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**(1965) 08 AHC CK 0023**

**Allahabad High Court**

**Case No:** S.T. Reference No. 5 of 1963

Kanpur Kapra Committee

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

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**Date of Decision:** Aug. 23, 1965

**Acts Referred:**

- Sales of Goods Act, 1930 - Section 4

**Citation:** (1966) 17 STC 10

**Hon'ble Judges:** M.C. Desai, C.J; S.C. Manchanda, J

**Bench:** Division Bench

**Advocate:** S.N. Kacker and M.P. Mehrotra, for the Appellant; Standing Counsel, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

S.C. Manchanda, J.

This is a case stated u/s 11 of the U.P. Sales Tax Act. The material facts giving rise to this reference are these.

2. In the year 1944 control was imposed on the import and distribution of cloth. The assessee syndicate was constituted under the name and style of Kanpur Kapra Committee Syndicate to act as an importing agency through which the cloth was to be distributed to the retailers to be sold at controlled rates. The syndicate consisted of 92 wholesalers who fulfilled the condition of having been continuously in business during the basic years 1940 to 1944. No quota-holder could be a member of this syndicate unless he surrendered his 3% profits to the syndicate. The syndicate was allowed a margin of 3% profit in addition to the 3% margin of profit originally allowed to importers. The syndicate was debarred from handling the cloth physically. The cloth was to pass from the importing agency direct to the retailers, and the retailers, on depositing money with the importing agency were entitled to obtain the cloth from the specified godown or godowns. On 28th June, 1948, cloth

was decontrolled. The syndicate could no longer function thereafter as an importing agency. The members then resolved (the actual resolution is not made a part of the case) that the cloth shall be sold among the shareholders in proportion to their contributions and the price of the cloth shall be charged from the members at the rate chargeable from the retailers. It was further resolved that the members shall be entitled to get the cloth only after the payment of the amount that stands against their names. The goods had to be removed by the members between 23rd February, 1948, and 9th March, 1948, on payment of the amount noted against them. In case of delay in making the payments interest shall be charged at 10 annas per cent, from the defaulters. A committee of 10 persons was formed to effect the alleged distribution of cloth. Consequently cloth worth Rs. 14,29,089 was disposed of to the members and cloth worth Rs. 3,351 was distributed among the employees of the syndicate in the shape of bonus and the remaining cloth worth Rs. 41,985 was either auctioned or sold in the open market. The syndicate did not file any return nor did it pay any sales tax on the said turnover. The contention of the assessee was that it was not a dealer nor was there any sale by it to its members. The Sales Tax Officer rejected this contention holding that there was dearth of cloth in the market, even though the control had been lifted and the syndicate had decided to sell the stocks with them to its own members at the price at which they would have been sold to the retailers; that the transaction between the syndicate and its members was a sale even though in some cases the price of the cloth had been adjusted out of the money already invested by the purchasers in the syndicate particularly for the reason that the syndicate even in the sale invoice issued to its members had clearly charged a profit over and above the price of the cloth in the same manner as it would have charged to any other retailer. The Judge (Appeals) confirmed the assessment. On a reference being asked for, the following question has been referred to this Court:-

Whether on the facts and in the circumstances of the case, cloth given by the syndicate to its members on payment was a sale within the meaning of the U. P. Sales Tax Act ?

3. The short point which falls for consideration is as to whether the transaction entered into constituted a distribution of assets in specie or it was a sale within the meaning of the expression as defined in Section 2(h) of the Sales Tax Act ? Sale means, " within its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge." Two conditions, therefore, required to be satisfied, (1) that there should be a transfer of property in goods and (2) that such transfer should be for cash or deferred payment or other valuable consideration. In the present case the majority of the transactions admittedly were for cash. That condition would appear to be satisfied. The other condition as to whether this amounted to a transfer of property in goods would depend on whether there was a sale within the meaning of Section 4 of the Sale of

Goods Act. The Supreme Court has laid down in [New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar](#), "it is now settled law that the expression "sale of goods" has to be understood in the sense in which it is used in the Sale of Goods Act, 1930. u/s 4 of the Sale of Goods Act a transaction is called sale only where for money consideration property in goods is transferred under a contract of sale". A contract of sale between the parties is a pre-requisite. In the instant case undoubtedly the property in the goods was transferred by the syndicate to its members for valuable consideration. The only contention urged by Mr. Kacker for the assessee was that the sale was a result of a resolution and not by the volition of the parties and therefore it cannot be said to amount to a, contract of sale. There is no force in this contention. There was no element of compulsion and as found by the Sales Tax Officer, cloth was in short supply even though cloth had been decontrolled and if any member did not wish to take his quota it would have been readily disposed of. A resolution was admittedly passed by all the members of the syndicate agreeing to purchase the cloth at the same price as was hitherto being sold under the control order to the retailers. There was in these circumstances an implied if not an express offer and acceptance and as such it is not possible to say that the goods were not transferred under a contract of sale.

4. It is well-settled that the form that a transaction takes cannot be ignored. Lord Greene, M. R., in [HENRIKSEN \(INSPECTOR OF TAXES\) Vs. GRAFTON HOTEL LTD.](#), pointed out, "It frequently happens in Income Tax cases that the same result in a business sense can be secured by two different legal transactions, one of which may attract tax and the other not. This is no justification for saying that a taxpayer who has adopted the method which attracts tax is to be treated as though he had chosen the method which does not, or vice versa." Similarly, Lord Sands in *Commissioners of Inland Revenue v. Adam* [1928] 14 Tex Cas. 34, 42 observed, "When parties contract in certain forms different results may flow according to the form of the contract, however little difference there may be in substance." In the present case it is idle to contend that if the parties had distributed the cloth in specie to its members instead of selling it for a cash consideration the transaction would not have amounted to a sale. The form in which the transaction was couched, the resolution requiring sale to its members on the same margin of profit as was hitherto being charged to the retailers, the insistence on cash payment and the default penal interest clause, cannot be given the go by. The form unmistakably was that of a sale by the syndicate to its members. The syndicate and its members are two different entities and there is no prohibition in law in one entity making a transfer of its assets or stock-in-trade to another entity. Even in the case of a firm it can transfer or sell part of its assets or stock-in-trade to one of its partners.

5. For the reasons given above we would answer the question referred in the affirmative and against the assessee. The reference is answered accordingly. We direct that copies of this judgment shall be sent under the seal of the Court and the signature of the Registrar to the Judge (Revisions) Sales Tax and the Commissioner,

Sales Tax, as required by Section 11(6) of the Act. The assessee will pay the costs of this reference which we assess at Rs. 100. The counsel's fee is also assessed at Rs. 100.