PETITIONER:
STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:
CHAMPALAL KISHANLAL MOHTA

DATE OF JUDGMENT:
17/03/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.

CITATION:
1971 AIR 908 1971 SCR (1) 46
1970 SCC (1) 611
CITATOR INFO :
R 1985 SC1293 (45)

ACT:
Bombay Sales Tax Act (51 of 1959) as amended by the Maharashtra Act (15 of 1967), S. 2(7)--"Goody" including standing timber agreed to be severed--Sale of standing trees agreed to be severed under contract--If 'sale of goods' liable to sales tax.

HEADNOTE:
The contract of sale entered into by the respondent expressly provided that the timber agreed to be sold shall be severed. The High Court held that the sale of standing trees was not a sale of goods chargeable to sales tax under the Bombay Sales Tax Act, 1959. and the decision was confirmed by this Court on appeal. But after the judgment of the High Court and before the appeal was heard in this Court, the expression "goods" in the Act was amended by Maharashtra Act 15 of 1967 with retrospective operation, so that, it included at all relevant times, standing timber agreed to be severed before sale or under the contract of sale.
In a petition for review to this Court,
HELD : Since the judgment of this Court suffers from an error apparent on the face of the record, the judgment should be reviewed and the appeal allowed. [47C]
A State Legislature may not extend the import of the expression sale of goods" so as to impose liability for tax on transactions which are not sales of goods within the meaning of the Sale of Goods Act. But, by the inclusive definition in s. 2(7) of the Sale of Goods Act, things which are attached to the land may be the subject matter of contract of sale provided that under the terms of the contract they are to be severed before sale of under the contract of sale. The timber in the present case was therefore "goods" within the meaning of s. 2(7) of the Sale of Goods Act. Since the expression " sale of goods" in Entry 54, List II, of the Constitution has the same meaning as that expression has in the Sale of Goods Act, the amendment is valid. [47 H; 48 A-E]
The State of Madras v. Gannon Dunkerley, [1959] S.C.R. 379

and Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh, [1959] S.C.R. 427, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Review Petition No. 29 of 1969.

Application for review of this Court's Judgment dated July 17, 1969 in Civil Appeal No. 1878 of 1967 arising out of the judgmentand order dated July 18, 1966 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 722 of 1965.

N. S. Bindra and S. P. Nayar,for the petitioner/appellants.

A. G. Ratnaparkhi, for the respondent.

47

The, Judgment of the Court was delivered by

Shah, J. Appeal No. 1878 of 1967 was ordered to be dismissed by this Court on July 17, 1969. The Court held that the sale of standing trees is not sale of goods chargeable to sales tax under the Bombay Sales Tax Act, 1959.

A petition for review of Judgment has been filed by the State contending that after the judgment of the High Court and before the appeal was heard, the Bombay Sales Tax Act, 1959 was amended by the Maharashtra Act 15 of 1967 with retrospective operation, and by the amendment standing timber was included 'in the definition of timber, but counsel for the State failed to invite the attention of the Court to that Act. Since the judgment of this Court it is claimed suffers from an error apparent on the face of the record, we have granted review of judgment.

The expression "goods" was defined in s. 2(13) of the Bombay Sales Tax Act, 1959. By Maharashtra Act 15 of 1967 by s. 2 the definition of "goods" was altered by providing that

> "In section 2 of the Bombay Sales Tax Act, 1959 . . . in clause (13), after the words 'and commodities' the following shall be, and shall be deemed always to have been, added, namely:-

'and all standing timber which is agreed to be severed before sale or under the contract of sale'."

The definition was retrospective in operation and the expression " goods" included at all relevant times standing timber agreed to be severed before sale or under the contract of sale.

The expression "sale of goods" in Entry 54 List 11 of Sch. VII of the Constitution has the same connotation as it has in the Sale of Goods Act, 1930. This Court in The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.(1) observed that the expression "sale of goods" was, at the time when the Government Of India Act, 1935, was enacted, a term of well-recognised legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and must be interpreted in Entry 48 in List 11 in Sch. VII of the Act as having the same meaning as in the Sale of Goods Act, 1930 : see also Pandit Banarsi Das Bhanot v. The State of Madhya Pradesh (2). The expression " sale of goods" in Entry 54 in List II of Sch. VII of the Constitution has also the same meaning as that expression had in Entry 48 in List II of the Government of India Act, 1935. The State Legislature may not therefore extend the import of the expression

(1) [1959] S.C.R. 379.

(2) [1959] S.C.R. 427.

48

" sale of goods" so as to impose, liability for tax on transactions which are not sales of goods within the meaning of the Sale of Goods Act.

By Art. 366(12) of the Constitution the expression "goods" is defined as inclusive of "all materials, commodities and articles". That is, however an inclusive definition and does not throw much light on the meaning of the expression "goods". But the definition of "goods" in the Sale of Goods Act, 1930, as meaning "every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale". Standing timber may ordinarily not be regarded as "goods", but by the, inclusive definition given in s. 2(7) of the Sale of Goods Act things which are attached to the land may be the subject-matter of contract of sale provided that under the terms of the contract they are to be severed before sale or under the contract of sale.

In the present case it was expressly provided that the timber agreed to be sold shall be severed under the contract of sale. The timber was therefore "goods" within the meaning of s. 2(7) of the Sale of Goods Act and the expression "sale of goods" in the Constitution in Entry 54 List 11 having the same meaning as that expression has in the Sale of Goods Act, sale of timber agreed to be severed under the terms of the contract may be regarded as sale of goods.

The appeal is allowed and the petition filed by the respondent must be dismissed. Since the State succeeds in this appeal, relying upon a statute which was passed after the judgment of the High Court, there will be no order as to costs throughout.

V.P.S. Appeal allowed.

49