Marikar Motors Ltd.

Vs

Sales Tax Officer and Another

Civil Appeal No. 1015 of 1977

(B. P. Jeevan Reedy, S. B. Majmudar JJ)

06.02.1996

ORDER

1. This appeal is preferred against the judgment of a Full Bench of the Kerala High Court. The matter arises under the Kerala Sales Tax Act and the relevant Assessment Year is 1965-66. The appellant is a dealer in motor vehicles and automobile parts. The question herein, however, is confined to motor trucks. The appellant sells trucks both by way of direct sale and also on the basis of hire-purchase. We are concerned with the sales effected on hire-purchase basis.

2. According to the hire-purchase agreement entered into between the appellant and the hirer, the period of hire is two years. The agreement stipulates that the entire consideration specified under the said agreement shall be paid within the said period of two years and that, at the end of that period, the hirer shall become the owner.

3. In the course of assessment proceedings, the question - how to value the vehicles and with reference to which date - arose. The matter was brought to this Court in Marikar (Motors) Ltd. v. STO [(1967) 19 STC 18 : 1966 KLT 924]. This Court held that the hire-purchase agreement comprises two elements, (1) the element of bailment and (2) the element of sale in the sense that it contemplates an eventual sale. It was held that element of sale in the transaction fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of agreement are satisfied and the option is exercised, it was held, sale takes place of the goods which till then have been hired. Only when the sales take place, it was held further, it will attract the sales tax.

4. In an earlier decision of this Court in K. L. Johar & Co. v. Dy. CTO [(1965) 16 STC 213 : AIR 1965 SC 1082 : (1965) 2 SCR 112], it has been held that in the matter of determining the consideration for sale, two courses are open to the Revenue, viz., (a) to take the original price of the goods and deduct the appropriate amount of depreciation out of it or (b) to take the market value of the goods on the date of the sale.

5. Applying the aforesaid principles, the Sales Tax Officer proposed to adopt first of the above two methods of valuation. In other words, he wanted to take the original sale price from which he proposed to deduct the amount of depreciation. But this, in turn, gave rise to another controversy, viz., rate of depreciation. The Sales Tax Officer proposed to adopt the rate of twelve per cent depreciation per annum. Yet another question before the Sales Tax Officer was whether the sale should be deemed to have taken place at the end of the period stipulated in the agreement or on the date when the hirer actually exercised the option to purchase after paying the full price. The appellant's case was not only that he was entitled to a higher rate of depreciation but also that

wherever the period of hire-purchase has been extended by agreement between the parties, the extended period should be taken into consideration and the depreciation worked out for that entire period, i.e., up to the date the hirer exercised the option to purchase. According to the assessee, the sale did not come about automatically at the end of the period stipulated in the agreement but only when the hirer exercised the option after paying the full amount due, whether within the period stipulated in the agreement or the extended period, as the case may be. The Sales Tax Officer rejected both the contentions of the appellant. He adopted twelve per cent per annum as the rate of depreciation. He also refused to look into the question, whether and in how many cases, was there an extension of the period of hire-purchase. He simply took the period stipulated in the agreement as final and treated the last date of the said period as the date of sale. The appellant questioned the order of assessment directly by way of a writ petition in the Kerala High Court. The learned Single Judge allowed the writ petition holding (a) that so far as the rate of depreciation is concerned, the authority must examine the matter over again and (b) that the Sales Tax Officer was in error in treating the period of agreement as the only relevant period and in ignoring the extensions granted by the appellant. Following the decision of this Court in K. L. Johar & Co., the learned Single Judge held that the sale comes about when the hirer exercises the option and not automatically at the end of the period stipulated in the agreement. He accordingly remitted the matter to the Sales Tax Officer for making the assessment in accordance with the judgment.

6. The Revenue filed an appeal. The matter was referred to a Full Bench. On the question of rate of depreciation, the Full Bench held that no material was placed by the appellant before the court to hold that the rate actually adopted by the assessing officer was not reasonable. With respect to the other question, the Full Bench declined to express itself. It only held that the appellant has failed to prove, as a fact, that there were extensions. Once there is no such proof, the Full Bench opined, it was unnecessary for them to go into the question whether the Sales Tax Officer was right in holding that the sale comes about automatically at the end of the agreement period irrespective of any other factors. The said view is questioned in this appeal.

7. Before proceeding further, we may mention a fact which is relevant. Pursuant to the judgment of the learned Single Judge, the Sales Tax Officer made an assessment which is dated 16-7-1976. (We are told that there was no stay pending the writ appeal.) A copy of the said order is placed before us. The assessment order shows that the Sales Tax Officer has accepted the extended period wherever there was extension. It also appears that in some cases, the full payment was made even prior to the stipulated period and the hirer exercised the option to purchase. In those cases, the actual period was taken as the basis and the sale was held to have taken place at the end of such period. Now, it must be remembered that on the first occasion, the Sales Tax Officer did not find as a fact that there were no extensions as averred by the assessee. He refused to go into that aspect because of his opinion that it was irrelevant. The material was before him. Now, that we have held that the said fact is relevant, the factual aspect becomes relevant and for that purpose we have looked into the subsequent assessment order dated 16-7-1976. If so, the basis upon which the Full Bench has held against the assessee (insofar as the question - when does the sale take place) must be held to have become untenable.

8. Now, coming to the principle applicable in this behalf, we may reiterate the law enunciated by this Court in K. L. Johar case [(1965) 16 STC 213 : AIR 1965 SC 1082 : (1965) 2 SCR 112], viz., that coming into being of the sale is a question of fact and that it takes place when the hirer exercises the option. It cannot be said that merely because the hire-purchase agreement stipulates a particular period for the total payment of the consideration and for the purchaser to exercise the option to purchase at the end of the said period, the sale does not (sic) take place at the end of that

period willy-nilly. There may be cases where the hirer may default in paying the amount within the stipulated period, he may ask for extension and the dealer may grant the extension. In such cases, the sale obviously takes place only when the purchaser exercises the option to purchase after fully paying the agreed amount. In this view of the matter and also in view of the findings of fact affirmed in the assessment order dated 16-7-1976, the order of the Full Bench is liable to be set aside on this issue. We affirm the order of assessment dated 16-7-1976 on this issue.

9. The next question pertains to the rate of depreciation. The assessment order dated 16-7-1976 has again adopted the rate of twelve per cent per annum. Shri Poti, learned counsel, says that this figure is arbitrary and that the authorities have not explained the basis upon which the said figure has been arrived at. He says that under the Income Tax Act, where the trucks are held for running on hire, the rate of depreciation is forty per cent. He says that this factor should have been kept in mind in determining the rate of depreciation. As stated above, the Full Bench has opined that the appellant has failed to place any material showing that the said rate was arbitrary. It has also refused to take into consideration the rate of depreciation fixed by the Income Tax Act on the ground that is a different enactment and that the rate prescribed therein is for the purposes of that Act. Be that as it may, since the appellant has a right of appeal against the assessment order, we do not wish to enter into this question. It was open to the assessee to challenge the said finding in the appeal which may have been filed by him against the order of assessment. It is made clear that in case, the assessee has not filed the appeal against the order dated 16-7-1976, he may be permitted to file such an appeal now. If the appeal against the assessment order dated 16-7-1976 is filed within one month from today, the same shall be treated as filed within time and shall be disposed of accordingly. If, however, he has already filed the appeal, this direction shall not operate.

10. There is another minor question arising herein. That relates to rebate. The question is whether the amount of rebate should have been excluded from the turnover. Having regard to the smallness of the amount involved, we express no opinion on this aspect and leave the question open.

11. In the circumstances, this appeal is disposed of with the above directions. The judgment of the Full Bench shall be deemed to have been set aside to the extent it runs contrary to the judgment.

12. No costs.