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SUPREME COURT CASES

(2005) 7 SCC

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(BEFORE S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.)

USHA BELTRON LTD.

.. Appellant;

Versus

STATE OF PUNJAB AND OTHERS

.. Respondents.

Civil Appeal No. 2777 of 2000, decided on April 27, 2005

Sale of Goods Act, 1930 — S. 19 — Property in goods passes when parties intend it to pass — Contract with appellant for supply of underground cables to stations of Department of Telecommunications — As per terms of the contract, property in the goods remained at the risk of the appellant till delivery was completed and delivery to be completed only after successful testing and take-over certificate was issued — Hence held, property in goods had not passed to the buyer (DoTs) at the time the goods entered the municipal limits — Therefore, appellant liable to pay octroi duty claimed by the Municipality to which the goods were being transported since the goods cannot be said to have belonged to Govt. of India at that time and hence not exempted from payment of octroi duty — Certificate issued by the Government to the effect that these goods were for use by the Government and for no other purpose and the letter of the Chief General Manager, Punjab Telecom Circle claiming that the articles belonged to Union Govt. would not alter the position — Further held, contention that the property in the goods passed to the buyer when the contract was made and it was immaterial as to what was the time of delivery of goods, not acceptable

Appeal dismissed

R-P-M/32055/C

ORDER

1. This appeal is against the order of the High Court of Punjab and Haryana at Chandigarh dated 29-11-1999.

2. Briefly stated, the facts are as follows:

The Department of Telecommunications, Government of India, called for tenders and issued contracts for supply of PIJE underground cables to various manufacturers including the appellant. As per the bid document various stations of the Department of Telecommunications directly placed purchase orders on the appellant for supply of the cable. Those purchase orders were construed as contracts.

3. Pursuant to such purchase orders, the appellant was manufacturing and then transporting the cables to the various stations which had placed the orders. The Municipality to which the goods were being transported claimed octroi on the goods. According to the appellant, octroi was not payable as these goods belonged to the Government of India. The appellant claimed that by virtue of clause 12 of Notification No. 3/3/99-LIII-6555 dated 1-6-1999 all goods belonging to the Government of India were exempted from payment of octroi. As the Municipalities insisted on payment of octroi, a writ petition was filed in the High Court. The Punjab and Haryana High Court has by a very short order dismissed the writ petition.

a 4. It is submitted by Mr Dave that the impugned order is an absolutely cryptic order which does not consider anything. He submitted that therefore the matter should be remanded back to the High Court for disposal on merits. We are unable to accept this submission. Undoubtedly the order is a very short order. However, the short order sets out what is relevant for the purposes of a decision in this case. It sets out that the Court was not satisfied that the property in the goods had passed to the Government of India at the time the goods entered the municipal limits. The writ petition is dismissed on this ground.

b 5. We have perused the writ petition. The ground on which the entire writ petition is based is that the property in the goods had passed to the Government of India. Such a claim is made based on clause 5.1 of the bid document which inter alia reads as follows:

c “5.1. The purchaser or his representative shall have the right to inspect and test the goods as per prescribed test schedules for their conformity to the specifications. Where the purchaser decides to conduct such tests on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance like testing instruments and other test gadgets including access to drawings and production data shall be furnished to the inspectors at no charge to the purchaser.”

d Reliance is also placed upon Section 22 of the Sale of Goods Act, 1930. It is submitted that this was a contract for sale of specific goods in a deliverable stage. It is submitted that the property in the goods passed to the buyer when the contract was made and it was immaterial as to what was the time of delivery of goods. It was submitted that all the other clauses of the bid document were merely for the purposes of ensuring that proper quality goods had been supplied and did not relate to the passing of the property in the goods.

e 6. We are unable to accept these submissions. The bid document i.e. the contract between the parties is very categorical as to when the property in the goods is to pass. Clause 5.5 and clause 6.1 of the bid document read as follows:

f “5.5. When the performance tests called for have been successfully carried out, the inspector/ultimate consignee will forthwith issue a taking over certificate. The inspector/ultimate consignee shall not delay the issue of any ‘taking over certificate’ contemplated by this clause on account of minor defects in the equipment which do not materially affect the commercial use thereof provided that the supplier shall undertake to make good the same in a time period not exceeding six months. The taking over certificate shall be issued by the ultimate consignee within six weeks of successful completion of tests. In this case, BCPC (bill copy payable challan) shall be equivalent to ‘taking over certificate’, issuance of which shall certify receipt of goods in safe and sound conditions. However, they shall not discharge the supplier of their warranty

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obligations. BCPC in respect of last consignment against the purchase order will be equivalent to 'taking over certificate'.

* * *

6.1. (i) Delivery of the goods and documents shall be made by the supplier in accordance with the terms, specified by the purchaser in its schedule of requirement and special conditions of contract and the goods shall remain at the risk of the supplier until delivery has been completed. The delivery of the equipment shall be to the ultimate consignee as given in the purchase order.

(ii) Irrespective of the mode of transport of cables, the date of receipt by the consignee at site as indicated in the PO shall be taken as the 'date of delivery'."

These terms clearly indicate that the property in the goods remains at the risk of the appellant till delivery was completed. It shows that delivery would be completed only after the take-over certificate was issued. As per Section 19 of the Sale of Goods Act, 1930, the property in the goods passes when the parties intended it to pass. In this case the contract provides that property in the goods does not pass till after delivery and after successful testing and issuance of take-over certificate. Thus, the High Court was right in concluding that the property in the goods had not passed at the time the goods entered the municipal limits.

7. In this view of the matter clause 12 of the abovementioned notification would have no application. The certificate dated 23-9-1999 issued by the Government, to the effect that these goods were for use by the Government and for no other purpose and the letter of the Chief General Manager, Punjab Telecom Circle dated 23-9-1999 wherein it is claimed that the articles belong to the Union Government do not alter the position in law.

8. In this view of the matter, we see no infirmity in the impugned judgment. The appeal stands dismissed. There will be no order as to costs.

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(BEFORE G.P. MAHUR AND P.K. BALASUBRAMANYAN, JJ.)

RAJESHWARI .. Appellant;

Versus

PURAN INDORIA .. Respondent.

Civil Appeal No. 5295 of 2002[†], decided on August 25, 2005

A. Civil Procedure Code, 1908 — S. 100 — “Substantial question of law” — What is — Held, is a question of law (1) which is of general public importance, or (2) which directly and substantially affects the rights of the parties, and is not covered by a decision of the Supreme Court or Privy Council or Federal Court, or (3) is not free from difficulty, or (4) calls for discussion of alternative views — Words and Phrases — “Substantial

[†] Arising out of SLP (C) No. 16821 of 2002. From the Judgment and Order dated 12-12-2001 of the Rajasthan High Court in SB Civil Second Appeal No. 168 of 2001