
(1963) 05 MAD CK 0010

In the Madras High Court

Case No : T.C. No. 184 of 1962 (Revision No. 68)

Bangalore Emporium

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 03-05-1963

Acts Referred:

Citation : (1963) 14 STC 870

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Advocate : S. Swaminathan and K. Ramagopal, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—In this revision the question arises whether the assessee is liable to pay sales tax on the disputed turnover of Rs. 77,685-08, which according to the assessee represents the value of cloth and tailoring charges and not value of ready-made garments.

2. The assessee is the proprietor of Bangalore Emporium, tailors and dealers in cloth, hosiery goods etc., at No. 6, Club House Road, Madras-2. He submitted his return in Form A for the year ended 31st March, 1959, showing a gross and net turnover of Rs. 4,922-81 and Rs. 4,842-08 respectively. The Deputy Commercial Tax Officer determined his net turnover for the year to the best of his judgment at Rs. 2,10,979-59, the total receipts disclosed by the books, and subjected it to tax at the rate of 1 percent. The assessee preferred an appeal to the Appellate Assistant Commissioner of Commercial Taxes. That officer after giving relief in respect of some items determined the turnover at Rs. 77,685-08 representing the receipts for sale of hosiery goods and value of cloth and tailoring charges.

3. Against this order a further appeal was filed by the assessee to the Sales Tax Appellate Tribunal, which on the facts found that there was no separate sale of cloth to the customers and collection of tailoring charges and that the transaction

was sale of ready-made garments. The Tribunal therefore dismissed the appeal and directed the assessee to pay tax on the sale of garments. It is against this order that the assessee prefers this revision petition.

4. It is common ground that the assessee is a dealer in cloth. He has also got a tailoring department. His customers would visit the piece-goods department, select the cloth, settle the price and then place orders for stitching and delivering the goods. The assessee then sends the cloth selected by the customers to the tailoring department for the purpose of stitching and making the goods ready for the customers. He prepares two bills, one for the sale of cloth showing the commission given by him and the other for stitching charges. The customers also pay an advance at the time of selecting "the cloth and pay the balance due on the two bills at the time of taking delivery of the goods. On these facts we have to consider whether the disputed turnover relates to sale of cloth and tailoring charges separately or whether the whole amount relates to sale of garments. The Appellate Assistant Commissioner observed that the mere circumstance that there are two departments one wherein the cloth is stocked and exhibited for sale and another wherein tailoring work is done or that the value of cloth and tailoring charges had been fixed separately in advance cannot alter the nature of the contract which is for the supply of garments. We cannot agree with this observation because the moment the customer selects the cloth from the piece-goods department, settles the price and pays an advance and the cloth so selected is cut and set apart for his use, it becomes his property and is appropriated by him, and the assessee thereafter only supplies work and labour for making the cloth into garments. It is immaterial whether the cloth so selected by the Customer is cut in his presence or subsequently and then sent to the tailoring department by the assessee for the purpose of stitching. Thus the transaction consists of two parts, one the sale of cloth by the assessee to his customers and the other contract for work and labour. The assessee relied on the decision in *Indralaya Ltd. v. Additional Commissioner, Commercial Taxes* [1958] 9 S.T.C. 633 in support of his case that there was no sale of garments. In that case the facts are similar to the facts of the present case. The learned Judge laid down four tests to be applied for ascertaining whether a particular transaction is a sale of ready-made garments or comprised a sale of goods and contract for work and labour. For that purpose the transactions are divided into four distinct groups and they are set out at page 637 as follows:-

(1) Where the customer brings his own goods or materials to be made up into garments. In such a case, there is no sale of goods except for such things as buttons or thread etc., which may be supplied by the dealers and which may be the subject-matter of sales tax. This is pure work done and labour supplied.

(2) Where the customer goes to the piece-goods department, purchases certain material, pays the price, takes delivery and then goes to the tailoring department and orders it to be made up. If all such facts were strictly proved, it would be, so far as the tailoring department is concerned, in the same position as group No.

(1).

(3) Where the customer buys ready-made, that is to say, completely tailored goods. Here again, it is an out-and-out sale of such goods, and so far as the customer is concerned he purchases the goods and has nothing to do with the material and labour.

(4) In the fourth and last group, the customer goes to the shop and selects certain material and this is made up by the tailoring department. In this case, the mere fact that certain material has been selected is not enough to transfer the property. The property is transferred when the material is made up as a completed garment and delivered to the customer.

5. Applying the above tests, it will be clear that the instant case will come under group (2). It is immaterial whether the customer purchases materials to be made into garments from the assessee's shop itself or brings his own goods for the purpose of stitching. The assessee in the present case has got two departments, piece-goods department and tailoring department. The customer is not compelled to utilise the services of the tailoring department. He has proved that he issued two bills. During the course of hearing of this case, we asked the assessee to prepare a statement of his dealings in respect of the entire turnover. He has accordingly submitted a statement, which gives the details of the transactions under several headings, namely, date, tailoring receipt No., order No., date of order, cloth sales bill No., value, of cloth and tailoring receipts. From the statement it is clear that there are two transactions covered by two bills. We have also perused the order book and the connected accounts.

6. In *D. Ramaswami v. State of Madras* [1954] 5 S.T.C. 250 the question arose whether the assessee, a job printer who charged the customers separately for the paper and separately for the printing, was liable to pay sales tax in respect of labour charges. Rajagopalan, J., observed at page 252:

When paper purchased from others and turned over to the printer can be undoubtedly the purchaser's property, i.e., the customer's property, we fail to see why a sale of paper by the printer himself cannot make that paper the purchaser's property, i.e., the customer's property. If it was the customer's paper that was used, and if that paper was sold by the printer himself, that sale would be liable to tax if the total turnover of these sales amounted to over Rs. 10,000. But that is not the case here. Since the assessee took the precaution of showing the sales of paper and labour charges separately, the labour charges did not come within the scope of the definition of works contract, and as pure labour charges they were not taxable; as the taxable turnover was below the minimum it was not liable to be taxed.

7. In the instant case also the assessee has been careful enough to prepare two separate bills one for the sale of cloth and the other for work charges. As both are exempted from liability to sales tax, the assessee would not be liable to pay any tax on the disputed turnover.

8. We are satisfied that the nature of the transactions is such that there are two separate dealings. When once it is found that these are two separate transactions, the assessee would not be liable to pay sales tax either for the sale of cloth (that being exempt) or for work and labour. Therefore, we set aside the order passed by the Tribunal and allow this revision with costs, counsel's fee Rs. 100.