(1984) 09 AHC CK 0070

In the Allahabad High Court

Case No : Sales Tax Revision No. 303 of 1983

Commissioner, Sales Tax APPELLANT

Vs

Saraswati Press RESPONDENT

Date of Decision : 24-09-1984

Acts Referred:

Citation : (1985) 58 STC 327

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : P.S. Varma, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—This is a revision by the Revenue relating to the assessment year 1977-78, against the Tribunal''s order dated 30th April, 1983.

2. The assessee carried on a printing press. It printed bill books as per the requirement of customers on its own paper, purchased from within U. P., which was exempt for the purposes of sales tax. The assessee raised a consolidated bill for the price of paper and for printing charges. The question arose whether the parties entered into any agreement of sale and whether the amount received in the bill books by the assessee from the customers was liable to be included in the turnover. The assessing officer took the view that there was contract Of sale, and therefore, the sale proceeds of the printed material were to be included in the turnover. The Tribunal on appeal, however, took the view that there was no contract of sale but only a contract of works and labour, and therefore, the printing charges received by the assessee could not be included in the turnover.

3. I heard both the parties at length. The argument of the Revenue was that there would have been no dispute, had the assessee printed the bills on the paper supplied by the customers, but because the assessee carried out the printing work on its own paper, therefore, it was a contract of sale between the assessee and the customers, and therefore, the sale proceeds of the bill books

were rightly included by the Sales Tax Officer in the turnover. To reinforce his argument, learned Standing Counsel relied on decisions of this Court in the cases of The Kanpur Journals Ltd. Vs. Commissioner of Sales Tax, and Commissioner of Sales Tax v. Riazul Haq Shamsi 1984 UPTC 613 . On the other hand, the assessee relied on a decision of the Honourable Supreme Court in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, .

4. The question for consideration is whether the fact that the assessee printed bills on its own paper has changed the position materially and whether that is a determining factor to come to the conclusion whether or not there was a contract of sale or contract of works and labour.

5. In the case of The State of Punjab Vs. Associated Hotels of India Ltd., , the Honourable Supreme Court observed as under :

Mere passing of property in an article or commodity during the course of the performance of the transaction in question does not render it a transaction of sale. For, even in a contract purely of work or service, it is possible that articles may have to be used by the person executing the work and property in such articles or materials may pass to the other party. That would not necessarily convert the contract into one of sale of these materials. In every case, the Court would have to find out what was the primary object of the transaction and the intention of the parties while entering into it.

6. So, the argument of the Revenue that because the assessee had used its own paper, therefore, there was a contract of sale is of no importance. The case has to be decided on the totality of the facts and circumstances. On page 239, in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, , the Supreme Court observed as under :

The test is whether or not the work and labour bestowed end in anything that can properly become the subject of sale; neither the ownership of materials, nor the value of the skill and labour as compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining, in the circumstances of a particular case, whether the contract is in substance one for work and labour or one for the sale of a chattel.

7. On the same page and in the same para, the Supreme Court observed as under :

A contract of sale is one whose main object is the transfer of property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the principal object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one of work and labour.

8. When these principles laid down by the Supreme Court are applied to the facts of the instant case, it becomes clear that there was no contract of sale in the instant case, but only a contract of works and labour. When the assessee entered

into a contract with the customers, there was no bill book, and therefore, no contract of sale of bill book could have been entered at that stage. It is only when the assessee bestowed labour and skill on a simple paper by means of printing equipment or machinery, bill book came in existence. So, on the date of contract, there was no contract for transfer of a chattel qua chattel. The end-product, which was transferred to the customers by the assessee, came in existence only when the assessee added its labour and skill. So, it is the labour and skill of the assessee that bestowed end in the bill book that became a subject-matter of sale. So, the contract was not the one of sale, but it was a contract of work and labour.

9. Relying on the principles evolved by the Honourable Supreme Court, I uphold the view taken by the Tribunal. The authorities relied on by the Revenue do not consider or distinguish the authority of the Supreme Court in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, .

10. In the result, the revision is dismissed and the parties will bear their own costs.