

A

STATE OF RAJASTHAN & ANR.

v.

M/S. KARAM CHAND THAPPAR & BROS. LTD.

August 27, 1968

B

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Sales Tax—Sale—Ingredients of—Supply of coal at price fixed by Colliery Control Order—If constitutes sale.

Sales Tax Laws Validation Act (7 of 1956)—Composite order dealing with assessment year 1955-56—If could be split up and validated upto September 6, 1955.

C

The respondent-assessee, had its head office at Calcutta and a branch office at Jaipur and was registered as a 'dealer' under the Rajasthan Sales Tax Act, 1954. Under a contract with the Equitable Coal Company, the assessee acquired monopoly rights to supply coal in Rajasthan and sold coal as the agent of the Equitable Coal Company. Under an agreement dated April 28, 1955 the assessee supplied coal to the State of Rajasthan. The Sales Tax Officer, Jaipur, included in the turnover of the assessee in the year 1955-56, the sales of coal to the State of Rajasthan.

D

In a writ petition filed by the assessee, the High Court held : (1) that the supply of coal to the State of Rajasthan did not constitute sale as the supply was controlled by a statutory order, namely the Colliery Control Order, 1945; and (2) that even if there was a sale it would be inter-State sale, and even though the assessee was liable to pay sales tax in respect of inter-State sale between April 1, 1955 and September 6, 1955 because of Sales Tax Laws Validation Act, 1956 the order of assessment in the instant case was not valid, as it was a composite order for the entire assessment year 1955-56.

E

In appeal to this Court,

F

HELD : (1) Under the Colliery Control Order, coal may be supplied to a purchaser under a contract and the effect of the Control Order, was only to super-impose upon the agreement between the parties the rate fixed the Control Order. Therefore in the present case, the four elements necessary to render turnover from sale of goods liable to sales tax namely (a) competency of parties, (b) mutual assent of the parties, (c) passing of property in the goods supplied to the purchaser, and (d) payment or promise of payment of price were present and the transaction would be a sale of goods within the meaning of the Rajasthan Sales Tax Act. [864 F-H; 865 A, 866 G]

G

State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., [1959] S.C.R. 379, Indian Steel & Wire Products Ltd. v. State of Madras, 21 S.T.C. 138 (S.C.) and Andhra Sugars Ltd. v. State of Andhra Pradesh 21 S.T.C. 212 (S.C.), followed.

H

New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar, [1963] Supp. 2 S.C.R. 459 on which reliance was placed by the High Court, has no application to the present case, because, the condition requiring mutual assent of the parties was not present in that case. [865 B]

• (2) An order of assessment of sales tax challenged by a tax payer, could be split up and dissected so as to uphold it insofar as it related to

items of sale which could be separated and taxed for different periods. Therefore, a writ of *mandamus* would issue in the present case directing the State not to realise sales-tax only in respect of transactions of sale which were not taxable, that is, sales after September 6, 1955, [867 F-G; 868 B]

State of Jammu and Kashmir v. Caltex (India) Ltd. 17 S.T.C. 612, (S.C.) followed.

There is no inconsistency between the principle of the case of *Ram Narain Sons Ltd. v. Asstt. Commissioner of Sales Tax*, [1955] 2 S.C.R. 483; 6 S.T.C. 627 on which respondent relied and that of the case of *Caltex (India) Ltd.* [867 G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1364 of 1966.

Appeal from the judgment and order dated April 20, 1965 of the Rajasthan High Court in D.B. Civil Writ Petition No. 45 of 1959.

Niren De, Solicitor-General and K. Baldev Mehta, for the appellants.

S. P. Mehta, N. N. Bhattachariyya, Bhuvnesh Kumari, and J. B. Dadachanji, for the respondent.

B. Sen, G. S. Chatterjee and P. K. Bose, for the intervener.

The Judgment of the Court was delivered by

Shah, J. The respondent—hereinafter called ‘the assessee’—has its Head Office at Calcutta and a Branch Office at Jaipur, and is registered as a “dealer” under the Rajasthan Sales Tax Act, 1954. Under a contract dated September 2, 1948, with the Equitable Coal Company the assessee acquired monopoly rights to supply on behalf of the collieries, coal in certain areas including Rajasthan. Under an agreement dated April 28, 1955, with the State of Rajasthan the assessee supplied coal to the State Power Houses up to May 19, 1958. The Sales Tax Officer, City Circle A, Jaipur, assessed to tax the turnover of the assessee in the year 1955-56 from the supply of coal to the State of Rajasthan.

The assessee then moved a petition under Art. 226 of the Constitution in the High Court of Rajasthan for a writ quashing the order of assessment of the Sales Tax Officer. The High Court accepted the plea that the assessee was not a dealer within the meaning of the Act and quashed the assessment. In appeal by the State of Rajasthan against the order of the High Court, this Court held that the assessee was a dealer within the meaning of the explanation to s. 2(f) of the Rajasthan Sales Tax Act, since the assessee was an agent for sale for the Equitable Coal Company which carried on the business of buying, selling or supplying goods in the State. But this Court remitted the case

- A to the High Court for determination of certain other questions which were not decided.

- B The High Court on remand held that there was no sale of coal by the assessee to the State of Rajasthan; that in any event the sales were inter-State sales from the collieries in other States to the State of Rajasthan and that the Sales Tax Laws Validation Act 7 of 1956 which validated the levy of sales tax on inter-State sales till September 6, 1955, did not operate to validate the order of assessment, which was a composite order for the entire assessment year 1955-56. The High Court again issued a writ quashing the assessment. The State of Rajasthan has appealed to this Court with certificate granted by the High Court under Art. 133(1)(a) of the Constitution.

- C In support of the appeal the Solicitor-General urged two contentions :—

- D (1) In relying upon the judgment of this Court in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*⁽¹⁾ in support of the conclusion that there was no sale of coal within the meaning of Rajasthan Sales Tax Act, the High Court seriously erred; and

- E (2) that the order of assessment made by the Sales Tax Officer for the financial year 1955-56 is not liable to be quashed insofar as it relates to the period April 1, 1955, to September 6, 1955, in view of the provisions of the Sales Tax Laws Validation Act 7 of 1956.

- F Under the agreement dated September 2, 1948, with the Equitable Coal Company Ltd. the assessee was granted a monopoly right to supply coal in certain areas including the territory of Rajasthan. The assessee was to arrange despatches to cover the quantities of coal reserved on its account by the Equitable Coal Company. This Court in the judgment dated October 9, 1964, held that the assessee was an agent of the Equitable Coal Company and sold coal on behalf of that Company. Under the agreement dated April 28, 1955, with His Highness the Rajpramukh of the State of Rajasthan the assessee was to supply coal to the Rajasthan Government in accordance with the specifications and on the terms set out therein. The assessee undertook thereby to supply coal at controlled rates F.O.R. Colliery and to arrange all the transport and safe delivery of coal at Jaipur Power House.

- H At all times material in this appeal, supply of coal was governed by the Colliery Control Order, 1945. By cl. 4 of the Order, the Central Government was competent to fix the prices:

(1) [1963] Supp. 2 S.C.R. 459.

at which coal may be sold by colliery owners. By cl. 5 the colliery owners and their agents were prohibited from selling or agreeing to sell or offering to sell coal at a price different from the price fixed in that behalf under cl. 4. By cl. 6 it was provided that where a colliery owner has signified to the Deputy Coal Controller (Distribution) in writing his willingness to sell direct to consumers and an allotment is made by the Deputy Coal Controller to a consumer with his consent for such direct sale, the coal shall be delivered to the consumer at the price fixed under cl. 4, and no commission or other charges except brokerage shall be paid in addition. By cl. 8 the Central Government was authorised to issue from time to time such directions as it thought fit to any colliery owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery during any period, including directions as to the grade, size and quantity of coal which may be disposed of and persons or class or description of persons to whom coal shall or shall not be disposed of, the order of priority to be observed in such disposal, and the stocking of coal on Government account. Clause 12-E provided that no person shall acquire or purchase or agree to acquire or purchase any coal from a colliery, and no colliery owner or his agent shall despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in a general or special authority of the Central Government.

Under the Colliery Control Order, coal may be supplied under directions issued by the Central Government upon the colliery owner to any person without an agreement express or implied between the colliery owner and such other person : coal may also be supplied under a contract between the colliery to a purchaser at the price fixed by the Central Government. In the present case there was between the State of Rajasthan and the assessee acting as an agent of the Equitable Coal Company an agreement to sell coal. The price chargeable was fixed under the Colliery Control Order. The effect of the Control Order was only to superimpose upon the agreement between the parties the rate fixed under the Order. But on that account it cannot be said that the relation between the supplier and the person to whom the coal was supplied was not contractual. The contract between the parties was only modified by the statutory provisions.

This Court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.*⁽¹⁾ held that to render turnover from sale of goods liable to tax under the Sales Tax Acts, there must be concurrence of four elements in the sale—(1) parties competent to contract; (2) mutual assent of the parties; (3) thing

(1) [1959] S.C.R. 379.

- A absolute or general, property in which is transferred from the seller to the buyer; and (4) price in money paid or promised. In the present case all the four elements exist. The principle of the decision of this Court in *M/s New India Sugar Mills Ltd's* case⁽¹⁾ which the High Court regarded as decisive has no application to this case. In that case it was found that conditions (1), (3) & (4) were present, but not condition (2), since
- B there was no mutual assent between the parties. The facts found in that case were that the States in need of sugar intimated to the Sugar Controller from time to time their requirements, and similarly the factory owners sent to the Sugar Controller statements of stock of sugar held by them. The Sugar Controller then made allotments taking into consideration
- C the supply position and the requirements of the States. The Sugar Controller then intimated the allotment order to the factory owner, directing him to supply sugar to the State Governments in accordance with the despatch instructions received from the State Government. A copy of the allotment order was also sent to the State Governments concerned, on receipt of
- D which the competent authority of the State Government sent to the factory concerned instructions about the destination to which the sugar was to be despatched and the quantity of sugar to be despatched. On these facts it was held that there was no contractual relation between the State Government and the factory owner. The Sugar Controller directed the manufacturer of sugar to supply sugar to the State Government and the factory
- E owner complied with the direction. This Court in two recent judgments has held that when goods, supply of which is controlled by statutory orders, are delivered pursuant to contract of sale, the principle of the case in *M/s New India Sugar Mills Ltd's* case⁽¹⁾ has no application. In the *Indian Steel & Wire Products Ltd. v. The State of Madras*⁽²⁾, the facts were these :
- F sale and purchase of iron and steel products was at the relevant time controlled by the Iron and Steel (Control of Production and Distribution) Order, 1941. An intending purchaser of iron or steel goods placed his order for supply of materials through the Iron & Steel Controller, agreeing that the order was placed subject to the provisions of the schedule regarding prices etc. and the terms and conditions of business (including payment)
- G of the registered producer on whom the order would be placed by the Iron & Steel Controller. The indent was forwarded to the producer for delivery of the material in accordance with any general or special directions of the Iron & Steel Controller. The works order issued by the producer provided that all orders booked were subject to his terms of business and general understanding in force at the time of booking the orders and despatch
- H of goods. It was open to the producer to supply the goods ordered at his convenience, and to fix the time and mode of

(1) [1963] Supp. 2, S.C.R. 459.

(2) 21 S.T.C. 138.

payment of the price of the goods supplied. It was held that the transactions resulting in the supply of the steel products to the purchaser amounted to sales and were liable to sales tax.

In *Andhra Sugars Ltd. and Anr. v. The State of Andhra Pradesh and Ors.*⁽¹⁾, under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961, on the declaration of a factory zone for the purposes of supply of cane to a factory during a particular crushing season, the occupier of the factory was bound to purchase such quantity of cane grown in that area and offered for sale to that factory as might be determined by the Cane Commissioner. The Act prohibited the cane growers in a factory zone from supplying or selling cane to any factory or other persons otherwise than in accordance with the provisions of the Schedule to the Act. Under the Rules framed under that Act, the cane grower may within the period specified offer to supply cane grown in that area to the occupier of the factory, and the occupier of the factory was bound to enter into an agreement with the cane grower for the purchase of the cane offered. The prescribed agreement provided that the occupier of the factory agreed to buy and the cane grower agreed to sell during the crushing season certain sugarcane crop grown in the area, and at the minimum price notified by the Government from time to time, upon the terms and conditions mentioned in the agreement. Under the Act and the Rules framed thereunder, the cane grower in the factory zone was free to make or not to make an offer of sale of cane to the occupier of the factory. But if he made an offer, the occupier of the factory was bound to accept it. The resulting agreement was recorded in writing and was signed by the parties. The consent of the occupier of the factory to the agreement, it was held, was free, and in spite of statutory compulsion, the agreement was neither void nor voidable. Purchases of sugarcane under the agreement could, it was held, be taxed by the State Legislature under the Act enacted in exercise of the power conferred under Entry 54, List II, of Sch. VII to the Constitution of India.

There was in the present case an agreement of sale between the parties competent to contract and in pursuance of the agreement of sale, property in the goods supplied passed to the purchaser for price agreed to be paid. The transaction was, therefore, one of sale of goods within the meaning of the Rajasthan Sales Tax Act.

Counsel for the assessee made no serious attempt to support the judgment of the High Court which was largely influenced by the decision in *M/s New India Sugar Mill case*⁽²⁾—a case founded on a different principle but he contended that since

(1) 21 S.T.C. 212.

(2) [1963] Supp. 2 S.C.R. 459.

- A the sales tax authorities had made assessment for the entire period April 1, 1955 to March 31, 1956, even if it be held that upon enactment of the Sales Tax Laws Validation Act 7 of 1956, the assessee was liable to pay tax in respect of the transactions of sale which admittedly took place in the course of inter-State trade or commerce, during the period April 1, 1955 to September 6, 1955, the order of assessment could not be upheld in part. Counsel placed reliance upon two judgments of this Court in *Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax and Others*⁽¹⁾; and *Provincial Government of Madras v. J. S. Basappa*⁽²⁾. In *Ram Narain Sons Ltd.'s* case⁽¹⁾ it was held by this Court that when an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid *in toto*, and therefore a composite assessment relating to the pre-Constitution as well as the post-Constitution periods of which the part relating to the post-Constitution period was invalid in its entirety and was liable to be set aside. The principle of that case was reiterated in *J. S. Basappa's* case⁽²⁾.

E In the present case the Solicitor-General submits that on the finding recorded by this Court in the appeal filed in the earlier judgment it was held that the owner of the goods was the Equitable Coal Company and the assessee was merely the agent of that Company and coal was supplied in the course of inter-State sales. The State was entitled to levy tax for the period April 1, 1955 to September 6, 1955 both days inclusive, by virtue of the provisions of the Sales Tax Laws Validation Act 7 of 1956, and the order of assessment levying tax on the turnover for that period could be upheld.

- F Counsel relied upon the judgment of this Court in *State of Jammu and Kashmir v. Caltex (India) Ltd.*⁽³⁾ in which this Court directed that the order of assessment for the period January 1, 1955 to May, 1959 challenged by the tax payer could be split up and dissected so as to uphold it insofar as it related to items of sale which could be separated and taxed for different periods, and a writ of *mandamus* would issue directing the State not to realize sales tax only in respect of transactions of sale which were not taxable. There is no inconsistency between the principles of the cases of *Ram Narain Sons Ltd.*⁽¹⁾ and *Caltex (India) Ltd.*⁽²⁾ In *Ram Narain Sons Ltd.'s* case⁽¹⁾ this Court, after declaring that the assessment was invalid, directed that the matter will go back to the Assessment Officer for re-assessment of the appellants in accordance with law : see pp.

(1) 6 S.T.C. 627.

(1) 17 S.T.C. 612.

(2) 15 S.T.C. 141.

638 & 643. In *Caltex (India) Ltd.'s* case⁽¹⁾ the Court issued a writ of *mandamus* prohibiting the State from realizing sales tax with regard to the transactions on which the sales tax was not validated by the Sales Tax Laws Validation Act, 1956. The effect of the two orders is the same.

A writ of *mandamus* will issue directing the State of Rajasthan not to realize sales tax except with regard to the transactions of sale between the period April 1, 1955 and September 6, 1955, both days inclusive. The Sales Tax Officer who is also one of the appellants in this case will make appropriate modifications in the order of assessment in the light of the judgment of this Court. In view of the divided success, there will be no order as to costs throughout.

V.P.S.

Appeal allowed in part.

(1) 17 S.T.C. 612. (S.C.)