Indian Steel & Wire Products Ltd vs State Of Madras on 11 September, 1967

Equivalent citations: 1968 AIR 478, 1968 SCR (1) 479, AIR 1968 SUPREME COURT 478

Author: K.S. Hegde

Bench: K.S. Hegde, K.N. Wanchoo, R.S. Bachawat, V. Ramaswami, G.K. Mitter

PETITIONER:
INDIAN STEEL & WIRE PRODUCTS LTD.

Vs.

RESPONDENT:
STATE OF MADRAS

DATE OF JUDGMENT:
11/09/1967

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
WANCHOO, K.N. (CJ)
BACHAWAT, R.S.
RAMASWAMI, V.
MITTER, G.K.

CITATION:
1968 AIR 478 1968 SCR (1) 479
CITATOR INFO :
RF 1968 SC 599 (6)
R 1969 SC 343 (8)
RF 1970 SC2000 (10)
RF 1972 SC 87 (26)
APR 1978 SC 449 (7,35,43,32,52)
RF 1986 SC1742 (9)

ACT:
Madras General Sates Tax Act (9 of 1939)-Iron and Steel (Control of Production and Distribution) Order, 1941-Supplies effected on orders of Steel Controller whether 'sales'-Tribunal's finding that sales were for consumption in Madras State-To be treated as conclusive.

HEADNOTE:

At the instance of the steel controller exercising powers under the Iron and Steel (Control of Production and Distribution) Order, 1941, the appellant supplied certain steel products to various persons in Madras State during the financial years 1953-54, 1954-55 and part of the financial year 1955-56. The State of Madras assessed the turnover of the appellant relating to those transactions to sales tax under the Madras General Sales Tax Act, the law in force at that time. The appellant contended before the authorities under the Sales Tax Act as well as the High Court that the transactions were not sales and therefore could not be taxed. The further contention was that there was no material to show that the deliveries were for consumption within the State of Madras so as to become taxable within the State. From the adverse decision of the High Court the appellant, by special leave, came to this Court. In support of the contention that the transactions were not sales it was urged that they were effected under the directions of the Iron and Steel Controller given under cl. 10B of the Order and that being so there was no mutual assent between the parties to the transactions.

HELD:The authority of the controller to pass the orders in question came from cl. 5 of the order and not cl. 10B. The orders were in respect of goods not yet manufactured whereas under cl. 10B directions could be given only in respect of goods already in stock. So far as cl. 5 is concerned admittedly it does not require the controller to regulate or control every facet of a transaction between a producer and the person to whom he supplies iron and steel products. [488H: 489C-H]

In modern times the doctrine of laisser faire can have only a limited application. That does not mean that there is no freedom of contract. So long as mutual assent is not excluded in any dealing, in law it is a contract. On the facts of the present case it was not possible to accept the contention that nothing was left to be decided' by mutual assent. On the other hand the controller's directions were confined to narrow limits and there were several matters which the parties could decide by mutual consent. [490B; 491B-C]

Kirkness v. John Hudson & Co. Ltd. [1955] A.C. 696; M/s. New India Sugar Mills Ltd. v. Commissioner of Sales-tax, Bihar, [1963] Supp. 2 S.C.R. 459; Calcutta Electric Supply Corporation Ltd. v. Commissioner of Income-tax. West Bengal. 19 I.T.R. 406; M/s. Cement Ltd. v. State of Orissa, 12 S.T.C. 205; State of Madras v. Gannon Dunkerley, [1959] S.C.R. 379; North Adjai Coal Company (P) Ltd. v., Commercial Tax Officer & Ors. 17 S.T.C. 514 and S. K. Roy v. Additional Member, Board of Revenue, West Bengal, 18 S.T.C. 379, referred to.

(ii)From the facts and circumstances the Tribunal rightly found' that the supplies were made to stockists in the State of Madras for
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consumption in that State. It may be that a small portion of the supplies had gone out of the State. But that was not a relevant circumstance. What had to be seen Was whether the supplies in question were made for consumption in the Madras State. On that question the finding of the Tribunal was conclusive. [496B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1968-1970 of 1966.

Appeals by special leave from the judgment and order dated July 16, 1962 of the Madras High Court in Tax Cases Nos. 117,118 and 119 of 1959.

S. B. Banerjee and S. N. Mukerjee, for the appellant (in all the appeals).

K. M. Mudaliyar, Advocate-General for the State of Madras and A. V. Rangam, for the respondent (in all the appeals). M.C. Setalvad, B. Sen, G. S. Chatterjee and P. K. Bose, for the Intervener (in C. A. No. 1968 of 1966). The Judgment of the Court was delivered by Hegde, J. These appeals by special leave arise from the common order made by the Madras High Court in T. C. Nos. 117 to 119 (revisions Nos. 71 to 73) on its file. The Indian Steel and Wire Products Ltd. a joint stock public limited company is the appellant in all these appeals. At the instance of the steel controller the appellant supplied certain steel products to various persons in the Madras State during the financial years 1953-54, 1954-55) and part of 1955-56 (from April 1, 1955 to September 6, 1955). The State of Madras assessed the turnovers of the appellant relating to those transactions to sales tax under the Madras Gen. Sales Tax Act, 1939 (Madras Act 9 of 1939) (to be hereinafter referred to as the Act), the law in force at that time. The appellant has been assessed to tax on the basis of best judgment. The authorities under the Act have determined appellant's turnover during the year 1953-54 at Rs. 3129520/- and levied a tax of Rs. 16298/4 annas. During the financial year 1954-55, its turnover was determined at Rs. 3759216/- . and the assessment levied is Rs. 58737-12-0. For the broken period in the financial year 1955-56, the appellant's turnover was determined at Rs. 1453292/- and the same was assessed to tax at Rs. 22707-12-0. Even according to the appellant, its turnovers during 1953-54 was Rs. 2912533-14-0, in 1954-55, Rs. 3971493/7/- and in 1955-56, Rs. 1725400/5/-. Therefore, there is little room for controversy about its turnover in the relevant years. The appellant is contesting the right of the State of Madras to levy tax on the turnovers in question. According to the appellant, the turnovers in question could not have been considered as sales and consequently they could not have been brought to tax under the Act. The appellant asserts that deliveries in question were made under compulsion of law and there was no agreement between the parties. They were made in pursuance of the orders of the Controller exercising powers under the Iron & Steel (Control of Production and Distribution) Order, 1941 (which will hereinafter be referred to as the order), which was issued under the Defence of India Act 1939. It was argued on behalf of the appellant that

it was the controller who determined the persons to whom the goods were to be supplied, the price at which they were to be supplied, the manner in which they were. to be transported, and the mode in which the payment of the price was to be made. In short, it was said that every facet of those transactions were prescribed by the controller and therefore those transactions cannot be considered as sales. On the basis of those assertions support was sought from the decision of the House of Lords in Kirkness v. John Hudson & Co., Ltd.(1) the decision of this Court in M Is. New India Sugar Mills Ltd. v. Commis- sioner of Sales Tax. Bihar(1), the decision of the Calcutta High Court in Calcutta Electric Supply Corporation Ltd. v. Commissioner of Income Tax, West Bengal(1) the decision of the Orissa High Court in Messrs. Cement Ltd. v. The State of Orissa(1), and a few other decisions. It was further argued that even if those transactions are considered as sales the State before exercising its taxing power should have had in its possession material to show that the goods delivered by the appellant were delivered in that State for consumption which circumstance alone can make those transactions sales within that State; as no material was placed on record to show that the goods in question were delivered in that State for consumption it could not have brought the turnovers in respect of those transactions to tax under the Act. These contentions of the appellant have been rejected by the authorities under the Act as well as by the High Court. Other contentions advanced on behalf of the appellant deserve to be summarily rejected for the reasons to be mentioned hereinafter.

The principal question that falls for decision in these appeals. is whether the transactions with which we are concerned herein are sales. Sec. 2(h) of the Act defines 'sale' thus:

> " 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes also transfer of property in goods involved in the execution of works contract and in the, supply or distribution of goods by a co-operative society.. club, firm or any association to its members for cash or for deferred payment or other valuable consideration but does not include a mortgage. hypothecation, charge or pledge" (the explanations to that definition are not relevant for our present purpo se).

(1) [1955] A.C. 696.

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

(3) 19 I.T.R. 406.

(4) 12 S.T.C. 205.

This wide definition undoubtedly covers those transactions. But then the power of a State to tax sales is derived from Entry 54 of List II of the VII Schedule in the Constitution. That entry as it stood at the relevant time empowered the State to tax on the sale or purchase of goods. The scope of the expression 'sale or purchase of goods' found in entry 48 in List II of Schedule VII of the Government of India Act 1935 which is in pari materia with the aforementioned entry 54 came up for

interpretation before this Court in State of Madras v. Gannon Dunkerley(1). In that case, the question that fell for decision was whether the words 'sale of goods' should be given their popular meaning or whether they should have the meaning attached to them under the Sale of Goods Act. This Court held that the expression 'sale of goods' was, at the time when the Government of India Act, 1935 was enacted, a term of well recognised legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and must be interpreted as having the same meaning as in the sale of Goods Act 1930: In the course of the judgment, Venkatarama Aiyar, J,who ,spoke for the Court after examining the various decisions cited at the Bar, observed, as follows:

> "Thus, according to the law both of England and of India, 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 which of course pre-supposes capacity to contract, that it must be supported by money consideration and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer was not money but other valuable consideration, it may then be exchange or barter but not sale. And if under the contract of sale, title to the goods has not passed, then there is an agreement to sell and not a completed sale."

As laid down by this decision, to constitute a valid sale, there must be concurrence of the following elements viz. (1) parties competent to contract (2) mutual assent (3) a thing the absolute or general property in which is transferred from the seller to the buyer and (4) a price in money paid or promised. Therefore we have to see whether all these elements are found in the transactions before us. Before doing so it is necessary to refer to the 'order' and the manner in which those transactions were effected. During the World War IT iron and steel goods became scarce. Therefore it became necessary for the Government to control the production and distribution of those goods. In order to do so, the (1) [1959] S.C.R. 379.

government issued the 'order' on July 26, 1941, and the same came into force on August 1, 1941. The provisions in that order which are material for our present purpose are set out hereinbelow: -

> "2. Definitions In this Order, unless there is anything repugnant in the subject context:
>
> -
>
> (a) 'Controller' means the person appointed as Iron -and Steel Controller by the Central Government, and -includes any person exercising, upon authorisation by the Central Government, all or any of the powers of the Iron and Steel Controller;
>
> (b) 'Producer' means a person carrying on the business of manufacturing iron or steel.

(c) 'Registered Producer' means a producer who is registered as such by the Controller.

(d) 'Stockholder' means a person holding stocks of Iron or Steel for sale who is registered as stockholder by the Controller.

(e) 'Controlled Stockholder' means a stockholder appointed by the Controller to hold stocks of iron or steel under such terms and conditions as he may prescribe from time to time.

(f)'Pressure Pipes' include all Pipes and Tubes 1/8" nominal bore and above which will withstand or may be used for a working pressure of 25 lbs. per square inch and above.

3. Application of Order-(I) The provisions of this Order shall apply to all iron or steel of the categories specified in the Second Schedule to this Order. (2) A certificate signed by the Comptroller or by any officer authorised by him in this behalf, in respect of any category of iron or steel, shall be conclusive proof that it is an article to which this Order is applicable.

4. Acquisition-No person shall acquire or agree to acquire any iron or steel from a Producer or a Stockholder except under the authority of and in accordance with the conditions contained or incorporate d in a general or special written order of the controller.

5. Disposal-No Producer or Stockholder shall dispose of or agree to dispose of or export or agree to export from British India any iron or steel, except in accordance with the conditions contained or incorporated in a general or special written order of the Controller.

10B. Power to direct sale-The Controller may' by a written Order require any person holding stock or iron and steel, acquired by him otherwise than in accordance with the provisions of Clause 4 to sell the whole or any part of the stock to such person or class of persons and on such terms and conditions as may. be specified in the Order. 10C. Power to prohibit removal-The Controller may order any producer (including a registered producer), any stockholder (including a controlled stockholder) or any other person not to remove or permit the removal of any iron or steel, whether sold or unsold, from his stockyard or from any other part of his premises to any place outside the precincts of such stockyard or premises, except with the written permission of the Controller.

11 AA (3). No producer, stockholder, or other person holding stocks of iron and steel shall without sufficient cause, refused to sell any iron or steel which he is autho- rised to sell under this Order.

Explanation-The possibility or expectation of obtaining a higher price at a later date shall not be deemed to be a sufficient cause for the purpose of this clause. 11B. Power to fix prices-(1) The Controller may from time to time by notification in the Gazette of India fix the maximum prices at which any iron or steel may be sold (a) by a Producer, (b) by Stockholder including a Controlled Stockholder and (c) by any other person or class of persons. Such price or prices may differ for iron

and steel obtainable from different sources and may include allowances for contribution to and payment from equalising freight, the concession rates payable to each pro ducer or class of producer under agreements entered into by the Controller with the producers from time to time. and any other disadvantages.

(2) For the purpose of applying the prices notified under sub-clause (1) the Controller may himself classify any iron and steel and may, if no appropriate price has been so notified, fix such price as he considers appropriate. (3)No producer or stockholder or other person shall sell, or offer to sell. (and no person shall acquire) any iron or steel at a price exceeding the maximum prices fixed under sub-clause (1) or (2).

13. Any Court trying a contravention of this Order may, without prejudice to any other sentence which it may pass, direct that any Iron and Steel in respect of which the Court is satisfied that this order has been contravened shall be forfeited to His Majesty."

The appellant has set out in para 4 of the statement of the case the procedure adopted for acquiring iron and/ or steel products under the order. This is what is stated therein: -

> "That Order was at all material times administered principally by the Iron and Steel Controller having his office in the city of Calcutta in the State of West Bengal who controlled the entire production and distribution of the iron and/or steel products. Any party desiring to acquire any product has to apply to the Controller. Upon processing such application or requisition entirely at his option and discretion, the Controller would pass such a requisition an to the Appellant for manufacture and/or despatch. The appellant has, upon receipt of the said requisition from the Controller to prepare a Works Order for the manufacture of the products concerned and to advise the Controller; and later on completion of the manufacture the appellant has to make the product conform to the requisition processed by the Controller and then deliver the requisite quantity in the requisite shape to the Indian State Railways siding maintained at the appellant's own factory site, in Indranagar. in the suburbs of Jamshedpur, in the State of Bihar, and to advise the requisitionist as well as the Controller accordingly.."

The correspondence relating to the delivery of steel goods in pursuance of an order placed by one K. Thiruvengadam Chetty & Co. has been produced by the appellant evidently to show the manner in which the transactions were effected.

On December 20, 1952. Thiruvengadam Chetty and Co., wrote follows to the Controller:

> 'From Name-K. Thiruvengadam Chetty and Company. Address-Iron Merchants and Tata Scob Dealers 93, Rasappa Chetty Street. Madras-3.
>
> Date 20th December 1952.

To The Iron and Steel Controller, 33, Netaji Subas Road, Calcutta. Through the Director of Controlled Commodities, Mount Road, Madras.

Dear Sir, Please place on our behalf and at our risk and account our order on Registered Producers for material as per specification given below for delivery in such period ,as you can arrange. We confirm that this indent is placed subject to the provisions of the Steel Price Schedule regarding prices, etc., and the terms and conditions of business (including payment) of the registered producers on whom the order is placed by you and that delivery or part/delivery from any such registered producer will be accepted by us. Please direct the registered producers concerned to send us a copy of the works order in confirmation of having booked our Indent. Ship to Madras Saltcotaurs.

Send R. R. to Messrs. K. Thiruvengadam Chetty and Company, Iron Merchants, 93, Rasappa Chetty Street, Madras-3, through your Madras Office.

Send original and duplicate invoice to Messrs. K.. Thiruvengadam Chetty and Company, 93, Rasappa Chetty Street, Madras-3 through your Madras Office. Date of shipment desired:

Ex-stock as early as possible.

Quantity	Pieoes	Section un-tested	Lengths	Complete description of material indented
(1)	(2)	(3)	(4)	

---------- CWT. QRS. LBS.

10.....468 M.S. rounnd 1/4" 18' 13 B Category

5.....493 " 3/16" 18' do

5.....453 " 5/16" 18' do

---

20 (Twenty tons only)

All P.T. free on rail Saltcotaurs and bundling charge account.

Yours faithfully, (signed).....

by Partner, For K. Thiruvengadam Chetty and Company." The Controller forwarded that letter to the appellant with the following remarks: -

> "The above indent is forwarded to Indian Steel and Wire Products Limited, Tatanagar, for delivery in period 1/53 or subsequently in accordance with any general or special directions of the Iron and Steel Controller."

It may be noted that the Controller merely asked the appellant to deliver to K. Thiruvengadam Chetty and company the goods ordered "in accordance with any general or special directions of the Iron and Steel Controller." Our attention was not invited to any general or special order issued by the controller excepting that fixing the base price. It is clear that it was left to the appellant to supply the goods ordered at his convenience. On the basis of the, above communication a works order was issued by the appellant to the mill superintendent, a copy of which was sent to Thiruvengadam Chetty and Company. That order reads:-

> "Works Order: RS/MAD/RM/15/53 of 23rd February 1953. Delivery: P.D.1/53.
>
> Ship to: Saltcotaurs Book to self. Freight: To pay.
>
> To The Mill Superintendent.
>
> Please supply the following to the Shipping Department, M.S. Rounds our usual commercial quality in bundles in stock lengths of 12/18 feet.
>
> TONS 1/4" diameter 10 at Rs. 486 per ton free on rail 3/16" 5 at Rs.493 Saltootaurs, plus bundling. 5/16" 5 at Rs. 453 Charge of Rs. 5 per ton. cc: South India Iron and Hardware Merchants Association, Armenian Street, Madras.
>
> Notice to consignees.
>
> Delivery must be taken within three days of the arrival of the train at destination, a certificate obtained for any wrongful delivery and a claim preferred against the Railway Company forthwith under advise to us. In the case of non- arrival of any consignment advise should be given us as soon as a reasonable time for the journey has elapsed. 'All orders booked are subject to our terms of business and general understanding in force at the time of booking the orders and despatch of goods.' 'All prices mentioned in the Works Orders are subject to revision, i.e., prices ruling at the time of despatch will be charged.'".

The works order in question specifically says that 'all orders booked are subject to our terms of business and general understanding in force at the time of booking the orders and despatch of goods'. In fact as seen from the letter of Thiruvengadam Chetty and Co., dated August 31, 1953, the buyers were willing to change by mutual agreement the specifications of the goods to be supplied. This is what that letter says:

agreement the specifications of the goods to be supplied. This is what that letter says:

"If 1/4" size is not ready, please despatch 3/8" size 20 tons as requested in our previous letter. Please treat this as very urgent."

From the material on record it is not possible to accept the contention of Mr. S.R. Bannerjee, learned counsel for the appellant that the dealings in question were controlled at every stage, leaving no room of concensus. From the records before us all that could be gathered is that the controller fixed the base price of the 'steel products and determined the buyers. In other respects, the parties were free to decide their own terms by consent. As seen from the correspondence referred to earlier, the controller allowed the appellant to supply the goods ordered either in the first quarter of the year 1953 or subsequently. In other words, the appellant could supply the goods in question at its convenience. It was open to the appellant to agree with its customers as to the date on which the goods were to be supplied. From the works order dated February 23, 1953, a copy of which was sent to one of the appellant's customers, it is clear that all orders booked were subject to appellant's terms of business and general understanding in force at the time of 'booking the orders and despatch of goods. It was also open to the appellant to fix the time and mode of payment of the price of the goods supplied. Therefore it would not be correct to contend that the transactions were completely regulated and controlled by the controller leaving no room for mutual assent. In his revision petition dealing with the question of transport of the goods supplied the appellant stated that "the transport of goods was if at all by virtue of an independent arrangement between the petitioner and the persons to whom the goods were supplied..... This admission clearly shows that the supplies in question were made partly on the basis of mutual assent.

It was Mr. Bannerjee's contention that for finding out the nature of the transaction we have only to look to the order and not to the documents produced in the case. According to him, the documents produced in this case do not fully disclose the nature of the transactions; the transactions in question had to be effected under the terms of the order; the order left no room for negotiation between the supplier and its customers and therefore we should conclude that the transactions in question are not sales. According to Mr. Bannerjee all supplies of iron and steel products could be made only in accordance with the directions given by the controller under cl. 10B of the order. That being so, he asserted there was no room for mutual assent. We do not think that this contention of Mr. Bannerjee is well-founded. We are unable to agree with him that the iron and steel products could not have been supplied to any person except in pursuance of an order made by the controller under cl. 10B. We think that supplies by producers can be made in pursuance of an order of the controller under cl.5. We are not pursuaded by Mr. Bannerjee's contention that clauses 4 and 5 merely prohibit the prospective buyer and the intending seller from buying or selling without the sanction of the controller and that those provisions do not confer power on the controller to authorise a person to acquire and to permit a producer to sell. Those provisions, in our judgment, by implication confer power on the controller to issue the necessary authority to the buyer and the seller. This conclusion of ours is strengthened from the circumstance that cl.10B was not a part of the order till 1946. That provision was inserted in the order by notification No. 1(1)-1(530)-A dated May 26, 1946, It is nobody 's case that the provisions of the order were incapable of being implemented till that date. The contention of Mr. Bannerjee that the controller derives his power to

authorise the buyer to buy and the seller to sell exclusively under cl. 10B, suffers from another infirmity. Under cl. 10B, the controller gets power to require any person holding stock of iron and steel acquired by him otherwise than in accordance with the provisions of cl. 4 to sell the whole or part of the stock to such person or class of persons and on such terms and conditions as may be specified in the order. This clause does not empower the controller to issue the authority required under cl. 4. Our attention has not been invited to any provision in the order if we exclude from consideration cl. 4, under which the controller could have the power to authorise the buyer to buy iron and steel products. Therefore, it is obvious that he gets that power from cl. 4, itself. The language employed in clauses 4 and 5 is simi- lar. If the controller gets power to authorise a buyer to buy iron and steel products under cl. 4, there is no reason why he should be held to have no power under cl. 5 to authorise a producer or stock-holder to dispose of his stock of iron and steel products. Further, under cl. 10B, the controller can only require any person holding stock 'of iron and steel to sell the whole or part of his stock to such person or class of persons and on such terms and conditions as may be specified in the order. That clause does not empower him to direct any manufacturer to manufacture any steel or iron product and to dispose of the same to any person. In other words, a direction under cl. 10B can only be given to a person holding stock of iron and steel But under cl.5 he can authorise a producer or a stockholder to dispose of any iron or steel whether the same is in stock or not in accordance with the conditions contained or incorporated in a special or general written order issued by him. In. the instant case, as can be gathered from the correspondence already referred to, the order issued by the controller could be complied with only after manufacturing the required material. Hence, the order issued by the controller could not have been issued under cl. 10B. In this view of the matter it is not necessary for us to find out the true scope of cl. 10B. So far as cl.5 is concerned. admittedly, it does not require the controller to regulate or control every facet of a transaction between a producer and the person to whom he supplies iron and steel products.

It is true that in view of the order, the area within which there can be bargaining between a prospective buyer and an intending seller of steel products, is greatly reduced. Both of them have to conform to the requirements of the order and to comply with the terms and conditions contained in the order of the controller. Therefore they could negotiate only in respect of matters not controlled by the order or prescribed by the controller. It is true, in these circumstances, the doctrine of laisser faire can have only a limited ap. plication. That is naturally so. In certain quarters the validity of that doctrine is, seriously challenged. Under the existing economic compulsions-all essential goods being in short supply-in a welfare State like ours, social control of many of our economic activities is inevitable. That does not mean that there is no freedom to contract. The concept of freedom of contract has undergone a great deal of change even in those countries where it was considered as one of the basic economic requirements of a democratic life. Full freedom to contract was never there at any time. Law invariably imposed some restrictions on freedom to contract. But due to change in political outlook and as a result of economic compulsions, the freedom to contract is now being confined gradually to narrower and narrower limits. This aspect is vividly brought out in the 'Law of Contract' by Cheshire and Fifoot (6th ed.) at p. 22. Dealing with the question of freedom to contract, the learned author observes.

> "As the nineteenth century waned it became ever clearer that private enterprise predicated some degree of economic equality if it was to operate without injustice. The very freedom to contract with its corollary, the freedom to compete, was merging into the freedom to combine; and in the last resort competition and combination were incompatible. Individualism was yielding to monopoly, where strange things might well be done in the name of liberty. The twentieth century has seen its progressive erosion on the one hand by opposed theory and on the other by conflicting practice. The background of the law, social, political and economic, has changed. Laisser faire as an ideal has been supplanted by 'social security'; and social security suggest status rather than contract. The State may thus compel persons to make contracts, as where, by a series of Road Traffic Acts from 1930 to 1960, a motorist must insure against third-party risks-, it may, as by the Rent Restriction Acts, prevent one party to a con- tract from enforcing his rights under it; or it may empower a Tribunal either to reduce or to increase the rent payable under a l ease. In many instances a statute prescribes the contents of the contract. The Moneylenders Act, 1927, dictates the terms of any loan caught by its provisions; the Carriage of Goods by Sea Act, 1924, contains six pages of rules to be incorporated in every contract for 'the carriage of goods by sea from any port in Great Britain or Northern Ireland to any other port; the Hire Purchase Act 1938 inserts into hire-purchase contracts a number of terms which the parties are forbidden to exclude; successive Landlord and Tenants Act from 1927 to 1954 contain provisions expressed to apply 'notwithstanding any agreement to the contrary.".

It would be incorrect to contend that because law imposes some restrictions on freedom to contract, there is no contract at all. So long as mutual assent is not completely excluded in any dealing, in law it is a contract. On the facts of this case for the reasons already mentioned, it is not possible to accept the contention of the ,learned counsel for the appellant that nothing was left to be decid- ed by mutual assent. On the other hand, we agree with the learned Advocate General of Madras and Mr. Setalvad who appeared for. the State of West Bengal, the intervener, that the controller's directions were confined to narrow limits and there were several matters, which the parties could decide by mutual assent.

We shall now proceed to examine the principal decisions relied' upon by the learned counsel for the appellant. In Kirkness v. John, Eudson & Co. Ltd.(1), the material facts were these: On January 1, 1948, railway wagons owned by John Hudson & Co., the tax payers'. then under requisition by the Minister of Transport. were acquired, by the British Transport Commission under s. 29 of the Transport Act, 1947. Under s. 30 of that Act, compensation became payable by the Commission to the tax payers. The amount paid as compen- sation was substantially higher than the written down value of the wagons for income tax purposes and as the tax payers had received allowances under r. 6 of the rules applicable to Cases I and 11 of Sch. D to the Income Tax Act 1918, they were assessed under s. 17 of the Income Tax Act 1945 to give effect to a balancing charge in respect of the excess of the original cost of the wagons over the written down value. The Court of Appeal held that the transfer of' wagons under s. 29 of the Transport Act 1947 was not a sale at common law, since it did not involve a mutual assent and a price;, it was an acquisition authorised by a statute and not a

compulsory purchase. Therefore, the wagons were not machinery or plant which had been 'sold' within the meaning of s. 17(1) (a) of the Act of 1945 and no, balancing charge could be made under the sub-section. This, decision was affirmed by the House of Lords by a majority. Speak-- in,, for the majority, Viscount Simonds observed:

> "My Lords, in my opinion the company's wagons, were not sold, and it would be a grave misuse of language, to say that they were sold. To say of a man who has had his property taken from him against his will and been awarded compensation in the settlement of which be has had no voice, to say of such a man that he has sold his' property appears to me to be as far from the truth as to, (1) [1955] A.C. 696.

say of a man who has been deprived of his property without compensation that he has given ' it away. Alike in the ordinary use of language and in its legal concept a sale connotes the mutual assent of two parties. So far as the ordinary use of language is concerned it is difficult to avoid being dogmatic, but for my part I can only echo what Singleton L.J. said in his admirably clear judgment: 'What would anyone accustomed to the use of the words ,sale' or 'sold' answer? It seems to-me that everyone must say 'Hudsons did not sell'. I am content to march in step with everyone and say 'Hudsons did not sell'. Nor is a different result reached by an attempt to analyse the legal concept. When Benjamin said in the passage quoted by Singleton and Birkett L. JJ. from his well- known book on Sale, 2nd ed., p. 1, that 'by the common law a sale of personal property was usually termed a 'bargain and sale of goods', he was by the use of the word 'bargain' perhaps unconsciously emphasizing that the consensual relation which the word 'bargain' imports is a necessary element in the concept', ".

From the facts set out above it is clear that the House of Lords was dealing with a compulsory acquisition and not sale. Therefore -that decision is of no assistance to the appellant.

In Messrs. New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar(1), this Court was called upon to consider whether ,certain transactions effected under the Sugar Control Order 1946 were sales. By a majority this Court held that they were not sales. The facts as found by the High Court and accepted by this Court ,are found at pp. 463 and 464 of the report. They are as follows:

> "The admitted course of dealing between the parties was that the Government of various consuming States used to intimate to the Sugar Controller of India from time to time their requirement of sugar, and similarly the factory owners used to send to the Sugar Controller of India -statements of stock of sugar held by them' On a consideration of the requisitions received from the various State Governments and also the statements of stock received from the various factories, the Sugar Controller used to make allotments. The allotment order was addressed by 'the Sugar Controller to the factory owner, direc ting him to supply sugar to the State Government in question in accordance with the despatch instructions received from the -competent officer of the State Government. A copy of the :allotment order was simultaneously sent to the State Government concerned, on receipt of which the competent authority of the State Government sent to the factory concerned detailed instructions about the

destination to (1) (1963) Supp. 2 S.C.R. 459.

which the sugar was to be despatched as also the quantities of sugar to be despatched to each place. In the case of the Madras Government it is admitted that it also laid down the procedure of payment, and the direction was that the draft should be sent to the State Bank and it should be drawn on Parry and Company or any other party which had been appointed as stockist importer on behalf of the Madras Government."

On the basis of those facts, the Court came to the conclusion that there was no room for mutual assent in those transactions. The facts of the present case are materially different from the facts of that case. Hence the ratio of that decision does not apply to the facts of the present case. Whether in a given case there was mutual assent or not is a matter to be decided on the facts of that case. In Calcutta Electric Supply Corporation Ltd. v. Commissioner of Income Tax, West Bengal(1). the facts were: The assessees were an electric supply company. During the war the government requisitioned an electricity generating plant of the assessees under r. 83(1) of the Defence of India Rules. The Government wanted to acquire that plant. As the assessees were not willing to sell the plant, they required the government to re-examine the position and to rescind the order depriving them of the plant, but the government refused to re-consider that decision. The amount which the assessees received as price or compensation for the plant exceeded the written down value of the plant by Rs. 3,27,840/-. The taxing authorities treated the excess as assessees' profits under s. 10(2) (vii) of the Indian, Income Tax Act 1922 and assessed that amount to tax. On a reference under s. 66(1) of that Act, as to whether the amount in question can be considered as assessees' profit, Harries, C. J. and Banerjee, J. held that the transaction by which the government acquired the plant could-not be regarded as a sale within the meaning of s. 10(2) (vii) and therefore the sum of Rs. 3,27,840/- was not taxable as profit under that provision. The Court further observed that the ordinary meaning of the word 'sale' is a transaction entered into voluntarily between two persons known as buyer and seller by which the buyer acquires the property of the seller for an agreed consideration known as 'price'. The rule laid down in that decision is the same as that laid down by the House of Lords in Kirkness v. John Hudson & Co. Ltd.(2). In this case also the Court was dealing with a compulsory acquisition and not sale. In M/s. Cement Limited v. The State of Orissa(3), the Court was dealing with transactions effected under the Cement Control Order 1956. Therein the assessee company. a manufacturer of cement, was required to sell cement to the State Trading Corporation On payment of stipulated price. Cl. 3 of the Cement Control Order provided "Every producer shall sell (1)(a) the entire quantity of cement held in stock by him on the date of the commencement (1) 19 I.T.R. 406, (2) [1955] A.C. 696.

(3) 12 S.T.C. 205.

of the order, and (b) the entire quantity of cement which may be produced by him during a period of two years from the date of commencement of this order to the Corporation and deliver the same to such person or persons as may be specified by the Corporation in this behalf from time to time, (2) notwithstanding any contract to the contrary, every producer shall dispose of cement lying in stock with him or produced by him, in accordance with the provisions of sub-cl. (1) and shall not dispose of any cement in contravention thereof". Cl. 6(1) was to the effect that the price at which a producer

may sell cement shall be specified in the schedule. The sales in this case were effected under the aforementioned clauses 3 and 6. It is under those circumstances that the Court came to the conclusion that the transactions in question were not sales but were in the nature of compulsory transfer of title. This case again is of no assistance to the appellant.

The appellant's learned counsel also read to us the decisions in North Adjai Coal Company (P) Ltd. v. Commercial Tax Officer and others(1) and S. K. Roy v. Additional Member, Board of Revenue, West Bengal(2). On the facts of those cases, the Court came to the conclusion that the transactions in question were- not sales. For the reasons already stated, we are unable to accept the contention that the transactions with which we are concerned in these cases are not sales. Out of the four elements mentioned earlier, three were admittedly established, namely, the parties were competent to contract, the property in the goods was transferred from the seller to the buyer, and price in money was paid. The only controversy was whether there was mutual assent. Our finding is that there was mutual assent in several respects. Hence, we agree with the High Court that the transactions before us are sales. That takes us to the next contention by the appellant i.e., that there was no material to conclude that the goods were delivered in the State of Madras for consumption. There is no dispute that the goods in question were delivered in the State of Madras. The dispute centres round the question whether it is proved that they were delivered for consumption in that State. The learned counsel for the appellant conceded that actual consumption within the State need not be proved. All that is required to be shown is that they were delivered for consumption in the State. The only question is whether there was any material to support the conclusion of the Sales Tax Appellate Tribunal, the final fact finding authority, that the goods were delivered in the Madras State for consumption in that State. The High Court rightly proceeded on the basis that "the burden is certainly upon the State to establish facts upon which a subject can be taxed under a financial enactment." But it accepted the finding of the Sales Tax Appellate Tribunal that from the facts and circumstances established it is a reasonable inference to draw (1) 17 S.T.C. 514.

(2) 18 S.T.C. 379.

that the goods were delivered for consumption in the Madras State. This aspect was dealt with by the Tribunal in para 1 1 of its order dated April 17, 1959. On that question this is what the Tribunal says:

> "It will be an onerous task to pursue the subsequent history of every inter-State sale transactions to find out whether after successive change of hands the' goods left the state; but it will be permissible in such cases to consider the broad pattern of the transaction, the surrounding circumstances and any other relevant date to draw a reasonable conclusion therefrom. In the cases before us, it is admitted that the sales were in pursuance of a scheme of internal distribution under the control order applicable to the whole of India. That there was necessity to draw up such a scheme, indicates that the goods were essential goods, that the supply was inadequate to meet the demand, and that unless there was control and restriction in distribution it was likely that the goods would pass into the black market, and would be sold at exorbitant rates. It is permissible inference that controlled stockists, registered

> stockists and registered dealers, who are the principal buyers from the appellants and who could be expected to have been given quotas in the scheme of controlled distribution, would be people expected to meet the local demand for the consumption of the controlled goods. It is also well known to people familiar with the operation of a controlled scheme and distribution of goods that quotas are given against proved demands, and that it is not part of the scheme of distribution to provide for goods sold in one State being exported to other states inside the Union territory because each State has got its own quota of goods and list of controlled stockists, registered stockists and so on. Therefore we infer from the analysis given of the transactions by the appellants, that the sales to various groups of purchasers, registered stockists and controlled' stockists and so on are all intended to meet the local demands for steel products and not for re- export. An analysis of the amount concerned in each of these transactions show that the quantity of steel involved would not be large in each individual case, a circumstance again point to the inference that the sales were intended to meet the requirements of the consumers in Madras State. In the- case of sales to local Government departments, it is obvious that sales were intended for internal consumption and not reexports".

Strangely enough, the High Court at the first instance thought that this finding was unsupported by evidence. Consequently it remanded the case back to the Tribunal for a fresh finding on that aspect after giving both the parties opportunity to adduce further evidence oral and documentary. No fresh material was placed before the tribunal after the case was sent back to it. But on the basis of the material already on record, the tribunal again came to the very conclusion that it had come earlier. When the cases again came back to the High Court. that finding was accepted as correct. In our opinion, the High Court was not right in rejecting that finding at the first instance. The finding of the tribunal is a reasonable finding-. The inferences drawn by it are reasonable inferences from the facts proved or admitted. It is reasonable to assume that the supplies of iron and steel products were being made to stockists in a State for consumption in that State. It may be, as found in this case, that a small portion of the supplies had gone out of the State. But that is not a relevant circumstance. What we have to see is whether the Supplies in question were made for consumption in the Madras State. On that question the finding of the Tribunal is conclusive.

The contentions of the appellant that the findings of the tribunal about the quantum of the turnover were not based on any evidence, or that those findings were arrived at in violation of the principles of natural justice or that the decision of the High Court is perverse, are wholly untenable contentions. At the time of the hearing no reasons were advanced in support of those contentions. Hence those contentions do not merit any detailed examination. In the result, these appeals fail and they are dismissed with costs-hearing fee, one set.

Appeals dismissed.

G.C.