(1956) 08 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 1214 of 1956

Indian Aluminium Co. Ltd. APPELLANT

Vs

M.M. Dalvi and Another RESPONDENT

Date of Decision : 30-08-1956

Acts Referred:

Sales Tax (Amendment) Act, 1952 — Section 26
Sales Tax Act, 1946 — Section 18

Citation : (1957) 8 STC 58

Hon'ble Judges : Chagla, C.J;Tendolkar, J

Bench : Division Bench

Advocate : N.A. Palkhivala, H.K. Shah, S.P. Mehta and R.V. Patel, for the Appellant; Advocate-General and Little and Co., for the Respondent

Judgement

Chagla, C.J.—Mousell and Company Ltd., which has been described as the transferor company, was assessed to sales tax for the period from the 1st of October, 1946, to the 31st October, 1952, on the 18th of March, 1954. This company transferred a part of its business to Sanghi Motors (Bombay) Ltd. on the 4th of December, 1953, and transferred the rest of its business to the petitioners on the 4th of May, 1954. The Taxing Authority sent a notice of demand upon the petitioners claiming from them the amount to which the transferor company had been assessed on the ground that as a transferee company it was liable to pay the tax which the transferor company was liable to pay. The petitioners thereupon came here under the Constitution for a writ contending that the demand for tax made by the Taxing Authority was not justified by law.

2. Now, it appears that after the petition was filed, which was on the 18th of April, 1956, the notices originally served by the Taxing Authority upon the petitioners have been withdrawn and fresh notices have been served. But the Advocate-General agreed that we should give our decision on the basis of the new notices. As a matter of fact, there is no difference in principle whether the

notices were issued earlier or later and except for a slight difference in the amount, the position is identical with respect to the first set of notices and the second set of notices.

3. Now, the question resolves itself into a very narrow compass. Under the Sales Tax Act of 1946, which is Act V of 1946, an artificial liability was imposed upon a transferee. It is clear that if a person or a company or a firm is liable to pay tax and that person, company or firm transfers its business, under general law the transferee is not liable for that tax. But section 18 created an artificial liability and made the transferee liable, and the language of section 18 is :-

"When the ownership of the business of a dealer liable to pay the tax under this Act is entirely transferred, any tax payable in respect of such business and remaining unpaid at the time of transfer shall be payable by the transferee as if he were the dealer liable to pay such tax."

4. This Act was repealed on the 1st of November, 1952, and under the new Act there was a similar provision and that provision is to be found u/s 26 and that section provides :-

"When the ownership of the business of a dealer liable to pay the tax is entirely transferred, any tax payable in respect of such business and remaining unpaid at the time of the transfer shall be payable by the transferee as if he were the dealer liable to pay such tax."

and section 48 is the saving section and that saves any right, title, obligation or liability already acquired, accrued or incurred, notwithstanding the repeal of the Act of 1946.

5. Now, the first question that we have to consider is whether any liability accrued to the petitioners which was saved by section 48(2) of the Act of 1953. The material date for the purpose of this argument is the date of transfer, which is the 4th of May, 1954, and it will be noticed that this transfer took place after the Act of 1946 had been repealed. Therefore when the petitioners took the transfer of the business from the transferor company, could it be said that they took the transfer with a liability to pay the tax payable by the transferor company ? As we have already pointed out, the liability created by section 18 is an artificial liability and we must be satisfied that at the date of the transfer there was any liability upon the transferee under the law. It is obvious that it does not require any argument to appreciate the fact that the Act of 1946 having been repealed, no liability u/s 18 could have been imposed upon the transferee on the 4th of May, 1954. The Advocate-General, faced with this difficulty, attempted to argue that notwithstanding the repeal of the Act of 1946, the liability of the transferor continued and therefore the transferee was liable to pay the tax. Nobody disputes that the liability of the transferor accrued under the charging sections of the Act of 1946 and notwithstanding the repeal of that Act, his liability was saved by reason of section 48(2) of the new Act. But we are not concerned on this petition with the liability of the transferor. We are concerned

with the liability of the transferee and the mere fact that the liability of the transferor was saved under the Act of 1946 does not lead necessarily to the inference that the liability of the transferee arose and was saved by the Act of 1953. We must find some specific provisions in law to satisfy us that there was any liability whatsoever upon the transferee company on the 4th of May, 1954, when the petitioners took the transfer of the business from the transferor company. We find no such provision of law either in section 18 or in any other law.

6. The other contention put forward was that apart from section 18, there is a liability upon the petitioners to pay tax u/s 26. Now, as already pointed out that section states, "when the ownership of the business of a dealer liable to pay the tax is entirely transferred." Therefore the transfer contemplated by this section is the transfer of a business which is liable to pay the tax; and "tax" is defined by section 2(18) as "the sales tax, general sales tax, a purchase tax or outside goods purchase tax payable under this Act", i.e., the Act of 1953. It is clear that the business which was transferred to the petitioners on the 4th of May 1954, was not liable to pay any tax under the Act of 1953. Its liability to pay tax was only under the Act of 1946. Therefore section 26 has no operation. The Advocate-General finds himself on the horns of this dilemma. If he relies on the Sales Tax Act of 1946, then the transfer to the petitioner is after the repeal of the Act. If he relies on the new Act of 1953, then the difficulty is that the liability to the tax which can be imposed upon the transferee is in respect of the tax payable under the Act of 1953 and the petitioners are not at all liable in respect of any liability to pay tax under the provisions of that Act. We can quite understand and appreciate the contention of the Advocate-General that the Legislature could never have intended that the transferee, the petitioners, should under these circumstances escape liability to pay tax. But, this, according to us, is one of the many instances where the Legislature has misfired and has failed to achieve its object. As this is a taxing statute, if there is any doubt or ambiguity, we must give the benefit of that doubt or ambiguity to the subject. But we are of the opinion that this is not a case of a doubt or ambiguity at all. The provisions of law are quite clear and the Taxing Authority was in error in trying to recover the dues by the transferor company from the petitioners.

7. The result is that the petitioners succeed. Notices dated 13th of July, 1956, will be set aside. Respondents to pay the costs of the petitioners.

8. Petition allowed.