(1962) 04 BOM CK 0001

In the Bombay High Court

Case No : Sales Tax Reference No. 21 of 1961

Kwick Stationery Mart, Bombay APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 25-04-1962

Acts Referred:

Citation : (1963) 14 STC 282

Hon'ble Judges : Y.S. Tambe, J;V.S. Desai, J

Bench : Division Bench

Advocate : Y.P. Trivedi, for the Appellant; The Advocate-General, for the Respondent

Judgement

Desai, J.—The questions, which are referred to us on this reference, arise out of the transaction of the supply of printed posters by the petitioners to their customers. The petitioners are dealers in stationery materials and publicity printers. They have no printing press of their own and get the printing work relating to the order received by them by other printing presses. The petitioners received orders from their customers for the supply of publicity posters. The petitioners were to supply the paper for the posters. They were also to prepare the designs for the printing according to the instructions of their customers and had to get the printing work done on the posters, which they got executed by other printing presses after paying the charges for the work done. The petitioners issued to the customers separate bills in respect of each of their orders for posters : one for the sale of the paper required for the posters and the other for charges for work, labour and skill. In the relevant assessment period in the present case, the petitioners had collected form their customers, apart from the price of the paper supplied, a total amount of Rs. 34,126-15-0 for work and labour charges which also included charges for their skill. At the time of the assessment, the petitioners contended that the said amount of Rs. 34,126-15-0 could not be included in their turnover liable to tax since it did not constitute the price of goods sold by them. This contention was not accepted by the Sales Tax

Officer. In his view that petitioners had sold ready-made posters and the entire amount which they had charged to their customers which included the price of the paper, work and labour charges, constituted the price of the completed posters, which were sold by the petitioners. The petitioners went in revision to the Additional Collector to Sales Tax who upheld the decision of the Sales Tax Officer. According to him the separate bills which the petitioners had given to this customers, one for the paper and the other for the printing charges, were prepared by them simultaneously either at the time of the supply of the printed posters or thereafter and in his view it was an attempt on the part of the petitioners to disguise the real nature of the transaction. The confirmatory letters which the petitioners had produced in support of their case were ignored by him on the ground that they had no evidentiary value. He found that the printers'' bills which had been submitted by the printers for the printing work done by them to the petitioners showed that the printing work was done on the paper, which vested in the petitioners and not in the customers of the petitioners. This showed, according to the Additional Collector, that the property in the papers had not passed to the customers before the printing was done on the paper. He pointed out that no stock book was maintained by the petitioners and although it was stated on behalf off the petitioners that paper was supplied to the printers under delivery challans no such challans had been produced by them. In the view of the Additional Collector, therefore, it was not conclusively proved by the petitioners that they had first supplied the paper to the customers and that thereafter they had undertaken to get the designs printed thereon and they, thereafter, were not entitled to have the amount of Rs. 34,126-15-0 excluded from the turnover. The petitioners then took the matter before the Sales Tax Tribunal in a revision. The view of the Tribunal was that the petitioners were unable to show that there were initially two separate contracts for appear and printing and since the petitioners had failed to produce any material to show that there were initially separate contracts for the supply of paper and for the printing work, they were not entitled to claim the exclusion of the amount of Rs. 34,156-15-0 from their turnover. Thereafter at the instance of the petitioners, the Tribunal drew up a statement of case and referred to this Court the following three questions :

(1) Whether on the facts and circumstances of the case the charges amounting to Rs. 34,126-15-0 received by the applicants have been rightly treated as sale price and included in the taxable turnover of the applicants ?

(2) Whether the supply of paper and the contract of printing constitute one or two separate contract transactions ?

(3) What should be the sum which should be taken as the correct turnover for the purpose of the sales tax under the circumstances ?

2. Mr. Trivedi, learned Advocate appearing for the petitioners has contended that the vies taken by the sales Tax Tribunal is erroneous. He points out that it was his case that the contract for the supply of posters between the petitioners and

their customers was a composite contract consisting of two distinct and divisible parts one of which related to the sale of papers and the other for the work, labour and skill. The confirmatory letters which he and produced before the Sales Tax Authorities and the Tribunal and the bills which he had supplied to the customers as also the accounts which he had maintained in connection with the transactions clearly substantiated his case. The Sales Tax Authorities and the Tribunal have ignored this evidence, which is clearly in favour of the petitioners without assigning any good or proper reasons. The Tribunal, he points out, is in error when it says that the petitioners had not produced any material to show that there were initially separate contracts for the supply of paper and for the printing thereof when there was, as a matter of fact, prima facie evidence produced by them. The Tribunal in its judgment has not dealt with this evidence nor given any reasons for its ignoring the same. According to Mr. Trivedi, therefore, since the Tribunal has misdirected itself in holding that the petitioners have not produced any material to show that there were separate contracts for the supply of paper and the printing, its finding is vitiated and would not be binding as a finding of fact.

3. It is contended by the learned Advocate-General that the conclusion of the Sales Tax Authorities and the Tribunal is not as a result of their not having applied their mind to the material on record or to their having ignored the evidence on record, but on an appreciation thereof. Whether the appreciated of the evidence by the Sales tax Authorities and the Tribunal is erroneous or correct is not a matter which can be inquired into on a reference and the finding of fact arrived on the appreciation of evidence even if erroneous cannot be interfered with by this Court. The learned Advocate-General points out that the Tribunal has come to the conclusion that in the present case there were no separate contracts, one for the supply of paper and the other for doing printing work but the contract was one and indivisible for the supply of ready-made posters. This, he says, is a finding of fact arrived at on the appreciation of the material on record and is not capable of being disturbed.

4. Now, it is no doubt true that if the finding of fact arrived at by the Tribunal was only as a result of the appreciation of the evidence on record, it would undoubtedly be a finding of fact not capable of being disturbed. If, however, in arriving at the said conclusion, there was an error of law involved, it would not be a binding finding of fact. In our opinion, the finding arrived at by the Tribunal is the result of its having misconceived the correct position in law. It was not held as contended by the learned Advocate-General that the contract in the present case is one and indivisible for the supply of ready-made posters. What it has held is that the petitioners have failed to prove that there were initially two separate contracts one for he supply of papers and the other for work and labour. It appears to us that the view taken by the Tribunal is that in order that the petitioners may be entitled to claim exemption in respect of the printing and labour charges, they have to establish that the contract in respect of the said work was entered into after the contract for the sale of papers had been

completed. In other words, such an exemption cannot be claimed by the petitioners where the contract is one and composite, but can only be claimed when the two contracts are distinct and separate. Now, that, in our opinion, does not appear to be the correct position in law. It is not necessary that in order to claim the exemption the petitioners must show that the paper was first purchased by the customers from them and thereafter delivered to them under a separate and distinctly different contract for the purpose of doing the work of designing and printing of posters. Even if the entire contract was entered into at one and the same time, it could still be shown by the petitioners that it consisted of a sale of goods only so far as the supply of paper was concerned and the rest of it was a contract for work and labour. That was indeed their case and they had produced evidence in support thereof. It seems to us that it was because of the erroneous view which the contracts and the contract for work had necessarily to be entered into subsequent to the completion of the contract for the supply of papers that the Tribunal appears to have ignored the evidence produced by the petitioners in the form of bills supplied by them to the customers and the confirmatory letters. That is why we do not find in the judgment of the Tribunal any discussion of the said evidence or its conclusion as to the legal effect thereof.

5. The learned Advocate-General has pointed out that although the decision of the Tribunal does not contain a discussion of this evident and does not state the reasons for its rejection the decision of the Additional Collector would indicate that he has dealt with the said evidence and has also given reasons for its rejection. And since the Tribunal was not disagreeing with the view taken by the Additional Collector with regard to the said evidence, the Tribunal might not have dealt with it exhaustively.

6. Now so far as the judgment of the Additional Collector is concerned, the evidence of the confirmatory letters has been disposed of by him by the remark that it has no evidentiary value and as to the bills, he has expressed his view that they appeared to him to be an attempt made for disguising the real nature of the transaction. We do not see why the confirmatory letters can be rejected as being of no evidentiary value whatsoever. It may be that the confirmatory letters were not obtained at the time when the contracts were entered into but subsequently, but that by itself would not be sufficient to render them of no value. There is hardly any reason why the customers of the petitioners should oblige them by giving confirmatory letter contrary to the correct position.

7. The view expressed by the learned Additional Collector that the bills are an attempt made to disguise the real nature of the transaction does not appear to us anything more than a mere surmise. The circumstance that the bills of the printers show that the papers which were printed by them were regarded by them as belonging to the petitioners and not to their customers is in no way inconsistent with the petitioners'' case since the printers were sub-contractors under the petitioners and there was no privity of contract between them and the customers of the petitioners. The absence of a stock-book or the failure to

produce delivery challans against are not circumstances from which an adverse inference can be necessarily drawn against the petitioners'' case. The reasons give by the Additional Collector, therefore, do not appear to us to be goods and substantial reasons for rejecting the prima facie evidence produced by the petitioners in support of their case. As we have already pointed out, this evidence has not been considered by the Tribunal in its judgment. In our opinion, therefore, on the facts and circumstances of the present case, there appears to be no reason why the case which was made out by the petitioners before the Sales Tax Authorities cannot be taken to have been established.

8. In the view that we are taking of the matter, question No. 1 will be answered in the negative.

9. Our answer to question No. 2 will be that the supply of paper and the contract of printing constituted two separate contract transactions.

10. Our answer to question No. 3 is that the correct turnover for the purpose of sales tax would be the price of the paper supplied.

11. The petitioners will get their costs from the respondent. Costs quantified at Rs. 250. The petitioners will also be entitled to the refund of the amount deposited by them before the Tribunal.

12. Reference answered accordingly.