COMMISSIONER OF TAXES ASSAM, SHILLONG

v.

PRABHAT MARKETING CO. LTD., GAUHATI

October 27, 1966

[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Assam Sales Tax Act (*Act* 17 *of* 1947)—*Packing materials of exempted goods when liable to sales tax.*

The respondent was a registered dealer under the Assam Sales Tax Act, 1947. The Sales-tax Officer assessed the respondent to Sales-tax in respect of the containers of hydrogenated oil and other exempted goods. Appeals to the Assistant Commissioner of Taxes failed as also second appeals to the Assam Board of Revenue. In reference the High Court held that the value of the containers was not assessable to sales tax "unless separate price has been charged for the containers." This finding was based on the view that there was no evidence to show that actually separate price was paid for the containers and hence there was no sale and there could not be any tax on the containers. In appeal to this Court by the Commissioner of Taxes it was urged that the parties may have intended in the circumstances to sell the hydrogenated oil apart from the containers, and the mere fact that the price of the containers was not separately fixed would make no difference.

HELD : The question as to whether there is an agreement to sell packing material is a pure question of fact depending upon the circumstances found in each case. The High Court was in error when it answered the question of law referred to it without addressing itself to the question whether there was an express or implied agreement for the sale of the containers of hydrogenated oil in the present case. [963 H]

Hyderabad Deccan Cirgrette Factory v. *State of Andhra Pradesh,* 17 S.T.C. 624, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 199 and 200 of 1966.

Appeals by special leave from the judgment and order dated May 20, 1964 of the Assam and Nagaland High Court in Sales Tax Reference No. 1 of 1963.

Naunit Lal, for the appellant (in both the appeals).

B. P. Maheshwari, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Ramaswami, J. These appeals are brought, by special leave, from the judgment of the High Court of Assam and Nagaland dated May 20, 1964 in Sales Tax Reference No. 1 of 1963.

The respondent is a registered dealer under the Assam Sales Tax Act (Act 17 of 1947). For the two periods ending September 30, 1959 and September 30, 1960, the Sales Tax Officer assessed the

respondent to sales tax holding that hydrogenated oil was exempt from sales tax but the value of the containers should be assessed at Re. 1/- for each container of hydrogenated oil and at 2 annas for salt bag and a small mustard oil tin which are other exempted goods for the period ending September 30, 1959. For the other period ending September 30, 1960, the value of the containers of the exempted goods was estimated at Rs. 21,500/-. The respondent preferred appeals to the Assistant Commissioner of Taxes, but the appeals were dismissed. The respondent preferred second appeals before the Assam Board of Revenue which by its order dated June 17, 1963 also dismissed the appeals. The respondent thereafter filed an application under s. 32 of the Assam Sales Tax Act, 1947 for reference of the following two questions of law to the High Court :

"(1) Whether delivery of goods made to the Assam Rifles and NEFA, at Rowriah Air Port for consumption outside the State of Assam, constitutes a sale liable to Sales Tax under the Act ?

(2) Whether the value of the containers of hydrogenated oil is assessable to Sales Tax under the Act though the oil itself is not taxable under it ?"

By its judgment dated May 20, 1964 the High Court answered the first question against the assessee. With regard to the second question, the High Court held that the value of the containers was not assessable to sales-tax "unless separate price has been charged for the containers". The High Court took the view that there was no evidence to show that actually separate price was paid for the containers and hence there was no sale and there could not be any tax on the containers. The High Court accordingly answered the second question in favour of the assessee.

The question presented for determination in these appeals is whether the value of containers of hydrogenated oil is assessable to sales-tax under the Assam Sales Tax Act, 1947.

On behalf of the appellant Mr. Naunit Lal contended that the High Court has erred in holding that unless a separate price has been charged for the containers the value of the containers is not assessable to sales-tax. It was submitted that the parties may have intended in the circumstances to sell the hydrogenated oil apart from the containers; and the mere fact that the price of the containers was not separately fixed would make no difference to the assessment of sales-tax. In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. It is well-established that in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, the

A agreement must be supported by money consideration, and that as a result of the transaction the property should actually pass in the goods. Unless all the ingredients are present in the transaction there could be no sale of goods and sales-tax cannot be imposed [*State of Madras* v. *Gannon Dunkerley and Co.* (*Madras*)](1). But the contract of sale may be express or implied. In *Hyderabad*
B *Deccan Cigarette Factory* v. *The State of Andhra Pradesh*(2). It was held by this Court that in a case of this description what the Sales-tax authorities had to do was to ask and answer the question whether the parties, having regard to the circumstances of the case, intended to sell or buy the packing materials or whether the subject-matter of the contracts of sale was only an exempted article, and
C packing materials did not form part of the bargain at all, but were used by the sellers as a convenient and cheap vehicle of transport. At page 628 of the Report Subba Rao, J., speaking for the Court, observed as follows:

> "In the instant case, it is not disputed that there were no express contracts of sale of the packing materials between
D the assessee and its customers. On the facts, could such contracts be inferred ? The authority concerned should ask and answer the question whether the parties in the instant case, having regard to the circumstances of the case, intended to sell or buy the packing materials, or whether the subject-matter of the contracts of sale was only the cigarettes and
E that the packing materials did not form part of the bargain at all, but were used by the seller as a convenient and cheap vehicle of transport. He may also have to consider the question whether, when a trader in cigarettes sold cigarettes priced at a particular figure for a specified number and handed them over to a customer in a cheap card-board container of insignificant value, he
F intended to sell the cardboard container and the customer intended to buy the same ? It is not possible to state as a proposition of law that whenever particular goods were sold in a container the parties did not intend to sell and buy the container also. Many cases may be visualized where the container is comparatively of high
G value and sometimes even higher than that contained in it. Scent or whisky may be sold in costly containers. Even cigarettes may be sold in silver or gold caskets. It may be that in such cases the agreement to pay an extra price for the container may be more readily implied."

H The question as to whether there is an agreement to sell packing material is a pure question of fact depending upon the circumstances found in each case. But the High Court answeaed the

(1) [1959] S. C. R. 379. (2) 17 S. T. C. 624.

question of law referred to it by the Board of Revenue without addressing itself to the question whether there was an express or implied agreement for the sale of the containers of hydrogenated oil in the present case. A

We accordingly set aside the judgment of the High Court and direct that the answer to the second question should be that the value of containers of hydrogenated oil is assessable to sales-tax under the Act if there is an express or implied agreement for the sale of such containers. These appeals are, accordingly, allowed. At the time of grant of special leave this Court made a condition that the appellant will pay the cost of the respondent in any event. B

Mr. Naunit Lal on behalf of the appellant gave an undertaking that if these appeals are allowed no further steps will be taken to tax the respondent for the containers for the periods covered in the present case. C

G.C. *Appeals allowed.*