Duncans Industries Ltd.

Vs

State of U.P. and Others

Civil Appeal No.5929 of 1997

(B. N. Kirpal, N. Santosh Hegde JJ)

03.12.1999

JUDGMENT

SANTOSH HEGDE, J.: –

1. A deed of conveyance dated 9-6-1994 executed by a company named ICI India Ltd. in favour of Chand Chhap Fertilizer and Chemicals Ltd. when presented for registration, the Registrar concerned referred he said document under Section 47-A (20 of the Stamp act to the collector complaining of non-compliance with Section 27 of the said Act and praying for proper allusion to be made and to collect the stamp duty and penalty payable on the said document. The Collector after inquiry levied a stamp duty of Rs 37,01,26,832.50 and a penalty of Rs 30,53,167.50. The said order came to be challenged by the aggrieved party in a revision under Section 56 of the Stamp Act before the Chief Controlling Revenue Authority in Stamp Revision No. 36.95-96 and the said revision authority as per his order dated 4-4-1995 partly allowed the challenge and so far as the imposition of penalty was concerned the same was set aside and slightly minified the stamp duty levied by the Collector. Consequent to the order of the revision authority, the appellant herein became liable to pay stamp duty on the said deed of conveyance amounting to Rs 36,68,08,887.50. This order of the revisional authority came to be challenged before the High Court in Civil Miscellaneous Writ Petition. No. 9170 of 1995 which came to be dismissed and as against this order of the High Court of Judicature at Allahabad dated 7-7-1997, the appellant has preferred the above civil appeal.

2. Briefly stated, the facts leading to the leading to the controversy in question are as follows:

> ICI India Ltd., a company registered under the companies Act, 1956 executed an agreement of sale dated 11-11-1993 wherein it agreed to transfer on an "as is where is" basis and "as going concern" its fertilizer business of manufacturing, marking, distribution and sale of urea fertilizer in favour of Chand Chhap Fertilizer and Chemicals Ltd. (hereinafter referred to as "CCFCL"), also a company incorporated under the Companies Act, 1956 which company had since been renamed as M/s Duncans Industries Limited, Fertilizer Division, Kanpur Nagar (the appellant herein) For a total sale consideration of Rs 70 crosses which was termed as "slump price" in the agreement. The said agreement also stated that the vendor would on the "transfer date" transfer the fertilizer business by actuarial delivery of possession to CCFCL in respect of such of the estates and properties mentioned in the agreement as were capable of the estates requiring transfer by execution of necessary documents vesting the title thereof in CCFCL. And it was further agreed and declared that the ownership introspect of the assets and properties comprised in the "fertilizer business" to be transferred as per the agreement, would be deemed to be vested in CCFCL on and

from the "transfer date" which, according to the agreement means 1-12-1993 or such other date as may be agreed to be vested in CCFCL The term "fertilizer business" was defined to mean and include the following other properties:

"(i) demised land being Plots Nos. 2-B 5 and the sub-divided portion of Plot No. 2 demarcated and admeasuring in the aggregate an area of 243.4387 acres equivalent to 9,85,159.50 sq. m. Being the unshaped portion shown on the plan annexed hereto together with the buildings and structures thereon forming part of the fertilizer business as on the transfer date;

(ii) freehold land and residential building thereon with the name ‘Chandralok’, situate at Plot No.4/284, Parbati Bangle Road, Kanpur comprising 95 residential flats;

(iii) freehold land and residential building thereon with the name ‘Chandrakala’, situate at Navsheel Apartments, 56 Cantonment, Kanpur comprising a guest house on the ground floor and 3 residential flats on the first floor;

(iv) plant and machinery relating to the fertilizer business including the ammonia-manufacturing plants, the captive power plant and all other moveable capital assets including vehicles, furniture, air conditioners, standby systems, pipe lines, railway siding etc., as on the transfer date and where so ever situate, all of which relate exclusively to fertilizer business and are owned and in the possession of ICI or are owned by ICI but in the lawful possession of any third party for and on behalf of ICI;"

3. Pursuant to the said agreement, a deed of conveyance dated 9-6-1994 was executed by the said ICI in favour of CCFCL, on the presentation of the said conveyance deed for registration. The Sub-Registrar made a reference to the Collector under Section 47-A (2) of the Act, 1899 (hereinafter referred to as "the Act") Section 27 of the Act had not been given by the parties, hence valuation and examination is essential and requested the Collector to determine the value as required under the Act and the rules and to take action to realise the deficit stamp duty and penalty. Consequent upon this reference mad by the Sub- Registrar, the Collector after necessary inquiry as per his order dated 20-2-1995 referred to above, levied stamp duty and penalty to which reference has already been made. Being aggrieved by the said order of the Collector, the appellant preferred a revision petition to the Chief Controlling Revenue Authority who, as already stated, by his order dated 9-6-1994 set aside the penalty and modified a the duty payable to Rs 36, 68,08,887.50 which order came to be challenged before the High Court unsuccessfully.

4. Before the High Court the appellant had challenged the authority of the sub-Registrar to make a reference to the collector on the ground the there was no material to entertain any "reason to believe" that the market value of the property which was the Subject-matter of the conveyance deed had not been truly set forth in the instrument. The High Court negative the said contention after considering the arguments of the appellant in detail, and before us no argument has been advanced on this score.

5. Mr. M. L. Verma, learned Senior counsel appearing for the appellant urged that the High court committed error in coming to the conclusion that the plant and machinery which were transferred by the vendor to the appellant, were immovable properties, attracting the provisions of the stamp Act

and at any rate under the conveyance deed dated 9-6-1994, the vendor had not conveyed any title to the appellant in regard to the plant and machinery. He also contended that the High court erred in relying upon paras 10 and 11 of conveyance deed to come to the conclusion that the plant and machinery were that subject-matter of the said deed. He contended that the said paragraphs merely made a reference to can earlier instrument and mere reference to some earlier transaction in a document does not amount to incorporation in that document of the terms and conditions relating thereto. It was also contended that the High Court failed to look into the intention of the parties who by an agreement dated 11-11-1993 had treated the plant and machinery as movables and have delivered possession of the plant and machinery as moveable and have delivered possession of the said plant and machinery as movables on 11-12-1993. Hence, the said plant and machinery is neither immovable property nor the property which has been transferred by virtue of the deed of conveyance dated 9-6-1994. Therefore, the value of the said plant and machinery could not have been taken into consideration for the purpose of arriving at the correct and true value of the property conveyed under the deed of conveyance. He also contended that the valuation in regard to the plant and machinery made by the authorities and as accepted by the High court is incorrect and contrary to law.

6. Mr. Gopal Subramanium, learned Senior Counsel appearing on half of the State in reply contended that the document dated 11-11-1993 (agreement of sale and transfer of Fertilizer business) by ICI in favour of CCFCL contemplated an agreement to transfer the business of manufacturing marketing, distribution and sale of urea fertilizer that is fertilizer business itself with a stipulation that the first stream, second stream and the third stream urea-manufacturing plants as well as the ammonia-manufacturing plants would also be transferred as a part of the transfer of fertilize business Of ICI as a going conniver. He also contended that a reading of the document at para 1(c)(i) which defines "fertilizer business" clearly shows that the intention of the vendor was to transfer all properties that comprised the fertilizer business. He also drew out attention to the observation of the High Court which had in specific terms noted that the learned counsel representing the appellant before it had not seriously challenged the valuation made by the authorities, hence he contended that the challenge made to the valuation by the appellant before us should not be countenanced.

7. We have heard leaned counsel for the parties and the question that arises for our consideration is: whether by the conveyance deed dated 9-6-1994, the plant and machinery were also transferred; and if so, whether the High Court was right in accepting the valuation as made by the authorities for the purpose of stamp duty payable.

8. Considering the question whether the plant and machinery in the instant case can be construed as immovable property or not, the High court came to the conclusion that the machineries which formed the fertilizer plant, were permanently embedded in the earth with an intention of running the fertilizer factory and while embedding these machineries the intention of running the fertilizer factory and while embedding these machineries the intention of the party was not to remove the same for the purpose of any sale of the same either as a part of a machinery or scrap and in the in the very nature of the user of these machineries, it was necessary that these machineries be permanently fixed to the ground. Therefore, it came to the conclusion that these machineries were immovable property which were permanently attached to the land in question. While coming to this conclusion the learned Judge relied upon the observation found in the case of *Reynolds v. Ashby & Son* (1904 AC 466 : 73 LJ KB 946) and *Official Liquidator v. Krishna Deo* (AIR 1959 All 247 : (1959( 29 Comp Cas 476). We are inclined to agree with the above finding of the above finding of the High Court that the plant and machinery in the instant case are immovable properties. The

question whether machinery which is embedded in the earth is moveable property or an immovable property depends upon the facts and circumstances of each case are immovable properties. The question whether a machinery which is embedded in the earth is moveable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties (sic party) when it decided to embed the machinery, whether such embodiment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance the nature of machineries involved clearly shows that the mutineers which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant. The description of the machines as seen in the she duel attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilize plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines should be treated as movables cannot be accepted. Nor can it be said that that plant and machinery could have been transferred by delivery of possession on any date prior to the date of conveyance of the title to the land. Mr. Verma, in support of his contention that the machineries in question are not immovable properties, relied on a judgement of this Court in *Sirpur Paper Mills Ltd. v. CCE* (1998) 1 SCC 400). In the said case, this Court while considering the leviability of excise duty on paper-making machines, based on the facts of that case, came to the conclusion that the machineries involved in that case did not constitute movable property. As stated above, whether a machinery embedded in the earth can be treated as moveable or immovable property depends upon the facts and circumstances of each case. The Court considering the said question will have to take into consideration the intention of the parties which embedded the machinery and also the intention of the parties who intend alienation that machinery. In the case cited by Mr. Verma, this Court in para 4 of the judgment had observed thus: (SCC p. 402)

> "In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The Tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper-making machine it machine it could always remove it from its base and sell it."

9. From the observations, it is clear that this court has decided the issue in that case based on the facts and circumstances pertaining to that case hence the same will not help the appellant in supporting its contention in this case where after perusing the documents and other attending circumstances available in this case, we have come to the conclusion that the plant and machinery in this case cannot but be descried as an immovable property. Hence, we agree with the High Court on this point.

10.The next question for consideration is whether the vendor did transfer the title of the plant and machinery in the instant case by the conveyance deed dated 9-6-1994. Here again, it is imperative to ascertain the intention of the parties from the material available on record. While ascertaining the intention of the parties, we cannot preclude the contents of the agreement pursuant to which the conveyance deed in question has come into existence, we have noticed that as per the agreement it is clear that what was agreed to be sold is the entire business of fertilizer on an "as is where is" basis including the land, building thereon, plant and machinery relating to fertilizer business – description of which is found in the definition of the term "fertilizer business" in the agreement itself which has been extracted by us herein above. It is not the case of the appellant when it contends that the

possession of plant and machinery was handed over separately to the appellant by the vendor, that these machineries were dismantles and given to the appellant, nor is it possible to visualize from the nature of the plant that is involved in the instant case that such a possession decors the land could be given by the vendor to the appellant. It is obviously to reduce the market value of the property the document in question as attempted to be drafted as a conveyance deed regarding the land only. The appellant had embarked upon a methodology by which it purported to transfer the possession of the plant and machinery separately and is contending now that this handing over possession of the machinery as decors the conveyance deed itself that what is conveyed under the deed dated 9-6-1994 is not only the land but the entire fertilizer business including plant and machinery. A perusal of clauses 10,11 and 13 of the said deed shows that it is the fertilizer factory which the vendor had agreed to transfer along with its business as a going concern and to complete the same the conveyance deed in question was being executed. There is implicit reference to the sake of fertilizer factory as a going concern tin the conveyance itself. That apart, the inclusion of Schedule III to the conveyance deed wherein a plan delineating the various machineries comprising of the fertilizer factory is appended shows that it is the land with standing fertilizer factory is appended shows that it is the land with standing fertilizer factory which is being conveyed under the deed, though an attempt to camouflage this part of the property sold is made in the recitals, in our opinion, the parties concerned have not been able to successfully do so. While considering this question of transfer of plant and machinery being part of the conveyance deed or not, reliance can also be placed on the application filed by the appellant before the appropriate authority of the Income Tax Department wherein while disclosing the market value of the immovable property sought to be transferred the appellant himself has mentioned the value of the property so transferred as Rs70 Crosse which is the figure found in the agreement of sale which agreement includes that sale of plant and machinery along with the land. A certificate issued by the appropriate authority under Section 269-UL (3) of the Income Tax Act evidences this fact. In the said application made by the appellant for obtaining the said certificate, the appellant has in specific terms at Serial No. (iv) of the schedule included plant and machinery, railway siding and other immovable properties as part of the fertilizer business undertaking. It is also found on record that by a supplementary affidavit dated 8-9-1993 filed before the Income Tax Department while filing form 37-I prescribed under the Income Tax Rules the petitioner has again show all these plant and machinery along with the plan which is now attached to the conveyance deed as part of the property that is being conveyed. Merely because in some of the relevant paragraphs of the conveyance deed is only the land and a reference is made in regard to the handing ver of possession of the machinery on an earlier date does not ipso facto establish that the vendor did not convey the title of the plant and machinery under the conveyance deed dated 9-6-1994.

11. Learned counsel for the appellant has placed for our consideration a Judgment of this Court in the case of *Himalaya House Co. Ltd. v. Chief Controlling revenue Authority* ((1972) 1 SCC 726) to contend that a mere reference to an earlier agreement does not amount to incorporation of the terms and conditions of an earlier transaction or the intention of the parties. We have carefully considered the said judgment and, in our opinion, that judgment does not in any manner lay down the law in absolute terms that a court cannot look into prior agreements while considering the intention of the parties for finding out what actually is the property that is conveyed under the deed under consideration. It is again based on facts of that case that this Court come to the conclusion therein that the so-called terms and conditions which were found in an earlier agreement were not intended to be incorporated in the subsequent document. This is clear from the following observations of this Curt appearing in para 10 of the said judgment: (SCC p. 732)

> "……From the language used in the assignment deed, it is not possible to come to

> the conclusion that the terms and condition so the earlier transactions have been made a part of that deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of an agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended to incorporate them. No such intention is available in this case."

12. Hence we are of the opinion that this judgment also does not help the appellant in his attempt to convince us that we should not take into consideration the recitals tin the agreement dated 11-11-1993 while considering the conveyance deed of 9-6-1994.

13. For the reasons stated above, we are of the considered opinion that the vendor as per the conveyance deed dated 9-6-1994 has conveyed the title it had not only in regard to the land in question but also to the entire fertilizer business on "as is where is" condition including the plant and machinery standing on the said land. Therefore, the authorities below were totally justified in taking into consideration the value of these plant and machineries along with the value of the land for the purpose of the Act.

14. The next point to be considered is whether the High court was justifies in accepting the valuation made by the authorities in regard to the plant and machinery. Here we must note that in the judgment of the High Court, the learned judge has noted as follows : "…In fact the finding on valuation of plant and machinery was not seriously challenged by Shri Shanti Bhushan during the course of argument and, in my opinion, rightly. "It is based on this approach of the learned counsel appearing for the appellant that the High Court did not go into the question of valuation. However, since the learned counsel for the appellant did question the correctness of the valuation made by the authorities below, we have heard the arguments addressed in this regard. We have also heard the arguments on behalf of the State on this score.

15. The question of valuation is basically a question of fact and this Court in normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record. The main objection of the appellant in regard to the valuation arrived at by the authorities is that the Collector originally constituted an Enquiry Committee consisting of the Assistant Inspector General (Registration), General Manager, District Industries centre, Sub-Committee for reasons of its own, the Collector reconstituted the said enquiry committee by substituting the additional city magistrate in place of the Sub-Registrar. This substitution of the Enquiry committee, according to the appellant, is without authority of law. We are unable to accept this contention constitution of Enquiry committee by the collector is for the purpose of finding out the true market value of the property conveyed under the deed. In this process, the collector has every authority in law to take assistance from such source as is available, even if it amounts to constitution or reconstitution more than one committee. That apart, the appellant has not been able to establish any prejudice that is caused to it by reconstitution of the Expert/Enquiry Committee. We have perused that part of the report of the Collector in which he has discussed in extern so the various materials that were available before the Committee and also the report of the values appointed for the purpose offending out the value of the plant and machinery. These values are technical persons who have while valuing the plant and machinery taken into consideration all aspects of valuing that plant and machinery taken into consideration all aspects of valuation including the life of the plant and machinery. The valuations made both by the Enquiry Committee as wells the values are mostly based on the documents produced by the appellant itself. Hence, we cannot accept the argument that the

valuation accepted by the Collector and confirmed by the revisional authority is either not base on any material or a finding arrived at arbitrarily. Once we are convinced that the method adopted by the authorities for the purpose o valuation is base on relevant materials then this Court will not interfere with such a finding of fact. That apart, as observed above, even the counsel for the appellant before the High Court did not seriously challenge the valuation and as emphasised by the High Court, rightly so. Therefore, we do no find any force in the last contention of the appellant also.

16. For the reasons stated above, this appeal fails and the same is dismissed with costs.