

Case Laws

Topics

- ▶ Holland Vs. Hodgson (1872) L.R.7 C.P.328 at 335 (Australia)
- ▶ Duncan Industries Ltd. Vs. State of U.P. and Other AIR 2000 SC 355
- ▶ Westinghouse Elect. Corporation 93 NC App. 710, 379 S.E.2D 37(1989) (U.S.A)
- ▶ Sirpur Paper Mills Pvt. Ltd. Vs. The Collector of the Central Excise, Hyderabad AIR (1998) 1 SCC 400: (1998 AIR SCW 366: AIR 1998 SC 1489)
- ▶ Official Liquidator Vs. Sri Krishna Deo and Ors. (AIR 1959 All 247)
- ▶ Symex Holdings Ltd. Vs. Commissioner of State Revenue, Supreme Court of Victoria, Australia-(2007) VSC 159

What it is

- ▶ Six cases – where there were important court cases.
- ▶ These court decisions – became important on the future.
- ▶ From different countries.

Holland Vs. Hodgson (1872) L.R.7 C.P.328 at 335 (Australia)

- ▶ The owner of a mill purchased some looms for use in his mill. They were attached to the stone floor by nails driven into wooden beams. They could quite easily be removed. The owner then mortgaged the mill and failed to keep up the payments and the mill was repossessed. The question for the court was whether the looms were fixtures forming part of the land or whether they remained chattels.
- ▶ The purpose of the attachment was so that the machines remained in place when in use because this was a necessary requirement in respect of how they were powered.
- ▶ The machines could easily be removed however, without causing significant damage to the floor. The claimant was granted an order at first instance and the defendant appealed.

▶ **Issue**

- ▶ The issue in this judgment was whether machines attached to a property became part of that property. This ultimately resulted in a consideration of the distinction that should be drawn between fixtures and chattels.

▶ **Held**

... blocks of stone placed one on top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on top of each other in the form of a wall, would remain chattels.

- ▶ In these circumstances, it was held that the purpose of the attachment was for the use of the factory as a mill and therefore, the looms were fixtures.

Means they were part of the property and not separate to the property.

Duncan Industries Ltd. Vs. State of U.P. and Other

- ▶ The question whether plant and machinery in an industry as a going concern should be construed as movable or immovable property
- ▶ the functioning of fertilizer business as a going concern and the company transferring its assets on “as is where is basis”.
- ▶ The focus of the decision was on the aspect as to how the plant and machinery were embedded and what the intentions of the parties were.
- ▶ The court upheld the valuation made by authorities by treating such plant and machinery as immovable property and considering them liable for payment of stamp duty on transfer.

Judgement

- ▶ The items which have been held by the court to be “plant” are:
- ▶ 1) A building with insulated walls used as a freezing chamber as a part of the air- conditioning plant of a cold storage.
- ▶ 2) Thermocol insulation in a cold storage.
- ▶ 3) Air-conditioning equipment installed in a safe deposit vault of a bank.
- ▶ 4) Cooling coils installed by a sugar mill to facilitate more rapid formation of sugar crystals.
- ▶ 5) Poles, cables, conductors and switchboards for distribution of electricity.
- ▶ 6) Coal tubs, cast iron pipes, winding and guiding ropes, etc.
- ▶ 7) Safe deposit vault in a bank.
- ▶ 8) Sanitary and pipeline fittings of a hotel.
- ▶ 9) Loose tools which are directly or intimately connected with the running of the assessee’s factory.
- ▶ 10) Know-how in the form of printed literature giving technical information under an agreement.
- ▶ 11) Technical know-how in the form of manufacturing designs, specimen drawings, charts, plans, processing data and other literature which forms the basis for business of manufacturing etc.

- 
- ▶ The following items are held by the courts as “not being plant”:
 - 1) Warehouses constructed by the assessee and hired out for storage purposes.
 - 2) Electrical installation in the case of a banking company.
 - 3) Water storage tank constructed by a person in connection with his business of supplying water to farmers.
 - 4) Part of a vehicle such as the body of a vehicle.
 - 5) Roads constructed within factory premises.

Westinghouse Elect. Corporation 93 NC App. 710

- ▶ The property under appeal in this case was a plant containing nearly 6,00,000 sq. ft.
- ▶ Designed for a specific heavy industrial use, namely, fabrication and assembly of steam turbine components
- ▶ The main manufacturing building had a ceiling (80) feet high, with an overhead twin crane way of extremely heavy floors and foundations,
- ▶ Special cooling capacity employing river water and other features which made it adaptable for heavy industrial uses.

Judgement

- ▶ The main manufacturing building in this case is a classic example of a super adequate structure and these super adequate features are no longer being effectively used by the appellant nor would any buyer of the property be likely to need and pay for these features.
- ▶ Because the original use for which the property was constructed had been abandoned by the taxpayer, the commission found that the property was *affected by substantial obsolescence*".

Sirpur Paper Mills Pvt. Ltd. Vs. The Collector of the Central Excise

Is Excise Duty Payable on the paper making machines constructed internally, by components purchased and self constructed.

- ▶ Machine was permanently attached to the ground.
- ▶ In fact, the machine cannot be worked until and unless the same was attached to the earth as a permanent fixture.
- ▶ It was further argued that the machine cannot ordinarily be sold in the market.
- ▶ The nature of the machine is such that it cannot be transferred/offered for sale to any other party.
- ▶ The machine was erected on turnkey basis at the very place where the machine was ultimately embedded in a concrete base make it permanent fixture.

Judgement

- ▶ The Tribunal, however, rejected these contentions
- ▶ The Tribunal held that the machine was attached to earth for operational efficiency.
- ▶ Purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also for safety.
- ▶ The Tribunal further held that the paper making machine was saleable and observed “if somebody to purchase, the whole machinery could be dismantled and sold to him in parts”.

So even when it is fixed in concrete – it is NOT part of the land. It is still a separate identity. It can be sold in parts.

Official Liquidator Vs. Sri Krishna Deo & Ors.

- ▶ Court a Commissioner to inspect the premises of the Company to ascertain
- ▶ Whether the machinery and plant were fixed and were things attached to the earth
- ▶ Permanently fastened to anything which was attached to the earth as mentioned in Section 2(6) of the Indian Registration Act.
- ▶ The report submitted by Mr. Verma
 - ▶ Detailed report containing 44 photographs.
 - ▶ Accurate a description of the machinery and the plant set up in the premises as could be possible.

Judgement

- ▶ The Hon'ble Supreme Court of India
- ▶ has observed that an item falls under plant and machinery if it satisfies the following criteria:
- ▶ (a) When the purpose behind attaching the machine to concrete base is to prevent wobbling of the machine and to secure operational efficiency and also for safety.
- ▶ (b) If somebody to purchase machine can dismantle and sale in parts.
- ▶ (c) In view of facts mentioned under (a) and (b) above it is not possible to hold that machinery assembled at factory site was immovable property as something attached to earth like a building or tree.
- ▶ (d) Whatever is embedded in earth must be treated as immovable property is basically not sound.

Just because a plant and machinery are fixed in the earth for better functioning, it doesn't automatically become an immovable property.

Symex Holdings Ltd. Vs. Commissioner of State Revenue, Supreme Court of Victoria

- ▶ In 1856 the Kitchen family began a candle-making business in South Melbourne
- ▶ In 1859 they purchased a factory in Port Melbourne.
- ▶ Subsequently John Kitchen and Sons was established and diversified into soap and tallow-rendering and the manufacturing of products such as stearine and glycerine.
- ▶ In 1924 John Kitchen and Sons amalgamated with Lever Brothers eventually becoming part of the multi-national corporation, Unilever.
- ▶ In 1971 the name J. Kitchen and Sons was again used for the oleo manufacturing division of Unilever at Port Melbourne.
- ▶ In 1978 the business came to be operated by Unichema Australia Pty Ltd, part of the global operation of Unichema International, but still remaining part of the Unilever group.
- ▶ In 1994 Michael Clevin Newton ("Mr Newton") was appointed as Managing Director.
- ▶ In 1999 another multi-national corporation, ICI, acquired Unichema International and the Port Melbourne business, still operating on the same site, continued under the name of Uniqema Pty Ltd.
- ▶ In the year 2000 Mr Newton and some other executives completed an MBO with ICI and Symex (a company incorporated for the purpose) became the independent owner of the business including the land and buildings ("the Symex land"), and the plant and equipment.

- ▶ Business sale agreement dated 17 January 2000 between Uniqema Pty Ltd (the Vendor), ICI Australia (Holdings) Pty Ltd, and Symex (the Purchaser).
- ▶ Under the sale agreement the Vendor agreed to sell to the Purchaser and the Purchaser agreed to purchase from the Vendor
- ▶ the Assets and the Business as a going concern.
- ▶ The components of the purchase price were the Business and the Assets plus the Working Capital Value.
- ▶ The sale agreement - purchase price land and buildings in the sum of \$2,749,800, plant and equipment in the sum of \$2,749,800.
- ▶ The Working Capital Value arrived at under these provisions of the agreement was \$9,094,823.
- ▶ Thus the total price under the sale agreement was \$14,594,823.

- ▶ A contract of sale of the Symex land was executed between Uniqema Pty Ltd and Symex, dated 17 January 2000 ("the land contract") with a purchase price of \$2,749,800. Fourteen instruments of transfer dated 1 March 2000, covering the fourteen titles involved, were executed in which the consideration totalled the amount of the purchase price.

▶ ISSUE WAS

- ▶ The taxpayer contended that the amended assessment was incorrect because the transaction was a bona fide commercial one negotiated at arm's length between unrelated parties. The Commissioner argued that the amount paid for the plant and equipment and the land and buildings was undervalued and additional stamp duty was owed.
- ▶ The taxpayer argued that the plant and equipment should be either valued at its 'open market value' (\$874,800) or its 'fair market value' (between \$8,395,300 and \$9,171,000 based on two independent valuations). The Commissioner demanded stamp duty based on a valuation of \$27.410m for plant and equipment resulting from an investigation into the transaction. The valuation of land and buildings was agreed to be \$10.4m.

▶ DECISION BY COURT

- ▶ Although there was no evidence of hard bargaining, the Court decided to value the plant and equipment using independent valuations disregarding the fact that the contract price was substantially less.
- ▶ Although the Court agreed that the transaction was conducted at arm's length between independent and capable commercial entities and individuals, it commented that the contract price of \$14.5m appeared to be inadequate when the working capital was valued at above \$9m and the plant and equipment had been valued between \$8m and \$9m. These two items exceeded the purchase price before adding the value of land and buildings. The Court accepted the valuation of working capital but did not comment on the valuation of land and buildings.



Thanks

SK Agrawal

9873592082

ska@agrawalnassociates.com