(1970) 01 AHC CK 0010

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 595, 596 and 597 of 1968

Quality Marked Footwear Manufacturers Co-Operative Association Ltd. — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 29-01-1970

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 21

Citation : (1970) 26 STC 79

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Advocate : A.N. Kaul and G.N. Kunzru, for the Appellant; Standing Counsel, for the Respondent

Judgement

Satish Chandra, J.—These three references raise the same question.

2. They relate to the assessment years 1959-60, 1960-61 and 1961-62.

3. The assessee is a central co-operative society. It has 46 members. Of these 11 are individuals while 35 members are primary co-operative societies. The assessee carries on the business of manufacturing and selling shoes. It obtains orders for the supply of shoes from the Government and, on receipt of these orders, the assessee places orders for manufacture of shoes with its members. The members select the raw materials from the market and inform the central co-operative society. The society purchases the raw materials from the market and supplies them to its members. At the time of supply it debits the exact cost of the raw materials in the account of each member to whom the raw material is supplied. The member, after manufacturing the shoes, supplies them to the assessee. The members prepare a bill in which, in addition to the price of the raw materials, Re. 1 to Rs. 2-8-0 per pair are charged. The assessee society pays to its members the price mentioned in the bills less the cost of the raw materials.

4. For the assessment years 1959-60 and 1960-61 the assessee was taxed on

the turnover of the sale of shoes. Subsequently, the Sales Tax Officer took the view that the transaction of supply of raw materials by the assessee-society to its members also constituted a sale. Consequently, he issued a notice u/s 21, U.P. Sales Tax Act, requiring the assessee to show cause why the turnover of the supply of raw materials be not taxed. The assessee claimed that the transaction was not a sale, but supply of goods for manufacture of shoes by the members on payment of remuneration. The Sales Tax Officer did not accept the assessee''s claim. He held that the transaction was a sale and was liable to tax. The assessee went up in appeal and then in revision, but failed. At the instance of the assessee the Additional Judge (Revisions) Sales Tax, Agra, has referred the following question for the opinion of this court:

Whether, under the circumstances of this case, the supply of materials by the assessee to its constituent units for the manufacture of shoes and boots, is ''sale'' and is liable to sales tax under the U.P. Sales Tax Act or not?

5. The authorities below have found that in the books of accounts of the assessee the transaction is entered as a sale. Further, the memorandum of association of the assessee shows that one of the objects of the society was to purchase, the stock of tools, implements and machinery and raw materials for sale to its members. Another object was to secure business for itself and its constituents and to arrange its supply according to plan and to act as a clearing house for supply and disposal of raw materials, tools, implements and machinery and goods. It has also been found that whenever the raw materials supplied to a particular member remains in surplus with it, it is either returned to the assessee or transferred to some other members at the direction of the assessee. None of the authorities below have found a single instance where the member of the assessee may have disposed of the raw material supplied to it by the assessee, itself. Further, there is no finding that there was any instance where the primary societies after using the raw material supplied by the assessee sold the manufactured shoes in the market or to any person other than the assessee. There is no finding that at the time of supply of the raw materials the members of the assessee actually paid for them. Only book entries are made by the assessee debiting the member the exact cost of the raw material supplied. The society did not make any profit on the transaction of the supply of the raw material.

6. To us, it appears that the fact that the raw material was disposed of by the members at the direction of the assessee, coupled with the circumstances that, at the time of the supply of raw materials, no price was paid or realised and the fact that the assessee did not make any profit on such supplies, along with the further fact that the assessee''s members have not been found to have disposed of their finished products independently in the market but only delivered them back to the assessee, would show that the property in the materials never passed from the assessee to its members. It continued to vest in the assessee.

7. The assessee is a central co-operative society. One of its objects has been

found to be to secure business for itself and for its constituents and to act as a clearing house for them. The society seems to be conducting its business in order to achieve those objects. It adopted this scheme of buying the materials itself and then supplying to its constituent members, in order to facilitate their work of actually manufacturing the shoes. It has also been found that the assessee''s members are paid the price less cost of the raw materials. The difference is between one to two and a half rupees per pair. That would go to suggest that the members were being paid remuneration for the work of manufacturing the shoes. There was no agreement to sell the raw materials. It was stressed that since the assessee itself recorded the transaction as sale in its accounts the sales tax authorities were justified in treating the transaction as such. The manner of recording a transaction in the books would not make the transaction in law a sale. The assessing authority could prima facie treat that transaction as a sale on that basis, but when the facts have been determined the legal character of the transaction would depend upon them and not upon the label put upon it by the parties.

8. We would answer, the question as follows :

Under the circumstances of this case, the supply of materials by the assessee to its constituent units for the manufacture of shoes and boots was not sale and hence was not liable to sales tax under the U.P. Sales Tax Act.

9. The assessee would be entitled to its costs which are assessed at Rs. 100 in each case. The counsel''s fee is assessed at the same figure.

