

# SUPREME COURT OF INDIA

Aggarwal Brothers

Vs.

State of Haryana

C.A.Nos.78 and 79 of 1996

(S.P.Bharucha and V.N.Khare JJ.)

01.09.1998

## ORDER

1. These appeals by special leave impugn the judgment and order of a Division Bench of the High Court of Punjab and Haryana whereby writ petitions filed by the appellants, and others, were dismissed.

2. The assessee (appellants) hire shuttering to builders and contractors who use it in the course of construction of buildings. The assessee was served with notices under the Haryana General Sales Tax Act, 1973 ('the said Act') requiring them to pay sales tax on such hire charges and assessment orders were then so made. The assessment order in the case of M/s. DD Shuttering recorded that the assessee dealt in shuttering materials used in the construction of buildings and received hire charges from its various customers. The hire charges received by it were sales within the meaning of Section 2(1)(1)(iv) of the said Act. The writ petitions were filed to quash these assessment orders and it was contended that the aforementioned provision of the said Act was unconstitutional. The High Court repelled the challenge to constitutionality. It found that the possession of the shuttering material was transferred by the assessee to their customers for use during the construction of buildings. The customers were in effective control of the shuttering during the periods it remained in their possession. The transactions, therefore, fell within the amended definition of the word "sale" as there was a transfer of the right to use the shuttering.

3. The argument of learned Counsel for the assessee goes thus: Entry 54 of Part II of Schedule VII of the Constitution enables the State to levy "taxes on the sale or purchase of goods other than newspapers....". Article 366 sets down definitions for the purposes of the Constitution. Clause (29 A) thereof refers to "tax on the sale or purchase of goods" and it includes "(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration." In the submission of learned Counsel, having regard to Entry 54 of Part II of Schedule VII, the transfer contemplated by Sub-clause (d) of Clause (29 A) of Article 366 is a legal transfer of the right in the goods. It has to be a transfer of goods. It has to be permanent. It has to be something like a lease. The giving of goods on hire is not such transfer and, therefore, falls outside the ambit of Sub-clause (d) of Clause (29A) of Article 366. Learned Counsel referred to paragraph 40 of the judgment of this Court in Builders' Association of India v. Union of India: [1989]2SCR320 which says:

As the Constitution exists today the power of the States to levy taxes on sales and purchases of

goods including the "deemed" sales and purchases of goods under Clause (29-A) of Article 366 is to be found only in Entry 54 and not outside it.

4. The language used in Section 2(j)(1)(iv) and 2(1)(1)(iv) of the said Act is the language used in Article 366(29A)(d), Section 2(j) dealing with purchase and Section 2(1) with sale. The argument before us is, therefore, not an argument on the constitutionality of these provisions of the said Act but of their interpretation and the application thereof to the facts of the present case.

5. The said Act defines 'sale' to mean the transfer of property in goods for cash or deferred payment or other valuable consideration and includes the "transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration." Such transfer of the right to use goods for consideration is "deemed" to be a sale. The provision expressly speaks of "transfer of the right to use goods" and not of transfer of goods. There is, therefore, no merit in the submission that to be a deemed sale within the meaning of the abovementioned provision of the said Act there must be a legal transfer of goods or that the transaction must be like a lease.

6. Where there is a transfer of a right to use goods for consideration, the requirement of the abovementioned provision of the said Act is satisfied and there is deemed to be a sale. In the instant case, the assessee owned shuttering. They transferred the shuttering for consideration to builders and building contractors for use in the construction of buildings. There can, therefore, be no doubt that the requirements of a deemed sale within the meaning of the abovementioned provision of the said Act are satisfied.

7. The appeals are dismissed with costs.