

Before Jawahar Lal Gupta & Iqbal Singh. JJ
INDIAN OIL CORPORATION LTD,—Petitioner

versus

**EXCISE & TAXATION OFFICER-CUM-ASSESSING AUTHORITY,
JALANDHAR,—Respondents**

C.W.P. No. 8013 of 1995

8th January, 1999

Punjab General Sales Tax Act, 1948—S.2(h)—Sale—Meaning of—Providing of LPG Cylinders, Regulators etc. to consumers—Only a security deposit obtained—Such transfer whether a sale—Held, no.

Held that on a perusal of clauses (5) & (6) of the terms of the agreement, it is clear that the goods viz. the Regulators and the Cylinders continue to be the property of the Corporation. It does not pass to the distributor or the consumer. Still further, the Corporation retains a continuous control over the property. The distributor or the consumer cannot even have the cylinders repaired from any one. They have to depend upon the Corporation itself or its authorised agents. It is common knowledge that when a consumer gets his cylinder, he is entitled to use it only as a container for the gas. He is not entitled to transfer it or to sell it to any other person. In fact, according to the terms of the agreement, the consumer is not expected to even take the cylinder out of the jurisdiction of the particular dealer who has released the connection to him. Taking these facts cumulatively, it cannot be said that the property in the goods viz. the cylinders stands transferred to the consumers by the mere act of acceptance of a deposit by the Corporation. Thus, the act of deposit will not result in a sale so as to render the transaction as exigible to the levy of sales tax under the provisions of the Sales Tax Act.

(Paras 3 & 5)

A.C. Chawla, Sr. Advocate with Renu Sehgal for the Petitioner

R.S. Virk, DAG, Punjab for the Respondent.

ORDER

Jawahar Lal Gupta, J. (Oral)

(1) The Indian Oil Corporation is the assessee. It has filed these five writ petitions to question the validity of five assessment orders relating to the years 1984-85 to 1988-89. The short question that calls for examination is—Does the Corporation sell a cylinder (used for the supply of liquefied Petroleum gas) to the consumer when it accepts refundable deposit by way of security? The assessing authority has held that the security is the sale consideration. The assessee has filed the present petitions to challenge the impugned orders.

(2) According to the Provisions of the Punjab General Sales Tax Act, 1948 the taxable event is the 'sale'. According to Section 2(h) (as it stood prior to amendment), sale means "any transfer of property in goods other than goods specified in Schedule 'C' for cash, deferred payment or other valuable consideration". Thus, the only issue that arises for consideration is—does the property in the goods—Cylinders and regulators in the present case, pass to the consumer when the corporation accepts a deposits? To answer this question, it is essential to refer to the terms of the agreement which every consumer has to execute at the time of the release of a connection. The relevant provisions are contained in Clauses (5) and (6). In these Clauses, it has been categorically provided that "the LPG Cylinders with Valves, Caps, Security nuts, Regulators and any other equipment as determined by the Corporation shall at all times remain the property of the Corporation". It has been further provided in Clause (6) that "the Distributor shall not undertake to repair the equipment or cause the same to be repaired by any one except the Corporation or its authorised agents appointed for the purpose".

(3) On a perusal of both the above Clauses, it is clear that the goods *viz.* the Regulators and the Cylinder continue to be the property of the Corporation. It does not pass to the distributor or the consumer. Still further, the Corporation retains a continuous control over the property. The distributor or the consumer cannot even have the cylinders repaired from any one. They have to depend upon the Corporation itself or its authorised agents. These two provisions clearly militate against the claim made on behalf of the respondents that the property in the goods stood transferred to the consumer.

(4) Still further, it deserves mention that the Corporation has been accepting deposit as fixed by the Central Government, Ministry of Petroleum, from time to time. It is maintained by the Corporation that the deposit was less than the price that it paid in respect of each of the cylinders to the manufacturer. By way of illustration, it has been pointed out that during the year 1988-89, the Corporation had purchased cylinders @ Rs. 510 each. However, the consumer was required to deposit only Rs. 450 by way of security. This rate of deposit continued and remained in force till the year 1993-94 by which time the cost price of the cylinder had risen from Rs. 510 to 750. Besides this, it has also been averred categorically that the cylinders are the assets of the Corporation for which it has been regularly providing for depreciation which was permissible and allowed under the Income Tax Act, 1961." Can we still say that the Corporation is not the owner of the Cylinders ?

(5) It is common knowledge that when a consumer gets his cylinder, he is entitled to use it only as a container for the gas. He is not entitled to transfer it or to sell it to any other person. In fact, according to the terms of the agreement, the consumer is not expected to even take the cylinder out of the jurisdiction of the particular dealer who has released the connection to him. Taking these facts cumulatively, it cannot be said that the property in the goods *viz.* the cylinders stands transferred to the consumers by the mere act of acceptance of a deposit by the Corporation. Thus, the act of deposit will not result in a sale so as to render the transaction as exigible to the levy of sales tax under the provisions of the Sales Tax Act.

(6) Mr. Virk appearing for the respondents has contended that with effect from 13th April, 1987, the definition of 'sale' was amended. Even the transfer of the right to use any goods for any purpose "for cash, deferred payment or other valuable consideration" is deemed to be a 'sale'. On this basis, learned counsel has submitted that the assessment orders for the years 1987-88 and 1988-89 were unassailable.

(7) The contention is misconceived. A perusal of the assessment orders for these two years which have been impugned in CWP Nos. 7914 and 7915 of 1995 respectively, shows that the assessment is not based on a deemed sale. In fact, the assessing authority has proceeded on the assumption that there is transfer of property in goods for valuable consideration. Even a reference has not been made to the amended provision or to sub-clause (iv) of

Clause (h) of Section 2. In this situation, we cannot accept the contention that the assessment orders are valid. These are based on the finding that there was transfer of property in the goods. Factually, it is not so. Legally, the order of assessment cannot be sustained.

(8) Faced with this situation, learned counsel for the respondents contended that the matter should be remitted to the assessing authority. We do not think it is necessary for us to do so. We shall only set aside the order. It is, however, clarified that in case, the assessing authority is legally entitled to do so, it shall be competent to pass fresh orders in accordance with law.

(9) No other point has been raised.

(10) In view of the above, the impugned orders of assessment are set aside. In the circumstances, there will be no order as to costs.

S.C.K.

Before N.K Sodhi & S.C. Malte, JJ

SURINDERJIT SINGH,—Petitioner

versus

**REGISTRAR, COOPERATIVE SOCIETIES, HARYANA AND
OTHERS,—Respondents**

CWP 16061 of 1997

The 3rd March, 1998

Constitution of India, 1950—Arts. 226/227—Haryana Cooperative Societies Act, 1984 (22 of 1984)—Haryana Co-operative Societies Rules, 1989—Rls. 27 & 28—Bye-laws of the Bank—Bye-law 33 (ix)—Elections to governing body—Respondent elected—Challenge thereto on account of his relationship with an employee of the Bank—Respondent already had a son working in Bank when he filed nomination papers—Election upheld—There is no rule making a person ineligible from contesting election on account of a relationship with an employee of the Bank.

Held that there is no rule making a person ineligible from contesting the election on account of his relationship with an