Sale' means any transfer of property in goods for cash of deferred payment or other valuable consideration and shall include transfer or acquisition of goods on hire purchase or under any other system in which payment of valuable consideration is made by instalment not withstanding the fact that the seller retains title in goods as valuable security of payment of consideration or for any other person.

Explanation. - Notwithstanding anything contained in any law for the time being in force sale shall be deemed to have taken place for the purpose of this Act within a market area when the goods are transferred from the principal to his selling agent or to the arhatia within the market area or outside the market area.

Section 27 is the charging section. It reads as follows along with the Explanation :

27. Power to levy fees. (1) The market committee shall levy and collect market fees on the agricultural produce bought or sold in the market area, at the rate of rupee one per Rs. 100 worth of agricultural produce.

Explanation. - All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been bought or sold in such area.

5. In fiscal laws due importance has to be given to the phraseology used in the charging section. Section 27 gives to the market committee the power to levy and collect market fees on the agricultural produce bought or sold in the market area at the rate given therein. The Explanation raises a presumption and that is that all notified agricultural produce leaving a market area shall be presumed to have been bought or sold in such an area. But this presumption is rebuttable because the Explanation gives the affected party an opportunity to satisfy the assessing authorities that there was neither buying nor selling in a given case.

6. This section with its Explanation thus creates no difficulty. It is when we come to the definition section, extracted above, that the difficulty arises, 'Sale' is defined in Section 2 (p)(i). If the definition had stopped there, there would have been no difficulty in construing Section 27 and its Explanation. In all transactions, the parties get an opportunity to satisfy the assessing authorities whether such transactions are sales or not. But the Explanation to Section 2(p)(i) introduces complications. This Explanation states by a deeming fiction, that when goods are transferred from the principal to his selling agent or arhatia within a market area or outside the market area, a sale takes place. This Explanation encompasses within its sweep, sales of all kinds within the market area or outside or within the State or outside. That is the reason why its validity was challenged by the respondents before the High Court.

7. The learned counsel for the appellants contended that the Explanation to Section 2(p)(i) could stand independent of the Explanation to Section 27 since they have different fields of operation. According to him, if this Explanation is made subject to the Explanation to Section 27, this Explanation would be rendered redundant and futile. The learned counsel for the respondents, on the other hand pleaded that since both the Explanations were brought on the statute book by the same amendment, they must be read harmoniously and the Explanation to the definition section should be read subject to the Explanation to the charging sections.

8. We have considered the rival contentions carefully. We feel that the Explanation to Section 2(p)(i) has not been well worded nor properly placed. We are steering clear of the contention that the Explanation is in excess of the powers of the State legislature since we feel that the dispute can be resolved better by allowing the two Explanations to co-exist by reading them harmoniously. In doing so, it is necessary to read down the Explanation to Section 2(p)(i) and give full effect to the Explanation to the charging section. The Explanation to Section 27 gives an opportunity to the affected persons to satisfy the assessing authorities that the transaction in question is not sale. The Explanation should be deemed to take in all sales including those mentioned in the Explanation to

Section 2(p)(i). In other words, even transactions coming within the ambit of Explanation to Section 2(p)(i) have to be governed by the Explanation to the Section 27. In construing the two Explanations we have given preference to the Explanation to the charging section over the Explanation to the definition section consistent with the rules of interpretation of such provisions. If that be so, the judgment of the High Court has to be upheld and these appeals have to be dismissed. We do so. As directed by the High Court the marketing committee concerned can make assessment of fees only after giving the respondents an opportunity to show cause as laid down in the Explanation to Section 27. If the government wants a stricter control over the transactions in the market area it is for them to suitably amend the Explanation in question by excluding its operation from the Explanation to Section 27.

9. In the circumstances of the case, there will be no order as to costs.

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