(1969) 11 KL CK 0018

In the High Court Of Kerala

Case No : TRC No. 16 of 1968

P.K. Dewer APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 26-11-1969

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (1970) KLJ 444

Hon'ble Judges : T.C. Raghavan, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : P.K. Kurian, V. Desikan, K.A. Nair and K. Sukumaran, for the Appellant;

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The petitioner owns a printing press; and he has another section attached to his business where he sells paper. He takes orders for printing, for which he supplies paper from his own paper section. He issues two bills, one for the sale of paper and the other for the printing charges. In some cases, it appears that he has issued bills on the dates when the paper was taken for printing and the bills for the printing charges on the dates when the printed material was delivered. In other cases, it is found that he has issued both the bills on the same dates, the dates on which the printed material was delivered. The petitioner was assessed to sales-tax for the entire amount he received both for the sale of paper and for printing charges. The petitioner disputed the levy; and the matter came to this Court once. This Court remanded the case for fresh consideration indicating that the petitioner would be liable to sales-tax only if what he delivered to his customers--the printed material--was "paper product". After the remand, the Tribunal considered the matter afresh and held that what the petitioner delivered to his customers was paper product. It is the correctness of this decision that is being challenged in this revision case. At the very outset, we may observe that there is some incongruity in the conclusions of the Tribunal.

Some of the material that was printed by the petitioner constituted court records printed for the High Court; and the finding of the Tribunal is that such court records are not "paper product". Still, the Tribunal says that the other material printed by the petitioner and supplied to his other customers is paper product.

2. Though several decisions on works contract have been cited before us, we feel that they are not relevant for the short question involved in the case. In this case, the petitioner is sought to be taxed under item 42 of schedule I of the Kerala General Sales-Tax Act of 1963. Section 5 of the Act is the charging section; and that section provides that in the case of goods specified in the first schedule, the goods lave to be taxed at the rates mentioned in the schedule at the points specified against each item. Item 42 reads:

Paper (other than newsprint), card boards, straw boards and their products.

And these goods are taxable at the first sale point in the State at 5 per cent.

3. Now the question can be viewed in two or three different ways. In a transaction between the petitioner and a customer of his for executing printing matter supplied by the customer on paper supplied by the petitioner, the contract may be a works contract, because, if the transaction is viewed as one, then the supply of the paper for printing will only be incidental. If so, the supply of the printed material will not be sale of goods and the transaction will not be taxable either. The second mode of looking at the question is to treat the contract as really two contracts, one for the supply of paper and the other a contract for printing. Then, the first contract for the supply of paper will involve a sale of goods and that is taxable too. But, in the case before us, paper is taxable only at the first sale point; and the petitioner''s sale not being the first sale, is not taxable. Therefore, even if the transaction is to be viewed in this manner, even then the sale of paper cannot be taxed. And the money received as printing charges cannot also be taxed, because that involves no sale of goods and the receipt of the amount is only a payment for the printing work done by the petitioner.

4. Then comes the third mode of looking at the question. Item 42 extracted above says that paper and its products are taxable. As we have already stated, paper cannot be taxed in the hands of the petitioner, he being the second seller; and his turnover, if it can be called turnover, can be taxed only if it is turnover resulting from the sale of "paper products". This appears to be what was pointed out by this Court when this Court remanded the case on the last occasion.

5. The reasoning of the Tribunal may now be noted. The Tribunal says that paper, when it is printed upon, undergoes a process and when it undergoes a process or passes through a process what results is a product of paper. In other words, in the opinion of the Tribunal, since printing is a process, the paper which is printed upon--which undergoes the process of printing--is a paper product. We may straightaway observe that this reasoning of the Tribunal may not be correct in every case. Suppose paper is put to a process to make it more durable or to

make it better withstand moisture or the attack by white ants or silver-fish, what results after the process will still be paper and not a paper product--a better type of paper. Therefore, to say that, merely because paper has undergone a process, it has changed its characteristic as paper and has become a product of paper may not be correct.

6. Authorities have been placed before us regarding the meaning of the word "paper" and also regarding the meaning of the expression "paper product". Paper evidently has two meanings, one a restricted meaning and other a wider or extended meaning. "Paper" is not defined in the Sales-tax Act; and therefore, the word has to be given the meaning it has in common parlance or in popular language, i.e., the word must be understood in the sense in which people conversant with the subject-matter of the statute understand it (vide Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, : Supreme Court).

The Shorter Oxford English Dictionary says that paper is

A substance composed of fibres interlaced into a compact web, made from linen and cotton rags, straw, wood, certain grasses, etc, which are macerated into a pulp, dried and pressed; it is used for writing, printing, or drawing on, for wrapping things in, for covering the interior of walls, etc.,

7. In Words and Phrases Judicially Defined by Roland Burrows, Vo.LV, it is stated:

Perhaps paper may be described fairly as a manufactured substance composed of fibres adhering together in form consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which flexible sheets are applicable.

8. This appears to be the meaning given to the word "paper" in Attorney-General v. Barry (1859) 4 H. & N. 470. Black''s Law Dictionary also gives the same meaning to the word as is given in (1859) 4 H & N. 470:

A manufactured substance composed of fibres (whether vegetable or animal) adhering together in forms existing of sheets of various sizes and of different thicknesses, used for writing or printing or other proposes to which flexible sheets are applicable.

9. This is the restricted meaning or the meaning in which the word is understood in common parlance or in popular language. But, wider meanings are ascribed to the word in expressions like "court papers", "reading a paper" at a conference, "paper money", "paper credit", etc. These wider or extended meanings are special meanings; and in the Kerala General Sales-tax act, with which we are dealing, the word "paper" is presumably used only in the first meaning, the meaning the word has in common parlance--the meaning the word has in popular language--and not in any wider or special connotation.

10. The Shorter Oxford English Dictionary defines "product", inter alia, as "that which is produced by any action, operation, or work". If this meaning of the word

"product" is applied to the case before us, it may certainly be said that the printed material is a "product"; it is a product of the action, operation, or work--the printing. But, can it be said that the printed material is a product of paper? Obviously the answer must be "No." If a renowned artist (painter) executes one of his masterpieces on a piece of paper, can it be said that the picture is a product of paper? Can it be said that the painting is a product of the paint used by the artist? The obvious answer that strikes anybody must be in the negative. Similarly, if a poem or a literary work is printed on paper, the printed material, the pamphlet or the book, cannot be said to be a product of paper, nor a product of the ink with which it is printed. The idea has been happily and pithily expressed by the Supreme Court of United States in James Pott V Chester A Arthur (26 Lawyers'' Edition 909):

No man of literary culture, it is true, would call a book paper or a manufacture of paper any more than he would designate a masterpiece of Raphael, as canvas or a manufacture of canvas By a license of speech, it is true, he might say that a particular book was mere waste paper, or rubbish, or that a particular picture was nothing but a piece of spoiled canvas; but, speaking seriously and in accordance with good usage, he would not make such an application of terms.

11. We are therefore of opinion that, if a printer prints material or matter supplied by his customer on paper supplied by the printer, the printed material supplied by the printer to the customer will not be a product of paper. In this connection, we reiterate that if the Tribunal is of opinion that the printed material supplied by the petitioner to the High Court is not paper product, we fail to understand how similar printed material supplied by him to his other customers can be paper product.

12. We shall now refer to the decision of this Court by Isaac J. in Srinivasa Printing Works Vs. Sales Tax Officer and Another, , which was brought to our notice and on which some reliance was also placed. The petitioner in that case executed job works as printer; and he was taxed on the amounts received by him in consideration for such works. Our learned brother held that the execution of works done by a printer did not involve any "sale", nor did the charges received by him constitute "turnover". In the course of the Judgment, the learned Judge discussed the question as to what was meant by the expression "paper product". The learned Judge observed:

..........It is doubtful whether a printed matter or exercise hook or ledger book is a product of paper, In these cases, the sale of exercise books, ledger books, printed forms, etc., has been taxed at 5 per cent of the turnover as products of paper. The petitioner has not taken any objection to the said assessments; and it is not, therefore, any more open to him to raise this question as regards these assessment years are concerned.

13. This reasoning seems to suggest that exercise books, ledger books, printed forms, etc. may not be paper products, probably because they still retain the

characteristic of paper. But, if a printer prints diaries of his own design and sells them as his products, can it be said that the diaries are still paper? And if they are not paper, are they not paper products ? On the other hand, if a customer gives an order to a printer to print diaries of the customer''s design and the printer executes the order on paper supplied by him, the diaries supplied by him may not be taxable as paper products in the hands of the printer and he may claim that the contract is only a works contract. But, are not the diaries paper products and their sale by the customer who got them printed taxable sales? This may probably be a border line case; and it may be a moot question whether the diaries are not paper products, though they still retain the characteristic of paper to some extent. However, we need not pursue the matter further in this case.

14. In the same decision, the learned Judge has said that paper product means "an article different from paper" and "something produced with or out of" paper. This appears to be quite obvious. But, this does not solve the problem. It is suggested during the course of the arguments before us that for "paper" to become a "paper product" the main characteristic or the main utility of paper must be lost and a new characteristic or a new utility is acquired. The main characteristic or utility of paper is to be printed upon, to be drawn upon, to be written upon, etc., and if by some process (action operation, or work) that characteristic or utility is lost and the product acquired some other characteristic or utility, then the product is a product of paper--so the argument has proceeded. For example, (as it is now common) if ice-cream tumblers are made out of paper, the tumblers are paper products: similarly, if cartons are made out of paper, or bags are made out of paper they may also be paper products. Still, the test should not merely be whether paper has lost its characteristic or utility of being printed upon, drawn upon, or written upon, etc, and the product has acquired a new characteristic or utility : the test should also be whether the product is considered to be a product of paper by people who are conversant with the subject. For, when paper is drawn upon, printed upon, or written upon, its utility as paper is lost; but such paper which is printed upon, drawn upon, or written upon is not a product of paper, though it may be said that it is no more paper and it has acquired a new characteristic or utility--the characteristic or utility of a book or picture. This is what has been said by the American Supreme Court in James Pott''s case already cited:

No man of literary culture..........would call a book, paper or a manufacture of paper...

15. A book is neither paper nor a product of paper: that is how it is commonly understood too.

16. In the case before us, the position is therefore quite simple. The printed material supplied by the petitioner using even his own paper is neither paper nor a product of paper. It cannot then come within item 42 of schedule 1 of the Sales-tax Act: and the State has no other claim to tax the petitioner. The revision case

is allowed and the assessment is set aside. The petitioner will also get his costs before us.

