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VIJAYA-NANDA GAJAPATIRAJ KUMAR OF VIZIA-NAGRAM v. COMMIS-SIONER OF INCOME-TAX

For the reasons stated above we answer the question referred to us in the manner indicated above. The assessee shall have his costs of this reference. We fix counsel's fees on each side at Rs.500.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

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GAJADHAR PRASAD RAMNATH AND ANOTHER (DEFENDANTS) *v.* LADORAM GAJANAND (PLAINTIFF)*

Contract for purchase of goods—Customs duty increased between date of contract and date of delivery—Which party should bear it—Intention of parties—Tariff Act (VIII of 1894), section 10.

Where, between the date of a contract for sale of goods and the date fixed for the delivery, the customs duty on that class of goods is increased, the question whether the seller is entitled to claim from the buyer the enhanced duty is in the first instance one of interpretation of the terms of the contract. Where the contract is silent on this point, *prima facie* the meaning is that the seller is to supply the goods at the contracted rate irrespective of any duty that might have been paid on them. If the circumstances of the transaction show that the intention of the parties was that the goods contracted to be sold were to be imported from abroad, then it would be a necessary inference that the parties intended that the enhanced duty that might come in afterwards would be payable by the purchaser. But, in the absence of any such indication, it can not be held that every contract of sale has to be varied in accordance with enhanced duty when such duty is imposed afresh or is increased on the class of articles contracted to be sold.

Under section 10 of the Tariff Act, 1894, the amount which the seller is entitled to recover in addition to the contract price is the amount of increased duty paid by him, which must obviously mean actually paid to Government when the goods were imported. The section can not be applicable to cases where the goods were already in existence in India prior to the increase of duty and on which no enhanced duty whatsoever had been paid to Government.

*Second Appeal No. 1284 of 1932, from a decree of S. Nawab Hasan, Second Additional Subordinate Judge of Jaunpur, dated the 4th of July, 1932, confirming a decree of K. L. Srivastava, City Munsif of Jaunpur, dated the 19th of June, 1931.

So, where there was nothing to indicate that the seller would import the goods from abroad for delivery to the buyer, nor was there any proof that any enhanced duty had been actually paid to Government on account of the goods, it was *held* that the buyer was not liable to pay for any enhanced duty, in addition to the contract price.

Mr. *Gadadhar Prasad,* for the appellants.

Mr. *R. K. S. Toshniwal,* for the respondent.

SULAIMAN, C.J., and MUKERJI, J.:—This is a defendants' appeal arising out of a suit for recovery of damages for breach of a contract. On the 6th of February, 1930, the defendants entered into a contract with the plaintiff firm, who are carrying on the business of commission agents, to purchase five bars of silver from the plaintiff to be delivered at Calcutta on the 31st of March, 1930, at the rate of Rs.47-5 per bar. In the written contract there was no mention of any liability to pay customs duty. Between the date of the contract and the date of delivery the customs duty on imported silver was raised by Government by the amount of Rs.9-6 per 100 tolas. When the due date was arriving, the plaintiff demanded from the defendants the payment of the price, but the defendants paid no heed to it. As the amount was not paid, the plaintiff firm instructed their agents in Calcutta to re-sell the goods, which were sold at Rs.45 plus Rs.9-6, that is, at Rs.54-6. The plaintiff demanded from the defendants the difference between this amount and the total of Rs.47-5 and Rs.9-6, that is to say, Rs.2-5 per 100 tolas. The defendants declined to pay this amount, with the result that the plaintiff brought the present suit for recovery of an amount due on a previous transaction with which we are not now concerned and also for the recovery of Rs.346-14 as the amount of loss suffered by the plaintiff in respect of five bars of silver on account of the breach of contract of the defendants, with Rs.5-4 for telegram expenses and interest amounting to Rs.16-14-6, in all Rs.369-0-6. Both the courts below have decreed the claim, holding that the burden of the increase of the

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customs duty should fall on the defendants purchasers under section 10 of the Indian Tariff Act. The only question before us is whether the defendants are liable to pay the amount equivalent to the enhanced duty on imported silver.

In the preamble to the Indian Tariff Act (Act VIII of 1894) it is made clear that it was intended to amend the law relating to the duties of customs on goods imported and exported by sea, and to provide for the levy of duties on goods imported into or exported from British India by land. It is not intended to affect goods which are already in existence in India, except so far as the provisions relating to the imposition of excise duty can be applicable to the goods produced in India. Section 10 lays down that "In the event of any duty of customs or excise on any article being . . . increased, . . . after the making of any contract . . . for the sale of such article duty-paid, where duty was chargeable at that time,—(*a*) if such . . . increase so takes effect that the . . . increased duty . . . is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such . . . increase of duty, . . ." In the first place it is to be noticed that the increase of duty referred to in the section is on any article and not necessarily on any class of article. The amount which the seller is entitled to recover in addition to the contract price is the amount of duty paid by him, which must obviously mean actually paid to Government when the goods are imported. The section cannot be applicable to cases where goods were already in existence in India prior to the increase of duty and on which no enhanced duty whatsoever had been paid to Government.

The question whether the plaintiff is entitled to claim from the defendants the enhanced duty on silver is in the first instance one of interpretation of the written contract. If the contract were clear and had made the defendants liable to pay in addition to the contractual price the enhanced duty as well, there would be no

question as to their liability. But where the contract is silent and merely contains a promise on the part of the plaintiff to sell silver to the defendants at the rate of Rs.47-5 per 100 tolas, its obvious meaning is that the plaintiff is to supply silver at that rate irrespective of any duty that might have been paid upon it, or that may have to be paid on other silver that may be imported in future.

If the circumstances of the transaction show that the intention of the parties was that the goods contracted to be sold were to be imported from abroad, then it would be a necessary inference that the parties intended that the enhanced duty that might come in afterwards would be payable by the purchasers. But, in the absence of any such indication, it cannot be held that every contract of sale in India has to be varied in accordance with enhanced duty when such duty is imposed afresh or is increased on articles of that class.

In the present case there is absolutely no proof that any enhanced duty had been paid to Government on account of these five bars of silver. The amount contracted to be purchased was small in quantity and could be had in the Indian market itself. Plenty of silver bars must have been in India before the enhanced duty came into effect. There is nothing in the contract to indicate that the defendants contemplated that the plaintiff would import these silver bars from outside in order to deliver them to the defendants. Indeed the interval of time between the date of the contract and the date of delivery was so short that a fresh order for importing goods could not have been contemplated. The position, in our opinion, is the same as if one would have entered into a contract for the sale of rice or wheat in India, without implying that the same should necessarily be imported from outside. There would be no liability on the part of the purchaser to pay enhanced duty if the Government were to impose such duty on the import of rice or wheat.

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The transaction between the parties was in the nature of principal to principal. The name of the person from whom the plaintiff purchased the bars of silver was never disclosed to the defendants, and there was no indication that the plaintiff would not himself be liable to make good the loss to the defendants. The parties, therefore, dealt with each other as principal to principal. The plaintiff can only recover the difference between the actual contract price and the sale price and not necessarily any loss which he may have suffered on account of his own private transaction with a third party in Calcutta. As pointed out above, the contractual rate was only Rs.47-5 and not Rs.63-11. The plaintiff has by realising Rs.54-6 per 100 tolas made a profit and not suffered any loss. The plaintiff's claim in respect of this transaction is, therefore, not maintainable and should be dismissed.

We accordingly allow this appeal and modifying the decrees of the courts below dismiss the claim for Rs.369-0-6 in respect of the second transaction. The parties will receive and pay costs in proportion to their success and failure in all courts.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

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HANSO PATHAK (PLAINTIFF) *v.* HARMANDIL PATHAK AND ANOTHER (DEFENDANTS)*

Hindu law—Joint ancestral property—Income derived from profession of a priest is self-acquired property—Gains of science—"Hereditary priests"—Custom.

Although in the Bombay presidency there might be "hereditary priests" maintained by certain castes and such priests might have a right to force their services on the members of those castes and the right to receive the income therefrom would be a part of the family property, a claim to force one's services as

*Second Appeal No. 353 of 1932, from a decree of Rup Kishan Agha, District Judge of Azamgarh, dated the 19th of February, 1932, reversing a decree of Syed Ejaz Husain, First Additional Munsif of Azamgarh, dated the 23rd of February, 1931.