(1960) 11 BOM CK 0010

In the Bombay High Court

Case No : Suit No. 237 of 1957

The Central Hindusthan Italian Trading Co. (Private) Ltd. APPELLANT

Vs

Pitty Brothers (Private) Ltd. RESPONDENT

Date of Decision : 16-11-1960

Acts Referred:
Sales of Goods Act, 1930 — Section 64

Citation : AIR 1962 Bom 222 : (1961) 63 BOMLR 966

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : M.J. Mistry, J.S. Khambatta and Cooper, for the Appellant; Nariman and Sorabjee, for the Respondent

Judgement

(1-11) x x x x x x x

(12) The whole of the Plaintiff''s case must be based on the provisions in section 64-A of the Sale of goods Act, the relevant part thereof runs as follows:

64-A "In the event of any duty of customs or excise on any goods being imposed, increased, decreased or remitted after the making of any contract x x x x for the sale of such goods duty-paid where duty was chargeable at that time-

(a) if such imposition or increase so takes effect that the duty or increased duty, x x x x x x x is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such duty or increase of duty, and he shall be entitled to be paid and to sue for and recover such addition, and

(b) if such decrease or remission so takes effect that the decreased duty only or no duty, as the case may be, is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty and he shall not be liable to pay, or be sued for or in respect of, such deduction".

(13) The question in this case only relates to the provisions of sub-section (b) and the more relevant words as contained in that section are "the buyer may

deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty and he shall not be liable to pay x x x x x x x x x x x x such deduction".

(14) The contentions made relate to the true effect and construction of the words "deduct" and "deduction" as also the phrase "he shall not be liable to pay". It is contended on behalf of the defendants that in respect of a contract for sale of goods where price is already paid in anticipation, the terms of sub-section (b) cannot apply. It is contended that there can be no question of, deduction where the price is already paid. According to the defendants therefore the words "deduct" and "deduction" are related to the physical act of payment of price.

(15) In connection with this contention made on behalf of the defendants it is necessary to notice that the intention of the legislature in enacting provisions of section 64-A as can be ascertained by reading the section was that in the event of imposition of fresh duty the seller should not suffer or bear such duty and in the event of decrease or remission of duty the seller should not retain benefit of such remission or abolition of duty. The reason is that as is well known the customs and/or export and/or excise duty are indirect taxes. The burden of the duty of customs or excise is always intended to be transferred to the consumers. It is for that reason that sub-section (a) of section 64-A clearly provides that the seller may add to the price the increase for freshly imposed duty. Sub-section (b) is enacted to deprive the seller of the amount of the abolished or remitted duty by deduction thereof from the agreed price. The word "deduct" bears the dictionary meaning of "subtract" and./or "take off" and is more appropriate in regard to the calculation of contract price due and payable under the contracts. It is not appropriate or possible to give to the words "deduct" and deduction'' as contained in sub-section (b) a meaning which relates to the act of deduction to the physical act of deduction at the time of payment of price. The phrase "so much from the contract price" in my view has no relation to the physical act of payment of price. The contention urged on behalf of the defendants would require the section to be read by addition of the word "thereupon" after the phrase "may deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty and he shall" and before the phrase "not be liable to pay or be sued for or in respect of such deduction". I do not think that the section should be read by addition of the word "thereupon" as is suggested on behalf of the defendants. The word "deduct" in the context refers and relates to and means the right to subtract and/or take off the duty in the process of calculation of and arriving at the contract price. In respect of such deduction the liability to pay price is wiped off. When the phrase "he shall not be liable to pay x x x x such deduction" is used in this sub-section it means that the buyer shall not be liable to pay towards the contract price the amount "as will be equivalent to the decrease of duty or remitted duty".

(16) Obviously the provisions of section 64-A are applicable only when the incidence of imposition, increase, remission or abolition of duty is connected with

and related to the goods of a particular contract for sale goods between a seller and buyer.

(17-37) x x x x x x

(38) Suit dismissed.

