

SONIAWEAR LTD v THE REGISTRAR GENERAL
[The Supreme Court of Mauritius]
2019 SCJ 69
SUMMARY

Facts:

This is an appeal by way of case stated against a determination of the Assessment Review Committee (ARC) upholding a decision of the respondent to impose on the appellant the payment of registration duty on a deed witnessing a buy back of shares. It was not in dispute that, if a deed witnessed a “transfer of shares” within the meaning of section 24(2) of the Registration Duty Act as it stood at the time of the buy back (i.e. on 30 June 2006), registration duty would be payable under section 3 of the Act. However, it was contended by the appellant that the buy back in question did not amount to such a “transfer of shares” whilst it was contended by the respondent that it did. The grounds of appeal raise one question of law. This question being whether, as a matter of law, a share buy back by a company, which did not result in a change of control, was a share transfer for the purposes of section 24(2) at the material time, that is, on 30/06/2006.

Held:

The Court held that the new subsection (2A) defined the scope of the term “transfer of shares” to make it clear that it includes amongst other modes of acquisition of shares, any acquisition by a company of its own shares by way of buy back where such acquisition results in a change of control of the company. Before the Finance Act 2006, there was no specific inclusion within the meaning of “transfer of shares” of share buy backs resulting in a change of control of a company. The question whether a buy back of shares by a company, prior to the amendments effected by these acts, amounted to a “transfer of shares” for the purposes of registration under section 24(2), is, therefore, a matter of interpretation. As regards the amendment brought by the Finance Act 2012, it in effect excluded a buy back from the definition of “transfer of shares.” When taken in its ordinary sense, the word “transfer” in relation to property, means a make over of the possession of property and the rights attached thereto from one person to another. In relation to the transfer of shares, it clearly means a make over of the ownership and possession of the property which the shares represent and the rights attached thereto from one person, namely, the shareholder to another person. Therefore, there cannot be any dispute that to the extent that in a buy back operation by a company, shares owned by a shareholder move from the latter to the company, there is a transfer of property in the natural sense of the word “transfer.” The question which arises is whether, given the particular characteristics of a buy back, this construction can be extended to that kind of operation, which to all intents and purposes is the acquisition by a company of its own shares from a shareholder. As a matter of fact, in a buy back the company recovers ownership and possession of its own shares not as a result of a gratuitous act, but upon consideration in favour of the shareholder. Furthermore, it is not correct to say that upon a buy back the company gains nothing in terms of rights since the company enjoys by virtue of sections 72 and 74 of the Companies Act certain rights which allow it of its own volition to either cancel the shares in order to reduce its share capital or keep them and re-issue them eventually with a view to maintain its share capital. The Court held that the term “transfer of shares” included the buy back of its own shares by a company for the purposes of section 24(2) of the Registration Duty Act as it stood at the material time and dismissed the appeal with costs.

This summary is provided to assist in understanding the Court’s decision. The full judgment of the Court is the only authoritative document.

Short Summary

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In the present matter, the Court held that registration duty would be payable under section 3 of the Registration Duty Act in relation to a buy back of shares by the appellant prior to the amendments brought by the Finance Act 2006 and 2012. This is because a “transfer of shares” within the meaning of section 24(2) of the Registration Duty Act as it stood at the time of the buy back did include the acquisition by a company of its own shares from a shareholder. The appeal was dismissed with costs.