A JAY BHARAT CREDIT AND INVESTMENT CO. LTD. ETC. ETC.

v.

COMMISSIONER OF SALES-TAX AND ANR.

AUGUST 9, 2000

B [B.N. KIRPAL, S.N. PHUKAN AND RUMA PAL, JJ.]

Sales Tax—Bengal Finance (Sales Tax) Act, 1941—As amended w.e.f. 1.10.1959—As extended to Union Territory of Delhi—Hire purchase transaction—Whether sale price would include hire charges—Held, Yes.

C *Sales Tax—Bengal Financial (Sales Tax) Act, 1941—As applicable to Union Territory of Delhi—Sale of Goods Act, 1950—Sections 2(g), 2(h)—Incidence of Tax in hire purchase transaction—Held, takes place when there is transfer of goods, not when there is transfer of property in goods.*

D *Words and Phrases—Sale—Meaning of.*

Appellants were carrying on the business of hire purchase by entering into agreements with hirers for the purpose of enabling the hirers to obtain a vehicle. The normal term of the agreement entered into between a hirer and the appellant contemplated a vehicle being purchased by the E **appellant and the said vehicle was then taken by the hirer on hire purchase basis. The terms of the agreement provided that on the execution of the hire purchase agreement an initial amount was paid by the hirer by way of premium for granting a lease and thereafter hire charges were required to be paid. The amount which is paid by the hirer included the price of the vehicle and the hire purchase charges. As and when all the instalments** F **were paid, the hirers were given an option to obtain the ownership of the vehicle on the payment of a nominal amount. On exercising of the option and the payment being so made, the vehicle was transferred in the name of the hirer.**

G **The Respondents-sales tax authorities held that on the correct interpretation of the provisions of the Bengal Finance (Sales Tax) Act, as extended to the Union Territory of Delhi, in force at the relevant time between 1.10.1959 and the coming into force of the Delhi Sales Tax Act in 1975, the hire charge would be regarded as a part of the sale price. The question of law was referred to the High Court wherein the decision of the** H **sales tax authorities was affirmed.**

In appeal to this Court, the appellants contended that with the amendment in the Bengal Finance (Sales Tax) Act, 1941 with effect from 1st October, 1959, in the case of hire purchase agreements sales tax can be levied not on the full amount paid by the hirer which would include the hire charges, but the sale consideration on which tax can be imposed will only be the price of the vehicle at the time when the hirer exercises the option to purchase the same; that under the Sale of Goods Act, the definition of the word "sale" would not include or take within its ambit a hire purchase agreement; that Delhi being a Union Territory; Parliament could in exercise of its powers under Entry 97 of List I of the Seventh Schedule of the Constitution regard a hire purchase agreement as a sale and tax can be levied but with the amendment made in 1959 the tax is leviable only on the sale and the amount paid towards hire charges cannot be included in the sale price and that the Sales Tax Act applicable in Delhi after 1st October, 1959 must be given the same meaning as was given to the Gujarat Sales Tax Act.

Dismissing the appeals, the Court

HELD : 1. The amendment of the Bengal Finance (Sales Tax) Act on 1st October, 1959 has, in effect, not altered the position from what existed prior to that date and even after the amendment the principle laid down by this Court in the first case of Instalment Supply Co. would continue to hold goods. [351-D]

Instalment Supply (P) Ltd. & Anr. v. *The Union of India & Ors.*, [1962] 2 SCR 644; *Instalment Supply Ltd.* v. *The Sales Tax Officer, Ahmedabad-I & Ors.*, [1975] 1 SCR 386 and *K.L. Johar & Company* v. *Deputy Commercial Tax Officer*, [1965] 2 SCR 112, distinguished.

2. The definition of the word "sale" in Sec. 2(9) the first part of which is in *pari materia* with the Sale of Goods Act, was expanded so as to include a transfer of goods on hire purchase or other system of payment by instalments. In the latter portion, in order that the tax is levied there is no requirement that the property in goods should be transferred. What is required is transfer of goods, unlike the first part of this definition which requires transfer of property in goods. The reason for this is very obvious. In the case of hire purchase, there are two elements, namely, that of bailment and an element of sale and when a hire purchase agreement is entered into there is transfer of goods on hire purchase which would not include, at

that point of time, any transfer of property in the said goods. If the contention of the appellants is accepted, the effect of that would be that the latter portion of the definition could be otiose. If the definition of Section 2(g) was to include within its ambit only that transfer which takes place at the time of purchase when the option is exercised, then it would not have been necessary to widen the scope of the definition to include transfer of goods on hire purchase and to provide for it separately. [351-F-H; 352-A-B]

3. If the meaning of the word "sale" occurring in Section 2(g) is substituted into Section 2(h), it would in effect read as follows : "Sale price means the amount payable to a dealer as consideration for transfer of goods on hire purchase". The word "sale" occurring in Sec. 2(h) must have the meaning ascribed to it as in Section 2(g). When the word "sale" includes transfer of goods on hire purchase, then whatever is the amount which is paid/payable to the dealer on such a transfer would be included within the meaning of the expression "sale price" in Section 2(h). The sales tax authorities were justified in including in the turnover of the Appellants the hire charges as provided for in the hire purchase agreements. [352-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2942-44 of 1979.

From the Judgment and Order dated 20.4.79 of the Delhi High Court in C.W.P. Nos. 433-435 of 1976.

WITH

Civil Appeal Nos. 2118-27/1980, 2111/1980, 2708/1979, 2709-2711/1979, 2978/1980. 3002-04/1980, 1221-1232/81 and 2570/1979.

Joseph Vellapally, K.K. Venugopal and Ashok Grover, S. Sukumaran, B.A. Ranganathan, Ms. A.K. Verma, Randhir Chawla, Ms Renu Saigal, Rakesh K. Sharma and Ms. Hemantika Wahi for the appearing parties.

The Judgment of the Court was delivered by

KIRPAL, J. The only question which arises for consideration in all these cases is: Whether the respondents were justified in holding that hire purchase transactions entered into by the appellants were liable to imposition of sales tax on the consolidated proceeds?

The appellants carry on the business of hire purchase. They enter into agreements with hirers for the purpose of enabling the hirers to obtain a vehicle. The normal term of the agreement entered into between a hirer and the appellant contemplates a vehicle being purchased by the appellant and the said vehicle is then taken by the hirer on hire purchase basis. The terms of the agreement provide that on the execution of the hire purchase agreement an initial amount is paid by the hirer by way of premium for granting a lease and thereafter regular instalments are required to be paid. The amount which is paid by the hirer would include the price of the vehicle and the hire purchase charges. As and when all the instalments are paid, the hirer is given an option to obtain the ownership of the vehicle on the payment of a nominal amount. On the payment being so made, the vehicle is transferred in the name of the hirer.

As already indicated above, the sales tax authorities came to the conclusion that on the correct interpretation of the provisions of the Bengal Finance (Sales Tax) Act, as extended to the Union Territory of Delhi (hereinafter referred to as "the Act"), as in force at the relevant time, the time being between 1.10.1959 and the coming into force of the Delhi Sales Tax Act in 1975, the finance charges would be regarded as a part of the sale price. On the Financial Commissioner coming to the aforesaid conclusion, the question of law was referred to the High Court who affirmed the decision of the sales tax authorities. Hence, these appeals by special leave.

It has been contended by the learned senior counsel for the appellants that with the amendment in the Bengal Finance (Sales Tax) Act, 1941 with effect from 1st October, 1959, in the case of hire purchase agreements sales tax can be levied not on the full amount paid by the hirer which would include the hire charges, but the sale consideration on which tax can be imposed will only be the price of the vehicle at the time when the hirer exercises the option to purchase the same. It was submitted by the learned senior counsel that under the Sale of Goods Act, the definition of the word "sale" would not include or take within its ambit a hire purchase agreement. Delhi being a Union Territory, the Parliament could in exercise of its powers under Entry 97 of List 1 of the Seventh Schedule of the Constitution regard a hire purchase agreement as a sale and tax can be levied but with the amendment made in 1959 the tax is leviable only on the sale and the amount paid towards hire charges cannot be included in the sale price. In support of this contention, our attention has been drawn to three decisions of this Court to which we shall presently refer.

In order to appreciate the contention of the learned senior counsel for the appellants, we may refer to the definition of the word "sale" as occurring in the Act before 1.10.1959, after 1.10.1959 and under the Delhi Sales Tax Act, 1975. The said definition is as follows :

Under the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi.

BEFORE 1.10.1959

"2(g) - "Sale" means any transfer of property in goods for money consideration and includes a transfer of property in goods supplied in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge; and any grammatical variations of the expression 'sale' shall be construed accordingly.

Explanation-1. A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale;

Explanation-2. A sale shall be deemed to have taken place in the State of Delhi if the goods are actually delivered in the State of Delhi as a direct result of such sale for the purpose of consumption in the State of Delhi, notwithstanding the fact that under the general law relating to the sale of goods the property in the goods has by reason of such sale passed in another State."

Under the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi.

AFTER 1.10.1959.

"2(g) - "Sale" - with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of goods on hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Explanation - A sale or purchase of goods shall be deemed to take place inside the Union Territory of Delhi if the goods are within that territory -

(i) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation."

Under Delhi Sales Tax Act, 1975

"2(1) - "Sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes:-

(i) a transfer of goods on hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

(ii) supply of goods by a society (including a co-operative society), club, firm or any association to its members for cash or for deferred payment, or for commission, remuneration or other valuable consideration, whether or not in the course of business; and

(iii) transfer of goods by an auctioneer referred to in sub-clause (iv) of clause (e);

It would also be relevant to refer to the definition of the expression "sale price" occurring in Section 2(h) of the Act which reads as follows :

"Sale price", means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged."

In *Instalment Supply (P) Ltd. and Another* v. *The Union of India and Others*, [1962] (2) SCR 644, the challenge was to the levy of sales tax on hire purchase transactions, similar to the ones in the present case. M/s. Instalment Supply (P) Ltd., which is also an appellant in one of these appeals, was carrying on the business of hire purchase and had entered into hire purchase agreements

A with different hirers. It was sought to be contended in a petition under Article 32 of the Constitution that sales tax could not be levied on hire purchase transactions because hire purchase was not 'sale' within the meaning of that expression under the Sale of Goods Act. While upholding the validity of Explanation I, this Court first considered what is the true nature and character of a hire purchase agreement. After adverting to definition of B the word "sale" this court observed that the transaction in question partakes of the nature of a contract of bailment with an element of sale. It held that the definition in Section 2(g) included not only what was compendiously described as a sale under the Sale of Goods Act, but also transactions, which, strictly speaking, are not sales, not even contracts of sale but only contain C an element of sale which is the option to purchase and that is why the Explanation to Section 2(g) ended with the words "be deemed to be a sale", thereby indicating that a legal fiction has been introduced into the concept of sale as ordinarily understood. It was clarified that the Explanation included within its amplitude a mere transfer of goods without the transfer of title to the goods if it was in the course of an agreement of the nature of hire D purchase.

While explaining the nature of the hire purchase agreement, the Court took note of the fact that in such an agreement, the hirer may not be bound to purchase the thing hired. It was observed as follows :

> E "It is clear that under the Law, as it now stands, which has now been crystallised into the section of the Hire Purchase Act, quoted above, the transaction partakes of the nature of a contract or bailment with an element of sale, as aforesaid, added to it.In such an agreement, the hirer may not be bound to purchase the thing hired; he may or may not be. But in either case, if there is an obligation to buy, or an option to buy, F the goods delivered to the hirer by the owner on the terms that the hirer, on payment of a premium as also of a number of instalments, shall enjoy the use of the goods, which ultimately may become his property, the transaction amounts to one of hire-purchase, even though the title to the goods has remained with the owner and shall not pass to the hirer until a certain event has happened, namely, that all the stipulated G instalments have been paid, or that the hirer has exercised his option to finalise the purchase on payment of a sum, nominal or otherwise."

The Court also was called to consider the effect of the *non obstante* clause contained in Explaination I and in regard thereto it held as H follows :

A "It is clear, therefore, that in addition to the contract of hiring an option has been given to the hirer to purchase or not to purchase. The more serious question on this part of the petitioners, contention is whether the non obstante clause in the explanation "notwithstanding that the seller retains a title to any goods as security for payment of the price" governs the main clause of the explanation. In our opinion it B does not. The non obstante clause has been added only to emphasise the categorical statement of the law contained in the main clause to the effect that a transfer of goods on hire-purchase, etc., shall be deemed to be a 'sale' even though there may be a stipulation to the effect that in spite of the transfer of goods to the hirer, the owner retains title to those goods until the happening of the ultimate event, namely, com- C pletion of title at the option of the hirer."

The Court then concluded, on interpreting the said provisions, that the agreement in question contained not only a contract of bailment simplicitor but also an element of sale which element has been seized upon by the legislature for the purpose of subjecting a transaction like that to the sales tax. Another D ground of attack in that case was based on Article 14 of the Constitution. It was submitted that though the Parliament may have had the power to tax something which was not strictly speaking a sale, the said law was discriminatory against the traders in Delhi as such a law has not been made applicable to whole of India. This contention was rejected firstly on the ground that it had E not been averred that other Part 'C' States had not been similarly treated, but what is important for our purposes in the present case, the Court took note of the fact that under the Central Sales Tax Act, the definition of the word "sale" contained the extended definition as in the Delhi Act without the *non obstante* clause. Section 2(g) of the Central Sales Tax Act, 1956 to which reference was made reads as follows: F

"Sale' with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire purchase or other system of payment by instalments, but does not include a mortgage or G hypothecation of or a charge or pledge on goods".

After referring to the same, the Court observed as follows:

"It would, thus appear that hire-purchase transactions have been included within the definition of 'sale' for the purpose of Central Sales H

A Tax, and this definition has become applicable throughout India, and it cannot, therefore, be said that the State of Delhi, and now the Union Territory of Delhi, has been selected for hostile discrimination. In our opinion, therefore, there in no substance in the contention that the extended definition of 'sale' in the main statute infringes Art. 14 of the
B Constitution."

Definition of "sale" in the Central Sales Tax Act is similar to that which was applicable in Delhi with effect from 1.10.1959.

After reading the aforesaid judgment, it leaves no manner of doubt that
C this Court in unequivocal terms came to the conclusion that as far as Delhi was concerned, it being a Part 'C' State at that point of time, the Parliament could enact a law which had the effect of regarding a hire purchase agreement as a sale even though under the Sale of Goods Act it could have been so regarded. The definition of the word "sale" under Section 2(g) had been expanded and was to include a hire purchase agreement. The hire purchase agreement had
D two elements : one being the element of bailment and the other being the element of sale at the option of the hirer. By referring to the Central Sales Tax Act, the contention based on Article 14 was rejected, the implication clearly being that even without the *non-obstante* clause the position was similar to that which was there in the Delhi Act, namely, a hire purchase transaction could be
E regarded as a sale for the purpose of Sales Tax Act.

After the amendment of the Act on 1st October, 1959, the words "transfer of goods on hire-purchase or other system of payment by instalments" occurring in Explanation I in the original Section 2(g) were incorporated in the main part of Section 2(g). The *non obstante* words occurring in Explanation
F I in the unamended Section were excluded. It is because of this change that the learned senior counsel for the appellants have contended that now with the amendment on 1st October, 1959 there can be sale in a hire purchase agreement only when the hirer exercised the option and the transfer of property takes place and the effect of that would be that it is only the price of the article, namely,
G the vehicle, which can be subjected to sales tax and the hire charges cannot be included therein.

In support of this contention, learned senior counsel has sought to place reliance on the second case of the *Instalment Supply Co.* entitled *Instalment Supply Ltd.* v. *The Sales Tax Officer, Ahmedabad-I & Ors*, [1975] 1 SCR 386,
H That was a case where the State of Gujarat in the case of a hire purchase

agreement between the hirer and the Instalment Supply Co. sought to tax the sale of the vehicle when the hirer exercised his option to purchase the same. At that time the goods were inside the State of Gujarat. The Gujarat Act being a State enactment, did not enable that State to tax transfer of goods on hire purchase but tax was sought to be levied at the time when the hirer had exercised his option to obtain the ownership of the vehicle. This Court dealt at length with the meaning of a hire purchase agreement. It observed that at common law the term hire purchase properly applied to contracts of hire conferring an option to purchase, but it was often used to describe the contracts which were in reality agreements to purchase chattels by instalments subject to a condition that the property in them is not to pass until all instalments have been paid. It recognised the difference between two types of agreements - first where, as in the case of a hire purchase contract, the hirer is not obliged to buy the goods at the end of the contract, whereas in the latter type of contract there is an obligation on the hirer to buy. In both the cases, however, the property remains with the financier and the ownership passes only when the hirer exercises the option in the case of hire purchase agreement, or in the second type of agreement when all the instalments are paid. Even though in the Gujarat Act sales tax could not be imposed on a contract of hire purchase but this Court held that at the time when the sale fructifies, with the hirer exercising the option to purchase, tax could be levied on that event. It was also obseved that there is no rule that any goods could be subjected to tax only once, the implication clearly being that whereas under the Delhi Act the contract of hire purchase would attract sales tax at the time when the contract is entered into but under the Gujarat Sales Tax Act the value of the vehicle could be taxed at the time when option to purchase was exercised under the same contract.

Mr. Vellapally, however, placed strong reliance on the following observations of this Court in the second case of *Instalment Supply Ltd.* (supra) when at page 393 it was observed as follows:

> "We may however point out that the definition of "sale" in the Bengal Finance (Sales Tax) Act applicable to the State of Delhi has been amended in 1959 by Act 20 of 1959 and reads as follows:
>
> > "Sale", with its grammatical variations and cognate expressions means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on hire-purchase or other system of payment by instalments, but does not

include a mortgage or hypothecation of or a charge or pledge on goods.

Explanation. - A sale or purchase of goods shall be deemed to take place inside the Union Territory of Delhi if the goods are within that territory -

(i) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation."

This definition is, in effect, the same as the one in the Gujarat Act. Therefore, the type of transactions which were subjected to tax in the earlier *Instalment Supply* case will not be subject to taxation hereafter and the problem of the same transaction being subjected to taxation at two different stages will not arise."

Learned senior counsel submits that by equating the two provisions of the Acts, we must give to the Sales Tax Act applicable in Delhi after 1st October, 1959 the same meaning as was given to the Gujarat Act.

It appears to us that the aforesaid observations were by way of an obiter. This court was not called upon to consider the effect of the amendment made to the Delhi Act in 1959. This court was only concerned with a question whether the State of Gujarat could levy any sales tax at the time when the hirer exercises his option to purchase the vehicle which happened to be in Gujarat at the time when the option was so exercised and despite the fact that sales tax had already been paid on the hire purchase transaction in Delhi earlier. The observations quoted above were merely to the effect that after the amendment there would be no case of taxation at two stages. The aforesaid decisions can be of no assistance to the appellants.

Our attention was also drawn to *K.L. Johar and Company* v. *Deputy Commercial Tax Officer*, [1965] 2 SCR 112. We are unable to see how that case can be of any assistance. The Court there was concerned with the validity of Explanation I to Section 2(h) of the Madras General Sales Tax Act which purported to include a hire purchase transaction within the meaning of the term

"sale". This court held that explanation I was beyond the competence of the State Legislature and the same was accordingly struck down. The Court then dealt with the question as to whether a hire purchase agreement ever ripened into a sale and if so when. It took note of the fact that a hire purchase agreement had two elements, namely, the element of bailment and the element of sale, in the sense that it contemplates an eventual sale. The Court came to the conclusion that a sale does take place and the same could be taxed when the hirer exercises the option to purchase the vehicle. With regard to the price at which the transaction would be regarded as having been entered into, the Court observed that the hire charges have to be excluded and the price of the vehicle worked out. The said decision, as we have already observed, can be of no assistance because the State of Madras, as it then was, had no legislative competence to seek to tax a hire purchase agreement to sales tax whereas in Delhi such a transaction could be subjected to tax and the same had been specifically upheld by this Court in the first case of *Instalment Supply (P) Ltd.* (supra).

It appears to us that the amendment of the Act on 1st October, 1959 has, in effect, not altered the position from what existed prior to that date and even after the amendment the principle laid down by this Court in the first case of *Instalment Supply Co.* (supra) would continue to hold goods.

We would like to point out that Section 2(g) uses two expressions, namely, "transfer of property in goods" and "transfer of goods on hire-purchase". If the latter part relating to hire purchase had not been there, there can be little doubt that the principle enunciated by this Court in *K.L. Johar's* case (supra) would have clearly been applicable, the hire purchase agreement itself would have been taxable and tax could have been levied only at that time when the option was exercised. This definition of the word "sale", the first part of which is in *pari materia* with the Sale of Goods Act, was expanded so as to include a transfer of goods on hire purchase or other system of payment by instalments. In the latter portion, in order that the tax is levied there is no requirement that the property in goods should be transferred. What is required is transfer of goods, unlike the first part of this definition which requires transfer of property in goods. The reason for this is very obvious. In the case of hire purchase, there are two elements, namely, that of bailment and an element of sale and when a hire purchase agreement is entered into there is transfer of goods on hire purchase which would not include, at that point of time, any transfer of property in the said goods. If the contention of the learned

A senior counsel for the appellants is accepted, the effect of that would be that the latter portion of the definition could be otiose. If the definition of Section 2(g) was to include within its ambit only that transfer which takes place at the time of purchase when the option is exercised, then it would not have been necessary to widen the scope of the definition to include transfer of goods on hire purchase and to provide for it separately.

B

Coming to the definition of the expression "sale price" we find that if we substitute the defined meaning of the word "sale" occuring in Section 2(g) into the said Section 2(h), it would in effect read as follows : "Sale price means the amount payable to a dealer as consideration for transfer of goods on hire purchase". The word "sale" occurring in Sec. 2(h) must have the meaning ascribed to it as in Section 2(g) when the word "sale" includes transfer of goods on hire purchase, then whatever is the amount which is paid/payable to the dealer on such a transfer would be included within the meaning of the expression "sale price" in Section 2(h). This being so, the sales tax authorities in the present cases were justified in including in the turnover of the appellants the hire charges as provided for in the hire purchase agreements.

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For the aforesaid reasons, we affirm the decision of the High Court and dismiss these appeals. There will, however, be no order as to costs.

V.M. Appeals dismissed.