45042 - Ruling on tawarruq sales

the question

In recent years, local commercial banks have introduced a way of selling by installments, then the purchaser may sell the product to a third party for cash. Is this method permissible or not?.

Detailed answer

Praise be to Allah.

This transaction is known to the scholars as tawarruq, which comes from the word al-wariq, meaning silver, because the one who buys the product is only buying it for the sake of dirhams (originally, silver coins).

The scholars differed concerning the ruling on this transaction.

The majority of scholars are of the view that it is permissible, because of the general meaning of the verse in which Allaah says (interpretation of the meaning):

“whereas Allaah has permitted trading”

[al-Baqarah 2:275]

and because there does not seem to be any intent to engage in riba and there is no concept of riba in this case. End quote.

Al-Mawsoo’ah al-Fiqhiyyah, 14/148

And because the purchaser is buying the product either to benefit from the item itself or to benefit from its price.

This is the view favoured by the scholars of the Standing Committee, and by Shaykh Ibn Baaz (may Allaah have mercy on them all).

It says in Fataawa al-Lajnah al-Daa'imah (13/161):

The issue of tawarruq is the subject of scholarly debate, but the correct view is that it is permissible. End quote.

Shaykh Ibn Baaz said:

With regard to the issue of tawarruq, it is not riba and the correct view is that it is permissible, because of the general meaning of the evidence and because it facilitates relief and enables people to meet their current needs. As for the one who sells it to the one from whom he bought it, this is not permissible, rather this is a riba-based transaction, which is called 'aynah. This is haraam because it is a trick aimed at getting around the prohibition on riba. End quote.

Majmoo' Fataawa Ibn Baaz, 19/245

Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) was of the view that this transaction is haraam. See al-Fataawa al-Kubra, 5/392

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) adopted a middle view, and said that it is permissible, subject to certain conditions.

He said in Risaalah al-Mudaayanah:

The fifth type (of loan) is where a person needs money but cannot find anyone to lend it to him, so he buys an item for a deferred payment, then sells it to someone else, other than the one from whom he bought it. This is the issue of tawarruq.

The scholars (may Allaah have mercy on them) differed at to whether it is permissible. Some of them said that it is permissible because if a man buys an item because he wants the item itself or he wants its price (by selling it), and both are valid aims.

Some of the scholars said that it is not permissible, because the aim is to take dirhams for dirhams, and the item comes in between as a means of making the transaction permissible, and making a haraam thing permissible by other means does not change anything. And the Prophet

(peace and blessings of Allaah be upon him) said: “Actions are but by intentions, and each man will have but that which he intended.”

The view that this kind of tawarruq is haraam is that favoured by Shaykh al-Islam Ibn Taymiyah, and it was narrated in one report from Imam Ahmad.

According to the report of Abu Dawood, Imam Ahmad regarded it as a type of ‘aynah, as was narrated by Ibn al-Qayyim in Tahdheeb al-Sunan, 5/801.

But in light of the people’s needs nowadays and the lack of lenders, we should say that it is permissible, subject to certain conditions.

1-That the person be in need of money; if he is not in need of money then it is not permissible, like those who resort to this method in order to lend to others.

2-That he should not be able to obtain money in any other permissible manner, such as a loan. If he is able to obtain money in some other manner, then this method is not permissible because he has no need for it.

3-That the contract should not include anything that resembles forms of riba, such as saying, “I sell this to you, the price of which is ten, for eleven” and so on. If it includes such things then it is either makrooh or haraam. It was narrated that Imam Ahmad said concerning such deals: such as if it is dirhams for dirhams, it is not valid. This is the view of Imam Ahmad. Based on this, the correct method is for the lender to know the value of the item and how much profit he will make, then say to the borrower: I will sell it to you for such and such, until one year.

4-The borrower should not sell it until he has taken possession of it and moved it to his own space, because the Prophet (peace and blessings of Allaah be upon him) forbade selling an item before the traders move it to their own space.

If these four conditions are met, then the view that tawarruq is permissible may be adopted, so as to relieve the people of hardship.

It should be noted that it is not permissible for the borrower to sell it to the lender for less than he bought it for under any circumstances whatsoever, because this comes under the heading of ‘aynah. End quote.