Supreme Court of India
United Breweries Limited vs State Of Andhra Pradesh on 4 March, 1997
Author: Sen
Bench: Cji, Suhas C. Sen, Sujata V. Manohar

PETITIONER:
UNITED BREWERIES LIMITED

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 04/03/1997

BENCH:
CJI, SUHAS C. SEN, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SEN, J.

This case along with a number of other cases was heard by S.P. Bharucha and Faizan Uddin, JJ. who passed the following order :-

"During the course of the arguments, the judgment of a bench of two learned judges in State of Maharashtra, Bombay & Ors. vs. Brittannia Biscuits Company Ltd. & Ors., 1995 Supp, (2) SCC 72, has been cited. Our attention has also been drawn to the judgment of a bench of three learned judges in Punjab Distilling Industries Limited vs. Commissioner of Income Tax, Simla, 1959 Supp. (1) SCR 683.

Having regard to these judgments, we think that these appeals require the consideration of the larger bench. the larger bench may also take not of the judgment dated 11th September, 1996 in C.A. Nos. 11864-

67 of 1996, Commissioner of Income Tax, Madurai vs. T.V. Sundaram Iyengar & Sons Ltd.

The United Breweries (hereinafter referred to as 'UB') supplies at Hyderabad two brands of beer -

(1) U.B. Export Lager and (2) Sun Lager. The dispute between UB. and Andhra Pradesh Sales Tax Authority was as regards the crates and bottles in which the beer was supplied. The case of UB was that when beer was sold bottles and creates were not sold to the customers. The sale price of UB Export Lager was Rs. 43.18 and Sun Lager Rs. 43.75 per dozen. The supplies were made to selling agents who deposited security of Rs. 4.80 for the bottles and Rs. 5.00 for the crates. These deposits were returned to the selling agents when the bottles and the crates were returned. This was the method or carrying on of the trade by the asessee and two circulars were issued by the assessee to explain the scheme to their customers. It was stated in the two circulars as to how payments for two brands of the beer were to be made. Additionally, it was stated that the "vendees to return bottles and crates and customers are assured of better supply, if the scheme is adhered by the customers; otherwise the company expressed difficulty in supplying the liquor"

The scheme was explained to the taxing authorities. the Commercial Tax Officer verified the scheme and held that the customers did not always return the bottles and crates. The sale of bear included sale of the crates and the bottles.

The Commercial Tax Officer was also of the view that the bottles and crates were higher in value than the amounts deposited as security. For these two reasons, it was held that the scheme was not genuine. Therefore, the taxable turnover had to be computed not only by taking into account the sale price but also the value of the bottles.

The case ultimately went up to the Tribunal. The Tribunal was of the view that there was no bailment of the bottles and the crates and there was as contractual obligation on the part of the customers to return the bottles and the crates. The scheme, therefore, was not acceptable as genuine.

Thereafter, the case was taken up by UB to the High Court. Before High Court the contention of the Revenue was hat the mere fact that bottles and creates in which beer was sold could be returned did not mean that the customers had not purchased the bottles and the crates and had not become owners thereof. The bottles and crates were also vended to the customers along with the beer. The High Court held that the ownership in the bottles and crates did not remain with the UP when beer was sold. The customers purchased the bottles and the crates with the contents of receptacles. When bottles and crates were returned to the extent shown by the assessee, in law, there was a resale of bottles and crates to the assessee. The High Court referred to the decision of this Court in the case of Punjab Distilling Industries Ltd. v. Commissioner of Income Tax (A) (199) 35 STC 519, and pointed out that Up did not have any right to the return of the bottles and crates no was there any time- limit set for return of the bottles and crates. Therefore, it was a clear case where bottle and crates were sold along with beer and had to be included in the sale price.

The assessee has come up in appeal against this decision.

The case of the appellant is that the Company carries on business of manufacture and sale of beer. It sells beer to retailers and wholesale dealers throughout India. When the beer is sold the bottles and crates are not sold to the customers. The assessee follows the trade practice to sell the beer in bottles

which are ultimately to be returned to the assessee after the beer is consumed. To ensure such return a deposit is collected from the customers. This deposit cannot be treated as sale proceeds in any way. It has been emphasised that the assessee has issued circulars to its customers making it clear that empty bottles and crates were not being sold. The bottles were to be returned so that the process of the bottling beer could continue smoothly and steady supply could be maintained. The system followed by the assessee was that upon the return of the empty bottles, fresh supplies would be made to the dealer. The assessee had submitted figures to show that a substantial part of the bottles was returned by the consumers. The attention of the Sales Tax Authority was also drawn to the circular issued by the assessee to its customers to the following effect:-

> "UNITED BREWERIES LIMITED, HYDERABAD, 24, Grant Road, P.B. 5104 Bangalore -1 Dear Sir, We are glad to inform you that our brewery at Hyderabad commenced operating on October 18, 1971 and we are not in a position to render the same service to you as we render the same service to you as we render to our valued customers in Bangalore viz., delivery of out beer at you door fresh from the Brewery every day.

The brands can offer and their prices are as follows:

U.B. EXPORT LAGER	
Rate per dozen	Rs. 33.88
Refundable deposit on bottles	Rs. 4.80
Refundable deposit on crates	Rs. 5.00
TOTAL per dozen	Rs. 43.18
SUN LAGER	
Rate per dozen	Rs. 38.95
Refundable deposit on bottles	Rs. 4.80
Refundable deposit on crates	Rs. 5.00
TOTAL per dozen	Rs. 48.75

Rebate for orders at a time of 40 dozen ad more of Sun Lager only is Rs. 1.24 per dozen making the net price Rs. 47.50 per dozen.

Orders should be booked at the office of Phipson & Co. Ltd. At 3-6-14/7, Himayathnagar, Hyderabad- 29 Full payment should be made at the above rates at the time of booking of orders. Cheques for UB Export Lager should be made in favour of United Breweries Limited and cheques for Sun Lager should be made in favour of Phipson & Co. Ltd. Delivery will be made on the following working day after booking of the order. Empty bottles and crates with customers will be taken back by our truck, the driver of which will issue a receipt, against which our Brewery will issue a Credit Note on production of which credit will be allowed for the deposit at the time of booking of the next order. Please take back empty bottles from your customers and pay them 40 paise per bottle. This will reduce the cost of the beer and encourage them to by larger quantities from you.

As open delivery will be given, there will be no question of leakages. Further, as already stated above, the beer will be delivered to you fresh every day. Not only will this simplify you business but you will build up a very good turnover in beer just like very every one of our customers in Bangaloe. This arrangement will be particularly of great advantage to you during the hor weather when there is a large demand for beer. We hope you will easily visualize the tremendous benefit Hyderabad and extend you kind patronage to you mutual benefit."

Four thins emerge from this circular set out herein- (1) The refundable deposits were being collected on the bottles and the crates.

(2) The appellant advised its customers to collect forty paise per bottle from the consumers as deposit. (3) The customers were advised to collect the empty bottles from the consumers and return them to the appellant. (4) The empty bottles and crates were to be taken back by the trucks of the appellant, the drivers of which were authorised to issue a receipt for the empties against which the appellant would issue credit notes. At the time of the booking of the next consignment, the customers would get advantage of the credit notes. This arrangement suggests a continuous process by which the appellant will sell beer to its customers in bottles and crates and collect the sale price of beer and also deposits for the crates and the bottles. The customers, in their turn, will sell beer to the consumers and apart form the price of beer will recover forty paise per bottle as deposit to ensure return of the bottles. The bottles will ultimately be taken back by the appellant for which the trucks will be sent and the credit notes will be given to the customers for return of the empties. This scheme of recycling the bottles and crates will keep down the costs and ultimately will have effect of reducing the price of beer and encouraging the customers to by beer in larger quantities.

The contention of Mr. Ganguli appearing for the respondent is that when beer was sold in bottles and despatched in crates to the customers by UB, and out and out sale of the bottles and the crates took place. The property in the bottles and the crates passed to the customers. The customers had an option to retain the bottles and use them as they liked. There was no contractual obligation to return the bottles to UB within any specified period of time. when the bottles were ultimately returned by the customers to UB, a resale of the bottles took place.

We are unable to uphold this contention having regard to the nature of the transaction. The basic questions are: what was the intention of the parties? When the bottles and crates were supplied by UB, did UB intend to make an out an out sale of the bottles and the crates along with beer and did the customers purchase not only beer but also the bottles and the crates from UB? the intention has to be fund out from the conduct of the parties to the agreement and the manner in which the business was being carried out.

Section 19 of the Sale Good Act lays own that where there is a contract for sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties, regard shall be had to transferred. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, conduct of the parties and the circumstances of the case, Section 20 to 24 contain rules for ascertaining the intention of the parties as to the time at

which the property in the good is passed to the buyer. But these rules will apply only if a different intention does not appear from the contract itself.

From the memorandum issued by UB, it appears that UB was very anxious not to lose the bottles and crates in which the beer was supplied. 40 paise was charged as deposit and the customers were also advised to do likewise when they sold the beer to the consumers. The whole intention was to get back the bottles from the consumers through the customers. The scheme was that UB would regularly send trucks with beer to the customers to supply beer and get back the empties. These empties will be filled up again for further supplies. This recycling of bottles will keep down the costs and this process will have the effect of keeping down the price of the beer which in turn will increase the sales. This does not appear to be a case where UB was selling beer i bottles and washing off its hand thereafter. It wanted to use the empty bottles. It was anxious to get back the bottles and that is why it not only charged 40 paise per bottle from customers but even advised them to do likewise, and collect 40 paise as deposit per bottle of beer from consumers to ensure that he bottles ultimately are returned to UB.

Mr. Ganguli invited our attention to Sections 23 and 24 of Sale of Goods Act. According to him, this Court i the case of State of Maharashtra, Bombay and others V. Britannia Biscuits Co, Ltd. and Others, 1995 Supp. (2) SCC 72, in a similar transaction has held that supply of biscuits by the manufacturer to its customers in returnable tines amounted to sale of goods. To come to this conclusion, a Bench of tow judges of this Court took the view that the principle underlaying Section 24 was that were the goods were delivered to the buyer on terms similar to the delivery of goods on approval or "on sale or return" basis, the property in the goods therein passed to the buyer, if he did not signify his approval or acceptance and also did not return the goods within the time prescribed therefor. The position of the purchaser, until the returned the good within the prescribed period, was that of a bailee and on the expiry of the said period, he becomes a purchaser. Where, however, the person to whom the goods were delivered was under and obligation to return the goods, there was no question of sale over coming into being and the person to whom the goods were delivered remained a bailee. It was held in : the facts of the case that the transaction therein was of the nature nearer to the situation contemplated by Section 24 inasmuch as the tins were delivered to the buyer with the stipulation that if the returned the tins in good condition with in three months, he would get back the deposit made by him in that behalf. It meant that after the expiry of the said period, he had no right to claim the refund on return of goods. The transaction then became a sale. The Court highlighted two features of the transaction. One was that the customer was under no obligation to return the tins in which the biscuits had been supplied. He had a right to return the tins were returned within three months in good condition within three months. The supplier was under an obligation to refund the deposit amount only if the tins were returned within three months in good condition.

It is not clear how the Court came to the conclusion in the facts of that case that the tins were sent to the buyers on sale or "on sale or return' basis or any analogous condition. We are of the view that the principle of Section 24 or any analogous principle cannot be applied to a case like this neither the beer nor the bottles nor the crates were sent to the customers by UB for approval or 'on sale or return' basis or any other similar term. Section 24 of the Sale of Goods Act is subject to the

provisions of Section 19 which provides that the property in specific or ascertained goods is passed to the buyer only at such time as the parties to the contract intend it to be passed. The facts of this case reveal that UB did not intend to sell the bottles or the crates to the customers. There was no intention of an out and out sale to the customer. On the contrary, the costumers were advised to sell the beer in bottles to the consumers and collect a deposit of 40 paise per bottle so that the bottles can be brought back from the consumers and returned to UB. The entire idea was to use the bottles over and over again so that the business costs of UB could be kept at a low level so that consumption of beer could be kept at a low level so that consumption of beer would increase. It does not appear that any time limit was fixed for return of bottles in this case. But even if such limit was fixed, it is well settled that time is not of the essence of the contract unless the parties specifically make it so. Section 11 of the Sale of Goods Act gives statutory recognition to this principle. This aspect of the matter was also overlooked in Britannia Biscuits Co. s case.

Having regard to the facts of this case, we are of the view that an out and out sale of the bottles did not take place when beer was supplied in bottles by UB to its customers against the deposits which had to be refunded when the bottles were returned. Having regard to the scheme and the nature of the transactions, we are of the view that the High Court was in error in holding that when beer was sold in bottles, not only beer but also the bottles were sold and the price of beer along with the deposits became exigible to sales tax.

Mr. Ganguli regard that the every fact that UB had right to forfeit the deposits on the failure of customer to return the bottles indicates that the customer to return the bottles indicates that the bottles were sold. The deposits were nothing but price of the goods which was returnable when the bottles were resold.

We re unable to uphold this contention. Whether the bottles and the crates were sold along with the beer or not will depend upon the intention of the parties. we have set out the terms and conditions under which the beer was sold and it does not appear from these terms and conditions that UB intended to sell crates and bottles to the customers. On contrary it was very anxious to get back these crates and bottles in order to use them again for further supplies. The fact that UB advised customers to charge similar deposits from consumers and get back the bottles from them goes to show that an out and out sale of the bottles had not taken place. By taking the deposits UB merely ensured the return of the bottles and the crates. A deposit of forty paise per bottle was taken to ensure return of the bottles. In our view, the deposit amount which was liable to be forfeited on failure of the return of bottle was in the nature of liquidated damages recoverable by the supplier under Section 74 of the Contract Act. An overall view has to be taken of the dealings and transactions between the manufacture of dealing and transactions between the manufacturer of the beer, its customers and the consumers. The intention of UB does not appear to have been to sel the beer bottles. Not was there any intention of the retailers to sell the bottles to the consumers. On the contrary, by the terms and conditions of the agreement UB was trying to ensure that the bottles in which the beer was supplied to the consumer through their customer were brought back to it so that they could be used again for fresh supply of beer at a cheap rate.

Strong reliance was placed by Mr. Ganguli on the decision of this Court in the case of Punjab Distilling Industries Ltd. v. The commissioner of Income Tax, Simla., 1959 Supp (1) SCR 683. That case was decided under the Income Tax Act, 1922. There the appellant distiller of country liquor carried o the business of selling liquor to licensed wholesalers. Due to shortage of bottles during the war-time, a buy-back scheme was evolved by the Government whereunder the distiller would charge a wholesaler a price for the bottles in which liquor was supplied at a rate fixed out the Government, which he was bound to repay to the wholesaler on his returning the bottles. In addition to this, the distiller took a further sum from the wholesalers described as security deposit for the return of the bottle. Like the price of the bottles, these moneys were also repaid as an when the entire sum was refunded only when 90 per cent of the bottles covered by it had been returned. The distiller was assessed to income tax on the balance on the amounts of these additional sums left after the refunds were made. This Court held that the some paid to the appellant and described as "security deposit" were trading receipts and, therefore, were assessable to tax. These amounts were paid as an integral part of the commercial transaction of the sale of liquor in bottles and represented an extra price charged for the bottles. They were not security deposits as there was nothing to secure there being no right to the return of the bottles.

The principle laid down in that case has to be understood having regard to the special facts of that case. The buy-back scheme was devised by the Government due to scarcity of bottles. Under this scheme, a distiller on a sale of liquor became entitled to charge to wholesaler a price for the bottles in which the liquor was supplied at rates fixed by the government. Therefore not only a sale of liquid took place but under "buy-back" scheme, the bottles were also sold. the price at which the bottles were to be sold were fixed by the Government. The supplier was bound to repay the wholesaler the price as and when the bottles were returned. Therefore, there could not be any doubt that under the "Buy-back" Scheme the bottles were being sold in the first instance and bought back lager on. This was scheme devised by the Government. The parties had no option to do business in any other way. Since the bottles had to be sold in the first instance and brought back thereafter, any additional deposit could not be anything but an additional consideration for sale of the bottles.

This case cannot be treated as a authority for proposition that whenever liquor is supplied in bottles to a consumer, the container is also sold along with liquor.

Commissioner of Income Tax, Madurai v. M/s. T.V. Sundram Iyengar & Sons Ltd., (1996) 6 Scale 757, is a case under Income tax Act. The question in that case was whether unclaimed sundry credit balances lying with the assessee could be treated as trading receipt. The amounts were left lying with the assessee and the claims of the customers had become barred by limitation. The assessee transferred the unclaimed balances to the profit and loss account. IT was held that the moneys had been received by the assess in course of trading transaction. Although originally the amounts received were not of income nature, by lapse of time the claim of the depositors became time barred and the amount by operation of law acquired a totally different character. This principle was enunciated in the case of Jay's The Jewellers Ltd. v. Commissioners of Inland Revenue 29 Tax Cases 274. This was case under the Income Tax Act. We fail to see how this principle has any relevance to the case not before us. In that case, the dictum of Lord Greene in the case of Morley (H.M. Inspector of Taxes) v. Messr. Tattersall , (1939) 7 ITR 316 (CA), that the taxability of receipts was fixed with

reference to its character at the moment it was received, was explained and confined to the peculiar facts of that case.

The principle laid down in the case of Jay's-The Jewellers Ltd. (supra) was that the money owed t the clients in course of usual business transactions remaining with the assessee-company and transferred by it from the suspense account to profit and loss account after it had become, by operation of law, the assessee's money, arose out of ordinary trading transactions and had to be taxed as income of the company.

It, however, cannot be said that the moneys laying with the company for a long time as security deposit from its customers would automatically become sale proceeds in the hands of the company of efflux of time. The customers ma lose all claims to the deposit amount by operation of law. The company may take the unclaimed deposits to its profit and losss account by treating them as trading receipts. That, however, will not convert the deposits which were not received initially as price into sale proceeds of the tins in which the biscuits were supplied or the bottles in which the beer was sold.

We were referred to a large number of decision of various High Courts. It is not necessary to refer to these decisions in this case. The case were decided on the basis of the facts found by the Tribunal and the provisions of the local sales tax laws.

In the case of Raj Steel and others V. State of Andhra Pradesh and other (1989) 3 262, this Court had to deal with two types of cases -(1) beer sold in bottles packed in cartons and (2) cement sold in gunnies. It was held that the issue as to whether the packing material had been sold, depended on the contract between the parties. The fact that the packing was on insignificant value in relation to the value of the contents might imply that there was no intention to sell the packing, but where any packing material was of significant value it might an intention to sell the packing material. It was concluded that in every case the assessing authority had to ascertain the true nature and character of the transaction upon a consideration of all the facts and circumstances pertaining to the transaction. The case was, therefore, remitted to the High Court to find out the facts on fuller investigation.

We were also referred to an English decision in the case of Beecham Foods Ltd. v. North Supplies (Edmonton) Ltd. (1959) 2 all England Reports 336, where the plaintiffs were the manufacturers and suppliers of a glucose drink sold under the trade mark 'Lucozade'. Every bottle of 'Lucozada' was supplied subject to a condition as to the price at which it might be resold, the condition being the observance of the fixed retail price as published in the current price list issued by the Plaintiffs' distributors. In the retails price list for 1957, the price was shown as "2s. 6d. plus 3d." for a twenty-six ounce unit, and under the heading "bottle and container charges" it was stated that 'Lucozade' bottles were "charged at 3s. per dozen, refundable". The defendants, who carried on business as grocers, sold 'Lucozade' at 2s. 7d per bottle. Moulded in the glass of the bottle was the word 'Lucozade', and there was a label was the word 'Lucozade', and there was a label on the bottle with "2s. 6d." in large type, followed by the words "Plus 3d. deposit returnable on bottle with stopper", in smaller type. The plaintiffs, who were the manufacturers, brought an action for an injunction to restrain the defendants from selling 'Lucozade' at a price less than the fixed retail

price, i.e. 2s. 6d. plus 3d. It was held that the bottles in which 'Lucozade' was supplied were not sold to customers, but merely hired to them, as the property in the bottles was not intended to pass to customers. The correct retail prices of the drink in a twenty-six ounce bottle of ' Lucozade' was 2a. 6d., and not 2s. 9d., the extra 3d. being for the hire of the bottle, and on each occasion when the defendants received 2s. 7d. for a bottle of 'Lucozade', the customer paid the correct retail price of 2s. 6d. for the drink and 1d. instead of 3d., for the hire of the bottle.

It was further held that the action was under Section 25 (1) of the Restrictive Trade practices Act, 1956, which applied only to sales and not to hiring agreements, and therefore the defendants were not in breach of the statue in not charging the stipulated rate for the hire of the bottles and therefore, the action of the defendants must fail.

The facts of this case come very close to the facts of the case before us. The Court took note of the fact that initially it was stated specifically on the lable " plus 3d. deposit returnable on bottle with stopper". The lable, however, did not say by whom the 3d. would be returned when the bottle with stopper was returned the retailer. The Court held that this merely implied that the customer would get 3d. back, if he took back the bottle to the same shop which supplied him the 'Lucozade', Vaisey, J., after referring to the scheme of the transaction concluded, "It further seems that the property in the bottle was never intended to pass to the customer".

> "In the present case each of the tow ladies who effected a trap or test purchase from the defendants paid on each occasion , 2s. 7d and, in my judgment, may fairly be said to have paid the full and correct price of 2s. 6d. for the liquid but only 1d. for or towards the hire of the bottle. In my judgment, however, the bottle, in each of these transactions, was never sold at all, but was merely lent or hired as a convenient receptacle fr carrying the liquid home. the same result follows if 2s 9d. is paid by a customer. In either case I interpret the transaction as a payment of 2s. 6d. in full as the price of the liquid and 3d. or 1d. for the hire of the bottle. The matter may be looked at in a variety of ways. For example, a customer may t into a shop, ask of a bottle of 'Lucozade', fill up his own flask from the contents and had back the bottle with its stopper across the counter to the shop man. What has he to pay? Surely 2s. 6d. The suggestion that he must pay 2s.
>
> 9d. and a minute or tow later ask for 3d. back is reducing a very ordinary transaction to an absurdity. The moral is that, if people want to fix prices for retail sales, they must, in may view, do so in plain simple an sensible and, above all, accurate language. Here the price of 'Lucozade' is 2s. 6d. whether the bottle to carry it home is hired or not."

After referring to the clause in the price-list that the deposit will be refunded when the bottles are returned, Vaisey, J., observed that the charge over and above the price of 'Lucozade' was in the nature of a deposit. It was held :-

> "I think that the distributors' view is perfectly right, and that the good which are sold in the present case are the contents of the bottles and no the bottles themselves. Indeed, it is this face, and this fact only, which justifies, the prominence given to the figures 2s. 6d. on the labels."

In the present case also the customers clearly know the price they will have to pay for the beer. they are required to pay an additional amount by way of deposit for taking away the bottle which refunded if the bottle is returned. It the bottle is not returned, the deposit is retained as liquidated damages for the loss of the bottle. There is a clear intention not to sell the bottle. Hence, we are of the view that the deposit cannot be considered as price of the bottles.

We are of the view that the High Court was in error in holding that the crates and the bottles were sold along with the beer. In the facts of this case, the deposits could not be treated as the price of the bottles and the crates.

We, therefore, set aside the judgment under appeal dated 17.2.1987 and 4.4.1994. The appeals are allowed. There will be no order to costs.