
(1987) 11 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2514 of 1983

M.P. State Co-Operative Press Ltd.

APPELLANT

Vs

Additional Commissioner of Sales Tax and Another

RESPONDENT

Date of Decision : 10-11-1987

Acts Referred:

Citation : (1988) 68 STC 245

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : D.M. Dharmadhikari and D.C. Bhamore, for the Appellant; S.L. Saxena, Additional Advocate-General, for the Respondent

Judgement

N.D. Ojha, C.J.—The petitioner is a co-operative press and, according to it, provides service of printing and supply of printed material to cooperative societies. A perusal of the record before the taxing authorities under the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act") indicates that various articles which the petitioner prints and supplies to the co-operative societies fall under the following categories:

- (1) Cheque books for several co-operative banks.
- (2) Printed registers to be maintained by banks and co-operative societies.
- (3) Letter pads on the orders of the customers.
- (4) Bonds of securities, captioned in Hindi Rin Patra.
- (5) Various types of forms to be used by co-operative societies and banks.
- (6) Share certificates for co-operative societies captioned in Hindi Ansh Praman Patra.
- (7) Ration cards.
- (8) Annual audit reports and financial statements in book form to be circulated to

the members.

It further appears from the said record that at one point of time it also printed a pamphlet entitled "Jabalpur Zila Me Nalkoop Yojni". It was published at the instance of Zila Sahakari Bhumi Vikas Bank Samiti, Jabalpur, and appears to have been meant for being distributed particularly among agriculturists to persuade them to derive benefit of the scheme with regard to irrigation. In proceedings for assessment of sales tax for eight periods between 13th November, 1966 and 12th January, 1981, the case of the petitioner was that it did not carry on the business of sale of goods but was executing works contract. This plea, however, did not find favour with the Additional Sales Tax Officer and orders of assessment were passed against the petitioner. Aggrieved, the petitioner preferred revisions before the Additional Commissioner of Sales Tax which were dismissed by a common order dated 4th January, 1983. It is these orders passed by the Additional Sales Tax Officer and on revision by the Additional Commissioner of Sales Tax which are sought to be quashed in the present writ petition.

2. It has been urged by Learned Counsel for the petitioner that since the petitioner had only carried out job-work in printing various items referred to above on the specifications provided by the customers, the view taken in the impugned orders that it was a case of sale of goods and not of works contract suffers from a manifest error of law. In order to appreciate this submission, it is necessary to consider certain decisions laying down the principles for determining the distinction between a transaction falling under the category of sale of goods from one of works contract. In *The Kanpur Journals Ltd. Vs. Commissioner of Sales Tax*, , it was held by a Division Bench of the Allahabad High Court:

We think it now to be established that in order to determine the nature of a contract the court has to look at its substance. If the substance of the contract is the production of something to be sold to the customer--such as a suit of clothes--then that is a sale of goods. If, on the other hand, the substance of the contract is that skill and labour have to be exercised for the production of the article, and that it is only ancillary to that that there will pass to the customer some materials in addition to the skill involved--as in the case of an oil painting--the contract will be one of work. This was so laid down in *Robinson v. Graves* [1935] 1 KB 579 where the earlier cases including *Clay v. Yates* 25 LJ Ex 237 relied upon by the assesseees were considered. Applying this test, and assuming that there be only a single contract, we can entertain no doubt that they were contracts of sale.

In *Sardar Printing Works v. Sales Tax Commissioner* [1958] 9 STC 75 SC, it was held by a Division Bench of the Court that stationery sold by the assessee to the customers is goods and that when the assessee brings into existence printed stationery to the order of individual customer, he produces a commercial commodity which is capable of being sold or supplied. The assessee is a

manufacturer when his business consists in printing to the order of individual customer stationery of business character. Therefore, when the printed material is sold to the customers there is a sale of finished goods to the customers. The essential feature of the business of the assessee is the production of stationery of a particular kind for sale. This is clearly not a case where it can be argued with any degree of force that the essential character of the work is the printing work and the paper comes into existence and becomes the property of the client or customer only incidentally. The substance of the contract when a customer places an order with the assessee for doing certain printing work on paper to be supplied by the printer is the production of something to be sold to the customer. Accordingly, it was held that when a printer accepts orders from his customers for job-work such as receipt books, registers, forms, letter heads, etc., and prints them in accordance with the requirements of his customers on paper supplied by him, that if by the printer himself, the orders placed by the customers for such job-work are contracts for the sale of goods and not contracts for work and labour.

3. In *Saraswati Printing Press Vs. Commissioner of Sales Tax, Eastern Division, Nagpur*, ; a Division Bench of the Bombay High Court held that where the assessee purchased the stationery and did printing work upon it according to the orders of individual customers and supplied the printed stationery to the customers, it produced commercial commodity which was capable of being sold or supplied and when it sold the printed stationery to its customers, it sold goods to the customers upon which sales tax was leviable and that the transactions were sales of goods and not in the nature of works contracts. The same view was taken by a Division Bench of the Andhra Pradesh High Court in *The State of Andhra Pradesh Vs. Sri Krishna Power Press*, . The question came up for consideration before the Supreme Court in *Government of Andhra Pradesh v. Guntur Tobaccos Ltd.* [1965] 16 STC 240 AP. It was held:

The fact that in the execution of a contract for work some materials are used and property in the goods so used passes to the other party, the contractor undertaking to do the work will not necessarily be deemed on that account to sell the materials. A contract for work in the execution of which goods are used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the works for a price; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials though not accessory to the execution of the contract is voluntary or gratuitous. In the last class there is no sale because though property passes it does not pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods.

In *State of Orissa v. Ramanath Panda* [1971] 27 STC 98 Ori a Division Bench of

the Orissa High Court held that where the customer does not enter into any separate agreement but merely asks the assessee to supply the printed materials, the contract is indivisible and the supply of printed materials is a sale liable to sales tax. Likewise, a Division Bench of the Kerala High Court in *P.T. Varghese Vs. State of Kerala*, ; while holding that sale of bill books, vouchers, receipt books, letter heads and notices was liable to be taxed as the sale of the aforesaid goods amounted to a sale of finished products, pointed out:

Only in respect of those goods to which title has passed as a result of contract, can it be said that the goods have been sold. Where a person buys a "Picasso" or a "Ravi Varma", he does not intend to buy or pay for the canvas or the paint, although canvas and paint are involved in the production of the painting, and title to such materials is transferred to him. But such transfer of title to the materials is not pursuant to any agreement for the sale of the materials as such. It would never have been in his mind to pay separately for the materials and for the labour. What the buyer buys is a finished product which is a work of art. On the other hand, when a person gets his manuscript printed as an article or a book of verses, the printer does no more than a mechanical or technical job. The printer does not create the article or the poem, but merely renders his services to print which is in the nature of a job-work. The manuscript as such is the result of the skill, industry and scholarship of the author. In such a case, there is no sale of the article or book by the printer; nor would it be possible in such a case to spell out an agreement for the sale of materials such as paper or ink, which may have been incidentally used in the production of the printed work. While the painter sells a finished product which is a work of art, quite distinct and different from the materials used in its production, the printer merely does a job-work involving no sale; one is the work of an artist who is endowed with the finer qualities of imagination and taste and the other that of an artisan who is trained as a mechanic or technician. A printer of judgments, for example, does not produce and sell them; his work is purely that of a technician. This court has therefore held that printing of judgments is only a works contract. The work of a printer in certain cases may involve more than printing; he may be a producer of finished articles such as bill books, vouchers and the like. When such articles are printed and sold to the customers, what is sold is not paper or paper products but printed materials which are finished products. Such contracts cannot be considered as contracts for the sale of paper coupled with an agreement to render service. The sale of paper had never been the subject-matter of the agreement between the parties. Like in the case of painting which is a finished product being a work of art, the bill books and vouchers are new products being printed materials; and the sale of such goods does not involve a composite contract which can be bifurcated into an agreement for the sale of goods--be they canvas and paint or paper and ink--and an agreement for work.

In the light of the above decisions, we are of the opinion that the printed materials such as bill books or vouchers are not paper, but finished products other than paper products and, as such, are liable to be taxed. In the case of

question papers, as in the case of judgments, a distinction has to be drawn. The printing of question papers, in our opinion, is a contract for work and labour, for the questions as such have been prepared by persons of special learning and skill, and the printer merely puts them in print which involves work and labour. The use of materials such as paper and ink in such cases is only accessory or incidental. He does not produce and sell question papers or judgments (unlike in the case of bill books or vouchers); he merely prints what is prepared by others, as in the case of an article or a poem.

In *The Sales Tax Officer Vs. I.V. Somasundaran*, it was held by a Division Bench of the Kerala High Court that in order to spell out a contract of sale there must be an agreement which may be express or which may be inferred from the circumstances. There can be an agreement for work and labour or there can be one for sale of goods. If essentially the agreement is one for work and labour, complete exemption from taxation should be allowed. If, on the other hand, it is a contract for sale, the whole turnover should be taxed. There may be complex contracts for sale and for work and labour. In such cases, it may be possible and it may be necessary to bifurcate the contract into two by saying that really there are two contracts, one for work and labour and another for supply of materials. But if this view is to be taken, there must be material on the basis of which it is possible to say that the contract was not one and composite, but really two. A contract for printing of judgments of courts is essentially a contract for work and labour and there is no justification for bifurcating that contract into two different contracts, one for cost of labour and the other for sale of paper, whereas in the case of contracts relating to the printing of ration cards, it is in the nature of job-works and it is essentially a contract for the sale of finished articles.

4. In *The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio*, it was held by the Supreme Court:

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. 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.

The case of *The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio*, was a case of a photographer and in that background it was further held:

Keeping the above principles in view, we may now turn to the facts of the present case. When a photographer like the respondent undertakes to take

photograph, develop the negative, or do other photographic work and thereafter supply the prints to his client, he cannot be said to enter into a contract for sale of goods. The contract on the contrary is for use of skill and labour by the photographer to bring about a desired result. The occupation of a photographer, except in so far as he sells the goods purchased by him, in our opinion, is essentially one of skill and labour. A good photograph reveals not only the aesthetic sense and artistic faculty of the photographer, but it also reflects his skill and labour. A good photograph in most cases is indeed a thing of beauty. It not only seeks to mirror and portray a scene from actual life, but it also catches and preserves for the future what belongs to and is a part of the fleeting moment. The ravage brought about by the passage of time, the decay and the ageing process which inevitably set in as the years roll by leave what is preserved in the photograph unaffected. It is no wonder that an old photograph revives nostalgic memories of days no more, but to which we look back through the mist of time with fondness even though such fondness has a tinge of sadness.

Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax, was a case of a contractor dealing in fabrication of Vanguard rolling shutters and steel works. The assessee manufactured iron shutters according to specifications given by the parties and fixed the same at the premises of the customers. After dealing with the material placed in this behalf in regard to the nature of the work executed by the assessee, it was pointed out that the process involved in the fabrication of a rolling shutter and its actual fixing to the premises at the site is a continuous one and is completed only when erection is completed in every way. The price charged by the contractor from the owner of the premises is one lump sum without at all specifying as to what part is meant for the materials used or fabricated and what part for the services or labour put in by the contractor. It was, therefore, clear that on the facts and circumstances of the case the transaction was a composite consolidated contract which was one and indivisible comprising labour and services executed for a lump sum and that the materials were not merely supplied to the owner so as to pass as chattel simpliciter, but were actually fixed to an immovable property and after the same were fixed and erected they became a permanent fixture so as to become an accretion to the immovable property. It was pointed out that in these circumstances the conclusion is inescapable that the contract could not be said to be a pure and simple sale of goods or materials as chattels but was a works contract. In this connection it was held:

The question as to under what circumstances a contract can be said to be a works contract is not free from difficulty and has to depend on the facts of each case. It is difficult to lay down any rule of universal application, but there are some well-recognised tests which are laid down by decided cases of this Court which afford guidelines for determining as to whether a contract in question is a works contract or a contract for supply of goods. One of the important tests is to find out whether the contract is primarily a contract for supply of materials at a price agreed to between the parties for the materials so supplied and the work or

service rendered is incidental to the execution of the contract. If so, the contract is one for sale of materials and the sale proceeds would be exigible to sales tax.

On the other hand, where the contract is primarily a contract for work and labour and materials are supplied in execution of such contract, there is no contract for sale of materials but it is a works contract. The circumstance that the materials have no separate identity as a commercial article and it is only by bestowing work and labour upon them, as for example, by affixing them to the building in case of window-leaves or wooden doors and windows that they acquire commercial identity, would be *prima facie* indicative of a works contract. So also where certain materials are not merely supplied but fixed to an immovable property so as to become a permanent fixture and an accretion to the said property, the contract *prima facie* would be a works contract.

5. In *Hindustan Aeronautics Ltd. Vs. State of Karnataka*, , the appellant under an agreement between it and the President of India had agreed to accomplish the servicing and maintenance of certain Air Force planes to the specified standard. In the process of repairing, servicing and overhauling aircraft, some parts had been supplied by the appellant to the Air Force and a question arose as to whether their price could be subjected to sales tax. The case of the appellant was that there had been no contract for the sale of spare parts to the Air Force and that the spare parts had been used during the course of execution of the works contract relating to servicing, repairing and overhauling of the aircraft, etc. It was held by the Supreme Court that since the spare parts and materials were supplied by the appellant in the course of execution of works contract, there was no sale thereof and their turnover was not exigible to sales tax, inasmuch as where passing of property was merely ancillary to the contract for the purposes of the works, such a contract does not thereby become a contract of sale. It was also pointed out that mere passing of a property in an article or commodity during the course of performance of the transaction in question does not render the transaction to be a transaction of sale. 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 those 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. It was further pointed out that the distinction between a contract of sale of goods and a contract for work and labour was often a fine one. A contract of sale is a contract whose main object is the transfer of the property in and the delivery of the possession of a chattel as a chattel to the buyer. Where, however, the main object of work undertaken by the payee of the price was not the transfer of chattel qua chattel, the contract is one of work and labour. The test is whether or not the work and labour bestowed and in anything that can properly become the subject of sale; neither the ownership of the 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 was in substance one for work and labour or one for the sale of a chattel.

6. In *Commissioner of Sales Tax Vs. Uma Art Press*, , it was, inter alia, held that if the customers of the assessee, which in that case was a printing press, gave specifications of the goods and placed a standing order with the assessee either generally or for a fixed period that in the course of their business they would require those goods in the nature of vouchers, bills, receipt books, registers, forms and hand bills, etc., in such quantity as may be notified from time to time and subsequently the assessee produced these goods on its own paper and supplies the same to the customers as and when needed for price paid in lump sum, the turnover of the assessee will be taxable as it is clearly a case of sale of finished goods produced by the assessee on the basis of the given specifications. The observation in the case of *Commissioner of Sales Tax Vs. Uma Art Press*, that sale of letter pads would not be taxable as they continue to be writing paper with a printed heading and their sale is a sale of paper does not apply to the facts of the instant case inasmuch in that case under the relevant provisions of the U.P. Sales Tax Act paper was taxable only if the sale was by the manufacturer in Uttar Pradesh or importer in Uttar Pradesh and the case of the assessee was that the paper used in printing by it was locally purchased and was not imported and that it was also not a manufacturer of the paper. The said observation will further not be applicable to the facts of the instant case in view of the decision of the Division Bench of this Court in the case of *Sardar Printing Works Vs. Sales Tax Commissioner*, .

7. At this place, with regard to the facts of the instant case it may also be pointed out that even though it is not conclusive, but is certainly an important indication in the matter of determining the nature of work done by the petitioner that as is apparent from paragraph 4 of the return filed on behalf of the respondents in the present writ petition, in the assessment for 1971-72, the cost of labour came to 22 per cent whereas the cost of material was 78 per cent. Similarly, in the assessment year 1972-73 the cost of labour and material was 27 per cent and 73 per cent, respectively. In the assessment year 1973-74, on the other hand, the break up came to cost of labour 18.2 per cent and that of material 81.8 per cent.

8. Learned counsel for the petitioner brought to our notice the decision of a learned single Judge of the Allahabad High Court in *Commissioner, Sales Tax Vs. Saraswati Press*, . In that case the assessee was carrying on a printing press and it printed bill books as per the requirements of the customers on its own paper purchased from within Uttar Pradesh which was exempt for purposes of sales tax. The assessee raised a consolidated bill for the price of the paper and for printing charges. On the question whether the parties entered into any agreement of sale and whether the amounts received by the assessee from the customers was liable to be included in the turnover, it was held that the contract was not one of sale but it was a contract of work and labour. We find it difficult to

apply the principle laid down in that case in view of the decision of the Division Bench of this Court in the case of Sardar Printing Works Vs. Sales Tax Commissioner,

9. Coming to the facts of the instant case, it would be seen that in view of the principles in this behalf laid down in the aforesaid decisions, particularly in the case of Sardar Printing Works Vs. Sales Tax Commissioner, by a Division Bench of this Court, articles falling under categories (1) to (7) specified in the opening part of this judgment would apparently constitute stationery and sale thereof being of finished goods, their turnover was exigible to sales tax. Annual audit reports and financial statements in book form to be circulated to the members at item No.(8) and the pamphlet entitled "Jabalpur Zila Me Nalkoop Yojna" would, however, stand on a different footing. They will fall in the same category as of a printer of a manuscript printed as an article or a book of verses, question papers or judgments in regard to whom it has been found in the case of P.T. Varghese Vs. State of Kerala, that he does not produce and sell them and their printing only is a works contract. As pointed out in that case also, the work of a printer in certain cases, for instance, with regard to bill books, vouchers and the like involves more than printing and in such a case he will be a producer of finished articles and when such articles are printed and sold to the customers, what is sold is printed material which constitutes finished products. We have gone through the orders which were placed from time to time with the petitioner and a perusal thereof makes it clear that after giving the specification of the various articles falling in categories (1) to (7) mentioned above, the petitioner was required each time to print these articles in such quantity as mentioned in the orders and supply them. Even though technically speaking since these orders were placed from time to time they may not literally fall within the category of a standing order either generally or for a fixed period as contemplated in the case of Commissioner of Sales Tax Vs. Uma Art Press, . Keeping in view the nature of the orders, there seems to be no doubt that the case of the petitioner in regard to articles mentioned in categories (1) to (7) specified above are of the same nature as contemplated in the case of Commissioner of Sales Tax Vs. Uma Art Press, . These orders were placed by the customers in the course of their business and after giving specification of the goods they required the petitioner to supply the goods in the quantity mentioned therein and subsequently the petitioner produced those goods on its own paper and supplied the same to the customers for price paid in lump sum. They fall in the category of finished goods as held by a Division Bench of this Court in the case of Sardar Printing Works Vs. Sales Tax Commissioner, . Consequently, the impugned orders, in so far as they relate to articles specified at categories (1) to (7) mentioned above cannot be said to suffer from any manifest error of law. These finished goods do not obviously fall within the category of supplying prints of photographs as in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, or of fabrication of rolling shutters and steel works and fixing them to the premises so that they become a permanent fixture and accretion to

immovable property as in the case of Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax, or supplying spare parts in the process of repairing, servicing and overhauling aircrafts as in the case of Hindustan Aeronautics Ltd. Vs. State of Karnataka, . Indeed, they fall in the category, as pointed out in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, as also in the case of Hindustan Aeronautics Ltd. Vs. State of Karnataka, , to which the test, namely, "whether or not the work and labour bestowed end in anything that can properly become the subject of sale" applies. The said orders, however, with regard to printing of annual audit reports and financial statements in book form to be circulated to the members and of the pamphlet entitled "Jabalpur Zila Me Nalkoop Yojna" or such other pamphlets, if any, cannot be sustained in view of the distinguishing feature already pointed out above.

10. In the result, this writ petition succeeds and is allowed in part to this extent that the impugned orders in so far as they purport to hold that the printing and supply for consolidated payment of annual audit reports and financial statements in book form to be circulated to the members of the co-operative societies and the printing of the pamphlet entitled "Jabalpur Zila Me Nalkoop Yojna" or similar other pamphlets, if any, are quashed. In regard to the turnover of the remaining articles falling within categories (1) to (7) specified in the opening part of this judgment, however, the writ petition is dismissed. The Additional Sales Tax Officer, Jabalpur (respondent No.1) is directed to pass a fresh order or orders, as the case may be, of assessment in respect of the various periods in question referred to above, in the light of the observations made above. In view of their divided success, the parties, however, shall bear their own costs. The outstanding amount of security shall be refunded to the petitioner.