Supreme Court of India
M/S. Marikar Motors Limited vs Sales Tax Officer And Anr on 6 February, 1996
Equivalent citations: 1996 SCC (3) 263, JT 1996 (2) 169
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
M/S. MARIKAR MOTORS LIMITED

Vs.

RESPONDENT:
SALES TAX OFFICER AND ANR.

DATE OF JUDGMENT: 06/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (3) 263 JT 1996 (2) 169
1996 SCALE (2)120

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal is preferred against the Judgment of a Full Bench of the Kerala High Court. The matter arises under the Kerala Sales Tax Act and the relevant assessment year is 1965-66. The appellant is a dealer in motor vehicles and automobile parts. The question herein, however, is confined to motor-trucks. The appellant sells trucks both by way of direct sale and also on the basis of hire-purchase. We are concerned with the sales effected on hire-purchase basis.

According to the hire-purchase agreement entered into between the appellant and the hirer, the period of hire is two years. The agreement stipulates that the entire consideration specified under the said agreement shall be paid within the said period of two years and that, at the end of that period, the hirer shall become the owner.

In the course of assessment proceedings, the question

- how to value the vehicles and with reference to which date - arose. The matter was brought to this Court in 19 S.T.C.80. This Court held that the hire-purchase agreement comprises two elements (1) the element of bailment and (2) the element of sale in the sense that it contemplates an evential sale. lt was held that element of sale in the transaction fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of agreement are satisfied and the option is exercised, it was held, sale takes place of the goods which till then have been hired. Only when the sales take place, it was held further, it will attract the sales tax.

In an earlier decision of this Court in K.L.Johar & Co. v. Deputy Commercial Tax Officer, Coimbatore (16 S.T.C.213), it has been held that in the matter of determining the consideration for sale, two courses are open to the Revenue, viz., (a) to take the original price of the goods and deduct the appropriate amount of depreciation out of it or (2) to take the market-value of the goods on the date of the sale.

Applying the aforesaid principles, the Sales Tax Officer proposed to adopt first of the above two methods of valuation. In other words, he wanted to take the original sale price from which he proposed to deduct the amount of depreciation. But this, in turn, gave rise to another controversy, viz., rate of depreciation. The Sales Tax Officer proposed to adopt the rate of twelve percent depreciation per annum. Yet another question before the Sales Tax Officer was whether the sale should be deemed to have taken place at the end of the period stipulated in the agreement or on the date when the hirer actually exercised the option to purchase after paying the full price. The appellant's case was not only that he was entitled to a higher rate of depreciation but also that wherever the period of hire-purchase has been extended by agreement between the parties, the extended period should be taken into consideration and the depreciation worked out for that entire periods i.e., upto the date the hirer exercised the option to purchase. According to the assessee, the sale did not come about automatically at the end of the period stipulated in the agreement but only when the hirer exercised the option after paying the full amount due, whether within the period stipulated in the agreement or the extended period, as the case may be. The Sales Tax Officer rejected both the contentions of the appellant. He adopted twelve percent per annum as the rate of depreciation. He also refused to look into the question, whether and in how many cases, was there an extension of the period of hire-purchase. He simply took the period stipulated in the agreement as final and treated the last date of the said period as the date of sale. The appellant questioned the order of assessment directly by way of a writ petition in the kerala High Court. The learned Single Judge allowed the writ petition holding (a) that so far as the rate of depreciation is concerned, the authority must examine the matter over again and (2) that the Sales Tax Officer was in error in treating the period of agreement as the only relevant period and in ignoring the extensions granted by the appellant. Following the decision of this Court in K.L.Johar & Co., the learned Single Judge held that the sale comes about when the hirer exercises the option and not automatically at the end of the period stipulated in the agreement. He accordingly remitted the matter to the Sales Tax Officer for making the assessment in accordance with the judgment.

The Revenue filed an appeal. The matter was referred to a Full Bench. On the question of rate of depreciation, the Full Bench held that no material was placed by the appellant before the Court to hold that the rate actually adopted by the assessing officer was not reasonable. With respect to the

other question, the Full Bench declined to express itself. It only held that the appellant has failed to prove, as a fact, that there were extensions. Once there is no such proof, the Full Bench opined, it was unnecessary for them to go into the question whether the Sales Tax Officer was right in holding that the sale comes about automatically at the end of the agreement period irrespective of any other factors. The said view is questioned in this appeal.

Before proceeding further, we may mention a fact which is relevant. Pursuant to the judgment of the learned Single Judge, the Sales Tax Officer made an assessment which is dated July 16, 1976. [We are told that there was no stay pending the writ appeal.] A copy of the said order is placed before us. The assessment order shows that the Sales Tax Officer has accepted the extended period wherever there was extension. lt also appears that in some cases, the full payment was made even prior to the stipulated period and the hirer exercised the option to purchase. In those cases, the actual period was taken as the basis and the sale was held to have taken place at the end of such period. Now, it must be remembered that on the first occasion, the Sales Tax Officer did not find as a fact that there were no extensions as averred by the assessee. He refused to go into that aspect because of his opinion that it was irrelevant. The material was before him. Now, that we have held that the said fact is relevant, the factual aspect becomes relevant and for that purpose we have looked into the subsequent assessment order dated July 16, 1976. If so, the basis upon which the Full Bench has held against the assessee [insofar as the question - when does the sale take place] must be held to have become untenable.

Now, coming to the principle applicable in this behalf, we may reiterate the law enunciated by this Court in K.L.Johar's case [supra], viz., that coming into being of the sale is a question of fact and that it takes place when the hirer exercises the option. lt cannot be said that merely because the hire-purchase agreement stipulates a particular period for the total payment of the consideration and for the purchaser to exercise the option to purchase at the end of the said period, the sale does not take place at the end of that period willy-nilly. There may be cases where the hirer may default in paying the amount within the stipulated period, he may ask for extension and the dealer may grant the extension. In such cases, the sale obviously takes place only when the purchaser exercises the option to purchase after fully paying the agreed amount. In this view of the matter and also in view of the findings of fact affirmed in the assessment order dated July 16, 1976, the order of the Full Bench is liable to be set aside on this issue. We affirm the order of assessment dated July 16, 1976 on this issue.

The next question pertains to the rate of depreciation. The assessment order dated July 16, 1976 has again adopted the rate of twelve percent per annum. Sri Poti, learned counsel, says that this figure is arbitrary and that the authorities have not explained the basis upon which the said figure has been arrived at. He says that under the income Tax Act, where the trucks are held for running on hire, the rate of depreciation is forty percent. He says that this factor should have been kept in mind in determining the rate of depreciation. As stated above, the Full Bench has opined that the appellant has failed to place any material showing that the said rate was arbitrary. It has also refused to take into consideration the rate of depreciation fixed by the Income Tax Act on the ground that that is a different enactment and that the rate prescribed therein is for the purposes of that Act. Be that as it may, since the appellant has a right of appeal against assessment order, we do not wish to either into

this question. It was open to the assessee to challenge the said finding in the appeal which may have been filed by him against the order of assessment. lt is made clear that in case, the assessee has not filed the appeal against the order dated July 16, 1976, he may be permitted to file such an appeal now. If the appeal against the assessment order dated July 16, 1976 is filed within one month from todays the same shall be treated as filed within time and shall be disposed of accordingly. If, however, he has already filed the appeal, this direction shall not operate.

There is another minor question arising herein. That relates to rebate. The question is whether the amount of rebate should have been excluded from the turn-over. Having regard to the smallness of the Amount involved, we express no opinion on this aspect and leave the question open.

In the circumstances, this appeal is disposed of with the above directions. The judgment of the full Bench shall be deemed to have been set aside to the extent it runs contrary to the judgment.

State of Tamil Nadu & Ors.

V.

Kothari Sugars & Chemicals Ltd. etc. W I T H CIVIL APPEAL NOS. 10733-10735 OF 1995 State of Tamil Nadu & Ors.

V.

Kothari Sugars & Chemicals Ltd. etc. W I T H CIVIL APPEAL NO. 11213 OF 1995 State of Tamil Nadu & Ors.

V.

E.I.D. Parry (India) Ltd., Madras W I T H CIVIL APPEAL NOS. 11605-11608 OF 1995 Tungabhadra Sugar Works & Anr.

V.

State of Karnataka & Ors.

W I T H CIVIL APPEAL NO.11211 OF 1995 State of Tamil Nadu & Ors.

V.

M/s.Kothari Sugar & Chemicals Ltd.

W I T H CIVIL APPEAL NO.11214 OF 1995 Godavari Sugar Mills V.

State of Karnataka & Ors.

A N D CIVIL APPEAL NO.11212 OF 1995 State of Tamil Nadu & Anr.

V.

Tvl Cauvery Sugars & Chemicals J U D G M E N T J.S. VERMA, J.

The question for decision is : Whether for the purchase of sugar-cane from tho cane growers, a purchaser is liable to pay purchase tax under the State Sales Tax Act on the amount paid by the purchaser to the cane grower over and above the price fixed under Clauses 3 and 5-A of the Sugar cane (Control) Order, 1966 ?

Clause 3 of the Control Order issued under the Essential Commodities Act, 1955 empowers the Central Government to fix the minimum price for sugar-cane for each season and different prices are permitted to be fixed for different areas or different quantities or varieties of sugar-cane. Since 1.10.1974 pursuant to the acceptance of Bhargava Commission Report, the Central Government introduced Clause 5-A in the Sugar-cane (Control) Order, 1966, the material part of which is as under ;

"5-A. ADDITIONAL PRICE FOR SUGARCANE PURCHASED ON OR AFTER 1ST OCTOBER, 1974 (1) Where a producer of sugar or his agent purchases sugarcane, from a sugarcane grower during each sugar year, he shall, in addition to the minimum sugarcane price fixed under clause (3) pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule annexed to this Order.

(2) The Central Government or the State Government, as the case may be, may authorise any person or authority, as it thinks fit, for tho purpose of determining the additional price payable by a producer of sugar under sub-clause (1) and the person or authority, as the case may be, who determines the additional price, shall intimate the same in writing to the producer of sugar and sugarcane grower connected with the supply of sugarcane to such Producer of sugar.

xxx xxx xxx In Tamil Nadu, the State Government duly exercised its power by appointing the Director of Sugar and Cane Commissioner, who, by order dated 2.7.1983 determined the "additional cane price" under Clause 5-A at Rs.28.15 per MT for the respondent i.e. Thiru Arroran Sugars Ltd., making the final statutory cane price as per the Control Order at Rs.179.55 per MT, the "minimum cane price" fixed by the Central Government being Rs.151.40 por MT. There is no dispute that this additional price fixed under Clause 5-A attracts purchase tax which has already been paid. However, the dispute is with regard to the claim of the State Government for payment of purchase tax on the excess amount paid by the purchaser in addition to the aggregate of the minimum cano price fixed under Clause 3 and the additional cane price fixed under Clause 5-A by the Central Government.

The occasion for payment by the purchaser of the amount in excess of the aggregate of the minimum cane price and the additional cane price so fixed, arises on account of an Order of the State Government dated 15.11.1980 purporting to fix a higher revised minimum cane price and directing the sugar factories in Tamil Nadu to pay that price to the cane growers. Pursuant to the direction,

each sugar factory was directed to make that payment and in compliance thereof this sugar factory paid the excess amount as an "Advance" described as under :

> " being advance payment towards cane supply during 1980-81 Season, against probable additional cane price under Section 5A of the Sugarcane (Control) Order, 1966."

This amount paid as "advance" by the sugar factory for purchase of sugar-cane in anticipation of fixation of the additional cane price under Clause 5-A was Rs.52.40 per MT Accordingly, on fixation of the additional cane price at Rs.28.15 per MT, the excess amount of advance came to (Rs.52.40 per MT minus Rs.28.15 per MT) Rs 24.25 per MT. While the sugar factory claims that this excess amount of Rs.24.25 per MT paid by it to the cane grower is towards advance and liable to adjustment or refund, even if it remains with the cane grower, it cannot form part of the price of sugar-cane which cannot exceed the aggregate of the minimum cane price fixed under clause 3 and the additional cane price fixed under Clause 5-A. This is the common stand of all sugar factories, as purchasers of sugarcane from the growers.

The purchasers filed writ petitions challenging the demand by the State Government of purchase tax on the above excess amount of Rs.24.25 per MT. They contested the demand on the ground that it could not form a part of the sale price of cane sugar which had been statutorily fixed under. Clauses 3 and 5-A of the Control Order. The Madras High Court rejected the contention of the State Government and allowed the writ petitions of the assessees. Hence, these appeals by way of special leave by the State of Tamil Nadu.

On a perusal of the relevant provisions of the Sugar- cane (Control) Order, 1966, particularly Clauses 3 and 5-A therein, it is clear that the total price of sugar-cane fixed thereunder is the aggregate of the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A. Thus, unless there be an agreement between the grower and the purchaser for purchase of the sugar-cane at a higher price, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under Clauses 3 and 5-A. In other words, under the Statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugar-cane at an amount higher than the minimum cane price fixed under Clause 3 and the additional cane Price fixed under Clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under Clause 5-A cannot form part of the price of cane sugar.

In these matters there is admittedly no statutory basis since the 'State advice' to the purchasers to pay a certain amount in addition to the minimum cane price fixed under Clause 3, in anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount paid as advance under the State advice also does not have any contractual basis since this was not paid as a result of an agreement between the grower and the purchaser. The amount of advance was paid in anticipation of fixation of the additional cane price under Clause 5-A which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance then the purchaser would have to pay the deficit amount. Similarly, when the amount of

advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact whether the refund was actually made or not. For the purpose of determining the price of sugar-cane for computation of the purchase tax, the only significant amount is the aggregate of the minimum price fixed under Clause 3 and the additional cane price fixed under Clause 5-A, unless a higher price is paid to the grower by agreement between the purchaser and grower.

It was argued by learned counsel for the State that the higher price inclusive of the excess amount included in the advance paid on State advice is deemed to have been paid by an agreement between the grower and the purchaser and, therefore, the entire amount would be the price of sugar- cane. This is a question of fact in each case. It is true that if in a given case it is found as a fact on the basis of evidence that the purchaser had agreed with the grower to pay the higher price described as 'advance' including the amount in excess of the additional price fixed under Clause 5-A then in that case the entire amount would be the price of sugar-cane. However, there is no such basis found in the present case wherein the excess amount forming part of the advance was paid only under compulsion on the direction contained in the 'State advice'. It is significant that a provision for adjustment is clearly made in sub-clause (6) of Clause 5-A. This provision supports the view we have taken. The decision of the Madras High Court which is reported in Thiru Arooran Sugars Ltd. Vs. Deputy Commercial Tax Officer Mannargudi & Ors., 1988 (71) STC 444 is, therefore, upheld and the appeals against the decision of the Madras High Court are, therefore, dismissed.

In the connected matters arising out of the judgment of the Karnataka High Court, similar writ petitions filed by the purchasers of sugar-cane were dismissed. The two decisions of the Karnataka High Court which require reference are Pandavapura Sahakara Sakkare Kharkhane (P) Ltd. v. State of Mysore, 1973 (32) STC 104 and Tungabhadra Sugar Works Ltd. v. State of Karnataka & Ors., 1994 (93) STC

561. In Pandavapura it was found proved as a fact that the substance of the transaction between the purchaser and the cane growers was for payment of the enhanced price for the sugar-cane supplied and the amount paid in excess of the statutory price was paid under the contract and not either as ex-gratia payment or towards advance. In that situation the entire amount paid was treated as the price. In our opinion, the nature of contract in that case being such, the entire amount paid had to be treated as price of the sugar- cane supplied since the Statute does not prohibit an agreement between the grower and the purchaser for payment of a higher price for the sugar-cane by the purchaser. In the later decision in Tungabhadra also it is noticed that there is no prohibition against the parties agreeing for the payment of a higher price of the sugar-cane. In that situation no doubt the entire amount paid has to be treated as the price of the sugar-cane. However, as indicated earlier, for treating the entire amount paid by the purchaser as the price of sugar-cane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugar-cane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as the aggregate of the price fixation under Clauses 3 and 5-A of the Control Order. Unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under Clause 3 and the additional price fixed under Clause 5-A, as a part of the amount paid as advance prior to fixation of the additional price under Clause 5-A, cannot be treated automatically as a part of the total price of sugarcane. In

matters arising out of decisions of the Karnataka High Court, this aspect has not been adverted to and the writ petitions have been dismissed without going into this question. The Karnataka matters have, therefore, to be remitted to the High Court for a fresh decision on the above basis.

As a result of the aforesaid decision, the appeals of the State of Tamil Nadu (Civil Appeal Nos. 10733-10735, 11083-11141, 11211, 11212 and 11213 of 1995) against the judgment of the Madras High Court are dismissed. The appeals against the decision of the Karnataka High Court by the sugar factories (Civil Appeal Nos. 11605-11608 and 11214 of 1995) are allowed. The matters are remitted to the Karnataka High Court for a fresh decision in accordance with law in the manner indicated after hearing both sides.