

1954

Present : Gratiaen J. and Fernando A.J.

**CARGILLS (CEYLON) LTD., Appellant, and COMMISSIONER
OF STAMPS, Respondent**

S. C. 250—Appeal under Section 31 of the Stamps Ordinance

Stamps Ordinance—Business—Agreement to sell it—Movable assets—Liability to duty—Meaning of “business”—Section 26A—Schedule, Items 4 (c) and 23 (2a) (vii).

An agreement for the sale of a business is chargeable to duty as such under Item 23 (2a) (vii) of the Schedule to the Stamps Ordinance notwithstanding that the various assets of the business are separately specified in the agreement.

Where such an agreement includes a provision for the sale of the goods, wares and merchandise belonging to the business the exemption in Item 4 (c) is not applicable.

APPPEAL under section 31 of the Stamps Ordinance against a determination by the Commissioner of Stamps.

N. E. Weerasooria, Q.C. with *H. W. Tambiah* and *S. Sharvananda*, for the appellants.

T. S. Fernando, Q.C., Solicitor-General, with *M. Tiruchelvam*, Crown Counsel, for the respondent.

Cur. adv. vult.

July 8, 1954. FERNANDO A.J.—

At the conclusion of the argument in this case, we made order dismissing the appeal with costs, and indicated that reasons would be given later.

This was an appeal under S. 31 of the Stamps Ordinance against a determination by the Commissioner of Stamps. The instrument in question is an agreement No. 3819 of 19th February, 1946, entered into between the attorney of Cargills Ltd. (a Company incorporated in Scotland) ("the vendor") and Mr. Abraham Gardiner ("the purchaser") which first recited the receipt by the vendor of an earlier written offer by the purchaser and the agreement by the Board of Directors of Cargills Ltd., which was communicated by cablegram, to accept the said offer. By the agreement the vendor bound himself to sell and the purchaser to buy with effect from 1st April, 1946 "the movable and immovable assets of Cargills Ltd. hereinafter specified at a price hereinafter mentioned", the price being "the aggregate sum of Rs. 11,500,000 for all the assets concerned". The specified assets were:—1. Immovable property briefly described in the Schedule, and the goodwill of the business of the vendor, 2. Furniture, fittings and plant equipment, 3. Customers outstandings due to the vendor on March 31st, 1946, 4. All the stocks, wares and merchandise remaining undisposed of in Ceylon belonging to the vendor on 31st March, 1946. The agreement stated that in arriving at the aggregate sum, the sum payable for the assets fourthly mentioned had been tentatively fixed at Rs. 3,300,000 and provided for adjustment by reference to the actual position on 31st March, 1946. (At a later stage it was accordingly agreed between the parties that the sum payable in respect of the fourth asset should be adjusted to Rs. 4,374,768.) The payment by the purchaser of a deposit of 10% of the aggregate sum was acknowledged and the balance of the aggregate was declared to be payable on or before August 1946. The vendor agreed to execute the necessary conveyances relating to the transfer of the assets to the purchaser.

The agreement was ultimately carried into execution and the necessary formal instruments of conveyance were executed by the vendor, transferring to the nominee of the purchaser, Cargills Ceylon Ltd., the assets

included in the categories 1 and 3. Stamp duty having been paid on these conveyances, the Commissioner in making his determination of the duty payable on the agreement No. 3819 deducted the amount of the duty so paid, and we are therefore concerned in this case only with the amount of duty, if any, payable on the remaining assets namely :— (a) the furniture, fittings plant and equipment belonging to the vendor, (b) the stocks wares and merchandise belonging to the vendor on 31st March, 1946. The Commissioner has determined that both categories of assets are chargeable with duty under S. 23 (2) of the Schedule to the Stamps Ordinance.

The principal question for determination is whether the document No. 3819 constituted an agreement for the sale of the business of Cargills Ltd. and therefore chargeable under Item 23 (2a) (vii) of the Schedule to the Ordinance.

Mr. Weerasooria contends that it is not, but is merely an agreement to sell certain specified assets belonging to the vendor, in which case, he argues, duty is not chargeable upon the agreement covering the goods, wares and merchandise. He relied at first on S. 26A of the Ordinance which was inserted in the main Stamps Ordinance by the amending Ordinance of 1941. He urged that the section conferred an exemption in regard to agreements for the transfer of goods, wares and merchandise, but it became manifest during the course of the argument that the mention of the item " goods, wares and merchandise " in an exception clause in S. 26A cannot be construed as conferring an exemption in respect of property of that class, if in fact a charge on it is imposed in the Schedule to the Ordinance.

Mr. Weerasooria relied secondly on Paragraph (c) of Item 4, in the Schedule, which does confer an exemption for agreements relating to the sale of goods, wares and merchandise, but only if such an agreement is not otherwise charged by the Ordinance. If therefore the agreement in this case is one covered by Item 23 (2a) (vii) of the Schedule as amended in 1941, neither item 4 nor the exemptions to that item would be applicable. I would like to refer in passing however to the cases of *South v. Finch*¹ and *Horsefall v. Hay*² where a similar exemption in respect of goods wares and merchandise in England was held not to apply to agreements for the sale of goods *together with other property*, and to the test applied in India " to see whether the document evidences only a transaction of sale or a sale and some other independent transaction ". (Donough-Indian Stamp Law 9th Ed. p. 581).

Was this then an agreement for the sale of a business ? In determining for the purposes of the Stamp Law whether a document falls within a description of documents which attract duty, regard must be had to its true meaning and intent. As authority for this principle is scarcely necessary, I am content merely to refer to the case of *Chesterfield Brewery Co. v. Commissioner of Inland Revenue*³ which was cited by the learned

¹ 3 Bing N. C. 506.

² 17 L. J. Exch. 266

³ (1899) 2. Q. B. 7

Solicitor General. If therefore a scrutiny of the deed here in question reveals that what was really agreed upon by the vendor and the purchaser was that all the assets or substantially all the assets of the business of Cargills Ltd. were to be transferred, then the agreement becomes liable to duty under the relevant item. The transaction covered several immovable properties upon which the business of the vendor had been carried on, the goodwill of the business, customers outstandings, fixtures and the whole of the stocks; it also covers agencies for imported commodities in so far as the agent was in a position to secure their transfer to the purchaser; in fact Mr. Weerasooria was unable to suggest any assets held by Cargills Ltd. for the purposes of its business (other than actual cash in hand or money in the Bank) which was not included within the scope of the transaction. In so far as the disputed item of goods, wares and merchandise is concerned, it is important to note that the agreement covered all goods, wares and merchandise in stock on 31st March, 1946, including even goods afloat, and the total value of these assets amounted to nearly Rs. 4½ million. It is clear that but for the transfer of these stocks the purchaser would not have been able to exercise with any hope of profit the rights expressly conferred on him by the agreement "to hold himself out as carrying on a similar business in Ceylon in succession to Cargills Ltd., and if so desired to carry on such business under the name and style of Cargills (Ceylon) Ltd.". This right would have been an empty one, and indeed purchase of the other assets would have been a hazardous venture, if the purchaser had not obtained a binding undertaking from the vendor to hand over all stocks in hand at the time of the transfer. It is a debatable question whether the purchaser could have avoided the payment of stamp duty on the value of the stocks by taking it on trust that the vendor would hand them over on payment together with the other assets, though successful avoidance of the duty by that means would have been perfectly legitimate. But the purchaser actually chose a different course and made the transfer of the entire stocks an integral part of the obligations binding upon the vendor by the agreement.

In the case of *In re Rhugg, Easton v. Boyd*¹ Simonds J. (as he then was) in construing a bequest of "my business as a solicitor" said "The word 'business' in such a context as this bears much the same meaning as when it is said that a man has sold his business. It means the undertaking or enterprise itself, not the process of carrying it on".

I am of opinion that the agreement before us cannot, merely on the ground that the various assets of the vendor were separately specified and valued, be construed as anything other than an agreement for the sale of the undertaking or enterprise theretofore carried on in Ceylon by the vendor under the name of Cargills Ltd. and that it is therefore chargeable with duty as an agreement for the sale of a business.

GRATIAEN J.—I agree.

Appeal dismissed.

¹ (1938) Ch. D. 828.