

SUPREME COURT OF INDIA

State of Uttaranchal (now known as State of Uttarakhand)

Vs.

Khurana Brothers

C.A.No.5876 of 2009

(P. Sathasivam and R.M. Lodha JJ.)

27.10.2010

JUDGMENT

R.M.Lodha, J.

1. These four appeals at the instance of the State of Uttaranchal and the Officers of its Forest Department are directed against the judgment dated December 27, 2007 passed by the High Court of Uttarakhand whereby the Division Bench allowed the review petitions filed by present respondents (writ petitioners) and reviewed its earlier judgment dated April 13, 2004 and thereby allowed the writ petitions filed by the writ petitioners holding that they were not liable to pay stamp duty on the documents pertaining to contract of sale for crude resin. Since the facts and documents involved in this group of appeals are identical, for convenience, we shall refer to the facts and documents in Civil Appeal No. 5876 of 2009. The controversy arises in this way.

2. The Divisional Forest Officer, Nainital Forest Range, Nainital notified public auction of resin at Bhuwali Forest Rest House on March 24, 2001. The writ petitioner (Khurana Brothers) participated in that public auction. Its bid in the sum of Rs. 3,90,000/- being the highest bid was accepted by the Divisional Forest Officer, Nainital and the formal contract of sale for crude resin was entered into between the competent authority of the State Government in the name of the Governor and the writ petitioner on March 24, 2001. Subsequently a letter was issued on April 7, 2001 asking the writ petitioner to lift the contracted resin within 60 days there from.

3. The contract of sale for crude resin between the parties reads as follows:

“FORM OF CONTRACT OF CRUDE RESIN Lot No. 7 to 10/2001 Value of the Deed Rs. 3,90,000.00 (Rupees Three Lakh, Ninety Thousand Only)

This indenture made this 24th day of March 2001 between the Governor of the Uttaranchal (hereinafter called "Seller" of the one part and Shri Khurana Brothers,

Rishikesh (hereinafter called the "Buyer" which expression includes its executors, administrators, successors and assigns) of the other part witnessed as follows :

The seller in considerations of payment to be made by the buyer as hereinafter provided at the rate of 1950.00 (Rupees One Thousand Nine Hundred Fifty Only) per quintal calculated at per quintal naked (without container) and in addition the buyer shall have to pay sale tax on the total sale value of the resin 79% or the rate applicable at the time of sale subject to the following terms and conditions:

(A) Approximately 1160 (One Thousand One Hundred Sixty) tins 200 (two Hundred) quintals of crude resin (net weight) will be delivered at resin depot Sultan Nagri. The quantity may increase or decrease by 10% & the buyer will have to accept the quantity made available by the seller. The weight of resin will be the same as has been recorded in the books of the seller. The seller reserves the right to reject the claim of the purchaser for weightment at the time of taking delivery.

(B) The resin sold will remain at purchaser's risk from date of acceptance of his bid and the seller will not be responsible for any loss and damage which may occur thereto from any cause whatsoever.

(C) All the resin will have to be removed by the purchaser within 60 days of the date of approval of the sale. It will be removed in not more than 60 installments as follows:

1. Within Days of approval of sale.
2. Within Days of approval of sale.
3. Within Days of approval of sale.
4. Within Days of approval of sale.

The purchaser can remove resin only with the written permission of the Divisional Forest Officer, Nainital Forest Division, Nainital and on payment in advance of the full cost and sale tax of resin.

The seller does not take any responsibility for the quality of resin contained in the tins and will not give any resin in exchange.

2. The amount of sale price of the lot calculated on the basis of per quintal bid at the time of auction shall be payable by the buyer irrespective of the fact whether he lifts the material or not.

3. Any resin or tin left within the depot after the last date of lifting shall vest in the Govt. and shall be confiscated and refund in lieu of such resin or tins shall be due to the buyer.
4. No crude resin will be exported by the buyer from the resin depot specified in clause I accept by such routes and via such chaukies as may be decided upon and recorded in written by the Forest Office. The resin tins may be counted and weighted by any Forest Officer at any time during transit.
5. The buyer shall furnish the Forest Officer in writing with the names of all the agents and servants it proposes employ for it before they are employed and the Forest Officer shall be at liberty to forbid the employment of any person whom he may consider undesirable.
6. The buyer shall not drag the resin tins from the Sultan Nagri Depot.
7. In the event of a breach of any of the conditions of this indenture by the buyer or by agents or servants the M/s. Khurana Brothers, Rishikesh shall be liable to pay of fine which may extend to fifty rupees at the discretion of the Forest Officer for each such breach.
8. In the event of breach of this agreement or of any forest law or rules the export of the buyer may be stopped under the orders of the Forest Office, pending any investigation and decision of the case.
9. Nothing in this indenture shall be held to exempt the buyer or its agents or servants from liability to criminal proceedings for breach of the forest laws and rules committed by it or them.
10. In the event of dispute concerning any of the terms of this indenture the same shall be referred to the sole arbitrator appointed by the Chief Conservator of Forest, Uttaranchal whose decision shall be final and binding the parties.
11. The seller has received from the buyer the sum of (Rupees 39,000.00 Thirty Nine thousand) only receipt of which is hereby acknowledged as security for the due fulfillment of all the covenants herein before contained. The Forest Officer in empowered to deduct from such security money any sum, which may be due from the buyer whether in respect of any of the price payable by it or any fine or liability incurred by it under the provision of this indenture. The security money or such balance thereof as may be after making the deductions aforementioned will be returned to the buyer on the expiration or sooner determination of this agreement as after the Forest Officer shall have satisfied himself that all the terms of this indenture have been duly and faithfully carried out by the buyer.

12. The stamp duty payable on this deed and the fee for registration of this deed shall be borne by the buyer.

13. Any tax imposed by any law on the present sale shall be payable by the buyer.

14. Any sum of money, either of sale consideration or fine or other kind of due, payable by the buyer under this deed to the seller shall be recoverable as arrears of land revenue.

In witness where of the Conservator of Forest, Southern Kumaon Circle, Uttaranchal on behalf of the Governor of the Uttaranchal and the M/s. Khurana Brothers, Gopal Mandir, Rishikesh aforesaid have there to set the in signature.

Sd/- BUYER : CONSERVATOR OF FOREST Khurana Brothers”

4. The letter issued by the Divisional Forest Officer to the writ petitioner on April 7, 2001 is as follows:

“Office of Divisional Forest Officer Nainital Forest Division Nainital

Letter No. 4566/39-8.9 Dated Nainital 7-4-2001

To,

Khurana Brothers Rishikesh Gopal Mandir Rishikesh

Subject : Acceptance of Lisa lots purchased on 24-3-2001 in the public auction held at Bhuwali Forest Rest House.

Ref : Letter No. 2955/39-8 Dated 31-0-2001 of forest conservator, southern Kumaun circle, Uttaranchal Nainital.

Sir,

The Bid given by you in the public auction held at Bhuwali Forest Rest House on 24-3-2001 for the following resin lot is accepted in your name.

Name Lot No. Resin BID Total Name of PURCHASED Accepted price in of
Division Tin No. Quantity Per QTL. rupees Depot In rupees from In where Quintal is
to be lifted 1 2 3 4 5 6 7 East 314 to 1740 295 1956/- 586800 Sultan Alimorah
319/2001 300 Nagri

You are therefore to arrange for lifting of aforesaid resin within 60 days of the date of issuance of the letter after having the following conditions of auction notice completed by depositing in advance with the Depot, Sultan Nagri Kathgodam.

1. Submitting challan of the total amount of purchased resin in favour of concerned Divisional Forest officer.
2. Submitting certified the photocopy of certificate of registration with department as required for registration in accordance with section 10 of Uttar Pradesh Rosin and other Forest produce (Trade Regulation) Act, 1976.
3. Payment of total price of Rosin & Trade tax at the prevailing rates at the date of auction shall be compulsory prior to lifting the resin.
4. The details of resin obtained from all sources along with details concerning utilization fuel and further details of payment of Trade tax on the products manufactured from previously obtained rosin prior to lifting the rosin be submitted with Depot officer Rosin Depot.
5. Stamp Duty shall be payable on such purchase as per rules and Government order.
6. The contribution for District Board at the rate of Rs. 5/- per quintal on the purchased rosin shall be payable.
7. Prescribed Income tax and surcharge according to rules shall be paid.

Sd/-

Divisional Forest Officer

Nainital Forest Division”

5. The short question that arises for consideration is whether the above contract of sale for crude resin amounts to 'conveyance' as defined under Section 2(10) of the Indian Stamp Act, 1899 (for short, 'the Stamp Act') and, if answer is in the affirmative, whether stamp duty is chargeable thereon. In order to answer the aforesaid question, the true and real meaning of the document needs to be ascertained. When we look at the contract, it would be seen that in consideration of the price stated in the contract, the State Government agreed to deliver the specified quantity of the crude resin to the writ petitioner ('purchaser'). The parties agreed that quantity may increase or decrease by 10% and the resin will have to be removed by the purchaser within 60 days from the date of approval of sale and it will not be removed in more than 60 installments. As per the terms of the contract, the purchaser was required to pay the amount of sale price irrespective of the fact whether the contracted quantity of resin was lifted by it or not. By a subsequent communication dated April 7, 2001, the purchaser was

informed of the acceptance of the bid for the stated resin lot/s in its favour and it was asked to arrange for lifting of the same within 60 days of the issuance of that letter.

6. Section 4 of the Sale of Goods Act, 1930 reads as follows:

“S.4. Sale and agreement to sell. - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

7. The essence of sale is the transfer of the property in a thing from one person to another for a price. As per Section 4, the contract of sale includes an agreement to sell. It is not necessary that contract of sale must be absolute. It may be conditional as well. The essential feature that distinguishes the contract of sale from an agreement to sell is that in a contract of sale the property in the goods is transferred from the seller to the buyer immediately whereas in an agreement to sell property is transferred on a future date/dates.

“An agreement to sell becomes a sale on fulfillment of the conditions or when the time provided in the agreement elapses.”

8. Section 2(10) of the Stamp Act defines `conveyance' as follows:

“S.2(10). - `Conveyance'.--`Conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I, Schedule I-A or Schedule I- B, as the case may be;

Explanation

9. Section 2(14) as was existing at the relevant time prior to amendment vide U.P. Act 38 of 2001 reads as follows:

“S. 2(14). -- "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.”

10. Section 3 is the charging Section. To the extent it is relevant, it reads as follows:

“S.3. Instruments chargeable with duty. - Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say--

(a)

(b)

(c)

Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in Clause (a), (b) or (c) of this section, or in Schedule I or I-A, the following instruments shall, subject to the exemptions contained in Schedule I-A or I-B, be chargeable with duty of the amount indicated in Schedule I-A or I-B or as the proper duty therefore, respectively, that is to say-

(aa) every instrument mentioned in Schedule I-A or I- B, which, not having been previously executed by any person, was executed in Uttar Pradesh :

(i)

(ii) in the case of instruments mentioned in Schedule I-B, on or after the date on which the U.P. Stamp (Amendment) act, 1952 comes into force:

(bb) every instrument mentioned in Schedule I-A or I- B, which, not having been previously executed by any person, was executed out of Uttar Pradesh :

(i)

(ii) in the case of instruments mentioned in Schedule I-B, on or after the date on which the U.P. Stamp (Amendment) Act, 1952 comes into force and relates to any property situated, or any matter or thing done or to be done in Uttar Pradesh, and is received in Uttar Pradesh :

Provided also that no duty shall be chargeable in respect of :

(i)

(ii)

Explanation.--Where the amount of duty prescribed in Schedule I-B contains any fraction of a rupee, below twenty five paise, or above twenty five paise but below fifty paise, or above fifty paise but below seventy five paise, or above seventy five paise but below one rupee, the proper duty shall be an amount rounded off to the next higher quarter of a rupee, as hereinafter appearing in the said Schedule.”

11. Schedule I -B appended to the Stamp Act provides for the rates of stamp duty in respect of instruments described there under. Article 23 thereof provides for rate of stamp duty on the `conveyance' as defined by Section 2(10) which are not exempted under Article 62.

“Description of instrument Proper stamp duty 23. Conveyance - as defined by Section 2(10) not being a Transfer charged or exempted under No. 62 -

(a)

(b) If relating to moveable property -

[See item 136 Appendix II]

where the amount or value of the consideration of such Twenty rupees conveyance, as set forth therein, does not exceed Rs.1000 and for every Rs.1000 or part thereof in excess of Twenty rupees Rs.1,000 Exemption

Assignment of a copy-right for musical works by resident of or first published in India Explanation :

For the purposes of this Article, in the case of an agreement to sell an immovable property, where possession is delivered before the execution, or at the time of execution, or is agreed to be delivered without executing the conveyance, the agreement shall be deemed to be a conveyance and stamp duty thereon shall be payable accordingly:

Provided that the provisions of Section 47-A shall, mutatis mutandis, apply to such agreement:

Provided further that when conveyance in pursuance of such agreement is executed, the stamp duty paid on the agreement shall be adjusted towards the total duty payable on the conveyance.”

12. The expression `document' is not defined in the Stamp Act. However, the General Clauses Act, 1897 defines `document' as under:-

“S.3(18). - `document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those

means which is intended to be used, or which may be used, for the purpose of recording that matter.”

13. Under Section 2(10), inter alia, every document by which movable property is transferred is `conveyance'. Does the contract of sale for crude resin entered into between the parties amount to transfer of movable property? In our opinion, it does. In the contract under consideration, all essential conditions of transfer of movable property are satisfied. By this document right in auctioned lot of crude resin has been created in favour of the writ petitioner.

“Correspondingly, the State Government is under obligation to deliver the quantity of crude resin specified in the document. Pertinently, clause 1(B) provides that resin sold will remain at purchaser's risk from the date of acceptance of its bid and seller will not be responsible for any loss and damage which may occur thereto from any cause whatsoever. The document read as a whole leaves no manner of doubt that property in the auctioned lot of crude resin vested in the purchaser as a result of the subject contract and, thus amounts to transfer of movable property. Even if the document dated March 24, 2001 is treated as an agreement to sell, in view of the acceptance letter dated April 7, 2001 whereby the writ petitioner has been informed that public auction is accepted in its name and that it must arrange for lifting of the auctioned resin within 60 days from the issuance of this letter, it is very clear that the contract of sale dated March 24, 2001 read with the letter dated April 7, 2001 amounts to `conveyance' within the meaning of Section 2(10) and is chargeable to stamp duty under Article 23, Schedule I-B as admittedly there is no exemption from payment of stamp duty in respect of such conveyance under Article 62.”

14. It is true that the contract document dated March 24, 2001 records the receipt of Rs. 39,000/- as security from the purchaser for due fulfillment of all the covenants but a clause like this does not make it a `Security Document' as held by the Division Bench in the impugned order.

15. The Division Bench travelled beyond scope of review in reviewing the judgment dated April 13, 2004. In our view, the view taken in the judgment dated April 13, 2004 did not suffer from any error apparent on the face of the record justifying its review.

16. The appeals are, accordingly, allowed and the impugned judgment dated December 27, 2007 is set aside. The parties shall bear their own costs.