(1957) 02 MP CK 0046

In the Madhya Pradesh High Court

Case No : Civil Ref. No. 65 of 1955

Sardar Printing Works APPELLANT

Vs

Sales Tax Commissioner RESPONDENT

Date of Decision : 05-02-1957

Acts Referred:
Madhya Bharat Sales Tax Act, 1950 — Section 2

Citation : AIR 1958 MP 30 : (1961) 6 MPLJ 737 : (1958) 9 STC 75

Hon'ble Judges : Samvatsar, J;Dixit, J

Bench : Division Bench

Advocate : Phadnis and Chaphekar, for the Appellant; K.A. Chitale, for the Respondent

Judgement

This reference by the Commissioner of Sales Tax u/s 13 (1) of the Madhya Bharat Sales Tax Act, 1950, arises out of the matter of liability of Messrs. Sardar Printing Works to pay sales tax on the sales of printed stationery during the year 1952-53.

The assessee carries on business in Indore as printers. That business consists in printing to the order of individual customers letterheads, bill-books,, registers etc., and other stationery of business character. The Customers did not supply the paper for the stationery required by them. They merely explained to the printer exactly the goods they desired and the printer furnished the goods at a fixed price.

For the year 1952-53, the total turnover of the assessee, as shown in his returns, was Rs. 24529-10-6. He claimed before the assessing authority that this taxable turnover was nil as the transactions of sales of paper were distinct and separate from the printing work done by him and the charges recovered for that work, and that he had from time to time issued separate cash and credit memos for the sale of the paper used by him and the printing charges.

The assessing authority took the view that the cash and credit memos issued by the assesses for the paper were merely paper transactions & that there was nothing to show that the paper used by the assessee printer was sold by him separately to the customers before executing the printing work thereon. The assessing authority, therefore, after deducting the cost of the paper on which sales-tax had already been paid by the assessee and after making other permissible deductions determined the taxable turnover of the assessee at Rs 9,339-1-0 and levied sales tax accordingly.

The assessee then preferred an appeal before the Appellate Judge which was rejected. He then took the matter in revision before the Sales-tax Commissioner who agreeing with the decisions of the assessing authority and the Appellate Judge rejected the revision petition. The Sales-tax Commissioner has how, at the instance of the assessee, made this reference stating the following questions for the opinion of this Court :

"1. Whether the stationary goods supplied as per orders of the customers be deemed to be goods under the Act and be made liable to tax?

Whether printed material supplied by the assessee to his customers as per specification of customers be deemed to be "goods" and liable to tax?

Whether printing made on the paper supplied by the assessee himself is manufature u/s 2 (k) and whether a dealer carrying on the business of supply of such printed material in execution of the orders secured from customers comes within the purview of a ''manufacturer'' as defined u/s 2 (k) of the Sales-tax Act?

Whether such printed material supplied by a dealer is a resale of locally purchased goods and exempted under the Sales-tax Act?

Whether papers and other materials purchased locally on which Sales-tax has been paid and used by the printing press in the production of printed materials become liable to tax again on sale after printing has been made on them and a different article is produced from such locally purchased materials?"

Under Section 3 (1), (b) every manufacturer whose turnover exceeds Rs. 5,000/.- is liable to pay tax under the Act on his taxable turnover in respect of the sales or supplies of goods effected in Madhya Bharat from the 1st day of May, 1950. Section 2 (k) defines ''manufacturer'' as a dealer who from materials produces goods by manual or animal labour or by machinery, and also includes a processor. "Goods" have been defined in Section 2 (g) as meaning all kinds of movable property other than certain things specified in the section. ''Dealer'' has been defined in Section 2 (f) as "any person or association of persons carrying on the business of selling or supplying of goods....." Under a notification issued by the Government on 22nd May. 1950, in exercise of its powers u/s 5 of the Act. sales-tax at the rate of Rs. 3/2/- per cent is liable on stationery goods of every kind which include ink, penci), holders, pad and things required in an office excluding exercise books. The relevant item in the notification is No. 34 which runs as follows :

^^gj fdLe dk LVs''kujh lkeku ftlesa ''kkgh] dye] isUlhy] isM rFkk dk;kZy; esa yxus okyk lkeku laEHkkykr gSA ?f''kok; ,DlkbZt cqd ds?**

The tax is payable by am importer or a manufacturer of these goods.

Mr. Chaphekar, learned counsel appearing for the assessee, argued that the assessee was only a contracting printer who printed by special contract to the order of each individual customer; that the work done by the printer was suitable and useful for the purposes of individual customer alone; and that he in no sense manufactured or produced for sale, nor did he sell any goods inasmuch as the business carried on by him was one of work and service and not one of the sale of goods. It was further stated that as the contract was essentially for work and labour, it made very little difference whether the paper for printing was supplied by the customer himself or by the printer and that in any case as the assesses entered into two independent contracts which his customers, one for the purchase of paper and the other for printing, the assessee was not liable to pay any sales-tax on the printing work done by him. Learned counsel placed, reliance on State of Madras v. S. Vijayaraghavan (1955) 6 STC 237: (AIR 1956 Mad 191) (A) and D. Ramaswami, Proprietor, the Court Press, Job Branch, Salem Vs. State of Madras,

I am unable to accede to this contention of the learned counsel. Having regard to the definition of ''goods'' and of the manufacturer'' given in the Act, it cannot be denied that the stationery sold by the assessee to his 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 definition of the expression ''manufacturer'' has been explained by this Court recently in Hiralal Jitmal Vs. Commissioner of Sales Tax, , and applying the test indicated therein for determining whether a person is or is not a manufacturer, there can be no doubt that 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 a clearly not a case where it can be argued with any degree of force that the essential character of the work is the printing and not the supply of stationery and that in executing the printing work 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. The contention, therefore, that the orders placed by the customers with the assessee were contracts for the sale of goods, is untenable.

The decision in (1955) 6 STC 237: (AIR 1956 Mad 191) (A), has no applicability here for it turned on the definition of the expression ''work contract'' given in

Madras General Sales-tax Act, 1939. The other D. Ramaswami, Proprietor, the Court Press, Job Branch, Salem Vs. State of Madras, , is also not of much assistance to the assessee for that was a case where there were separate contracts for the sales of paper and the printing work. In that case, it was, on the other hand, recognised that if the transaction of the sale of paper and printing the paper is one transaction, the printer who sold the printed stationery to his customers would be liable to sales-tax.

The question whether, 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 is by the printer himself, the orders placed by the customers for such job work are contracts for the sale of goods or whether they are contracts for work and labour was considered by the Allahabad High Court in the Kanpur Journals Ltd. v. Commissioner of Sales-tax, U. P., (D). Rejecting the contention of the assesse(1956) 7 STC 661e that in such a case the contract is one for labour and work, the learned Judges of the Allahabad High Court observed:

"We think this argument to be misconceived. 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 (E), where the earlier cases including Clay v. Yates (1856) 25 LJ Ex 237 (F), relied upon by the assessees were considered".

Allahabad case supports the view I have taken of the nature of the transaction.

In regard to the submission that the assessee issued separate cash and credit memos for the paper and printing charges and that this indicated the existence of two distinct contracts, one for the sale of paper and the other for printing work, it is sufficient to say that the taxing authorities have regarded the issue of such memos as mere paper transactions. The issue of such memos by itself is of very little value when there is no evidence to show that the customer in fact first purchased paper from the assessee and that when the property in the paper passed to him a contract for the printing work was entered into between the customer and the assesses. The assessee made no attempt before the taxing authorities to prove by the evidence aliunde that the customers in fact entered into two transactions with him, one for the purchase of paper, and that this was followed by a contract for printing. In the absence of such evidence it is not open to the assessee to assail the finding of fact arrived at, by the taxing authorities that the supply of paper and the printing was but one transaction.

For all these reasons, I would answer questions Nos. 1, 2, 3 and 5 in the affirmative and question No. 4 in the negative. There will be no order as to costs of this reference.

Samvatsar, J.

I agree.