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C.A.No. 2777 OF 2000  
ITEM No.106

Court No.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.2777 of 2000

USHA BELTRON LTD. Appellant (s)

VERSUS

STATE OF PUNJAB & ORS. Respondent (s)

(With appln.(s) for permission to place annexures and with office report)

Date : 27/04/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s) Mr. Dushyant A. Dave, Sr. Adv.  
Mr. S.K. Maniktala, Adv.  
Mr. Abhimeet Sinha, Adv.  
Ms. Minakshi Nag, Adv.  
Mr. Ejaz Maqbool, Adv.

For Respondent (s) Mr. B.S. Mor, Adv.  
Mr. Mahinder Singh Dahiya, Adv.

UPON perusing papers the Court made the following  
O R D E R

The Appeal stands dismissed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)  
Court Master

(Jasbir Singh)  
Court Master

[Signed order is placed on the file]

ITEM No.106

Court No.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.546 of 2001

M/S. R.P.G. CABLES LTD., NEW DELHI Appellant (s)

VERSUS

STATE OF PUNJAB & ORS. Respondent (s)

(with office report)

Date : 27/04/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s) Mr. Sunil Kumar Singh, Adv.  
Mrs. Mukti Singh, Adv.  
Mrs. Niranjana Singh, Adv.

For Respondent (s) Mr. A.V. Palli, Adv.  
Mrs. Rekha Palli, Adv.

UPON perusing papers the Court made the following

O R D E R

The Appeal stands dismissed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)  
Court Master

(Jasbir Singh)  
Court Master

[Signed order is placed on the file]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2777 OF 2000

USHA BELTRON LTD. Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent (s)

O R D E R

This Appeal is against the Order of the High Court of Punjab and Haryana at Chandigarh dated 29th November, 1999.

Briefly stated the facts are as follows:-

The Department of Telecommunications, Government of India, called for tenders and issued contracts for supply of PIJF underground cables to various manufacturers including the Appellant. As per the Bid Document various stations of the Department of Telecommunications directly placed purchase orders on the Appellant for supply of the cable. Those purchase orders were construed as contracts.

Pursuant to such purchase orders, the Appellant was manufacturing and then transporting the cables to the various stations which had placed the orders. The Municipality to which the goods were being transported claimed octroi on the goods. According to the Appellant, octroi was not payable as these goods belonged to the Government of India. The Appellant claimed that by virtue of clause 12 of Notification No.3/3/99-LIII-6555 dated 1st June, 1999 all goods belonging to the Government of India were exempted from payment of octroi. As the Municipalities insisted on payment of octroi, a Writ Petition was filed in the High Court. The Punjab and Haryana High Court has by a very short order dismissed the Writ Petition.

It is submitted by Mr. Dave that the impugned order is an absolutely cryptic order which does not consider anything. He submitted that therefore the matter should be remanded back to the

High Court for disposal on merits. We are unable to accept this submission. Undoubtedly the order is a very short order. However, the short order sets out what is relevant for the purpose of a decision in this case. It sets out that the Court was not satisfied that the property in the goods had passed to the Government of India at the time the goods entered the Municipal limits. The Writ Petition is dismissed on this ground. We have perused the Writ Petition. The ground on which the entire Writ Petition is based is that the property in the goods had passed to the Government of India. Such a claim is made based on clause 5.1 of the Bid Documents which inter alia reads as follows:-

"5.1The Purchaser or his representative shall have the right to inspect and test the goods as per prescribed test schedules for their conformity to the specifications. Where the Purchaser decides to conduct such tests on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance like Testing Instruments and other test gadgets including access to drawings and production data shall be furnished to the inspectors at no charge to the Purchaser."

Reliance is also placed upon Section 22 of The Sale of Goods Act, 1930. It is submitted that this was a contract for sale of specific goods in a deliverable stage. It is submitted that the property in the goods passed to the buyer when the contract was made and it was immaterial as to what was the time of delivery of goods. It was submitted that all the other clauses of the Bid Documents were merely for the purposes of ensuring that proper quality goods had been supplied and did not relate to the passing of the property in the goods. We are unable to accept these submissions. The Bid Document i.e. the contract between the parties is very categorical as to when the property in the goods is to pass. Clause 5.5 and clause 6.1 of the Bid Document read as follows:-

"5.5When the performance tests called for have been successfully carried out, the Inspector/ultimate Consignee will forthwith issue a Taking Over Certificate. The Inspector/ultimate consignee shall not delay the issue of any "Taking Over Certificate" contemplated by this clause on account of minor defects in the equipment which do not materially affect the commercial use thereof provided that the Supplier shall undertake to make good the same in a time period not exceeding six months. The Taking Over Certificate shall be issued by the ultimate consignee within six weeks of successful completion of tests. In this case, BCPC (Bill Copy Payable challan) shall be equivalent to "Taking Over Certificate", issuance of which shall certify receipt of goods in safe and sound conditions. However, they shall not discharge the supplier of their warranty obligations. BCPC in respect of last consignment against the Purchase Order will be equivalent to "Taking over Certificate".

"6.1(i)Delivery of the goods and documents shall be made by the Supplier in accordance with the terms, specified by the Purchaser in its Schedule of requirement and special conditions of contract and the goods shall remain at the risk of the Supplier until delivery has been completed. The delivery of the equipment shall be to the ultimate consignee as given in the purchase order.

(ii)Irrespective of the mode of Transport of cables, the date of receipt by the consignee at site as indicated in the P.O. shall be taken as the "date of delivery".

These terms clearly indicate that the property in the goods remains at the risk of the Appellant till delivery was completed. It shows that delivery would be completed only after the take over certificate was issued. As per Section 19 of the Sale of Goods Act, 1930, the property in the goods passes when the parties intended it to pass. In this case the contract provides that property in the goods does not pass till after delivery and after successful testing and takeover. Thus, the High Court was right in concluding that the property in the goods had not passed at the time the goods entered the Municipal limits.

In this view of the matter clause 12 of the above-mentioned Notification would have no application. The certificate dated 23rd September, 1999 issued by Government, to the effect that these goods were for use by the Government and for no other purpose and the letter of the Chief General Manager, Punjab Telecom Circle dated 23rd September, 1999 wherein it is claimed that the articles belong to the Union Government do not alter the position in law.

In this view of the matter, we see no infirmity in the impugned Judgment. The Appeal stands dismissed. There will be no order as to costs.

.....J.  
(S.N. Variava)

.....J.  
(Dr. AR. Lakshmanan)  
New Delhi;  
April 27, 2005.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.546 OF 2001

M/S. R.P.G. CABLES LTD., NEW DELHI Appellant (s)

VERSUS

STATE OF PUNJAB & ORS. Respondent (s)

O R D E R

In view of the principles laid down by us today in Civil Appeal No.2777 of 2000 (Usha Beltron Ltd. v. State of Punjab & Ors.), this Appeal also stands dismissed. There will be no order as to costs.

.....J.  
(S.N. Variava)

.....J.  
(Dr. AR. Lakshmanan)  
New Delhi;  
April 27, 2005.