
(1955) 03 MAD CK 0043
In the Madras High Court
Case No : Second Appeal No. 1131 of 1952

State of Madras

APPELLANT

Vs

S. Vijayaraghavan

RESPONDENT

Date of Decision : 03-03-1955

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 2(i)(1)

Citation : (1955) 03 MAD CK 0043

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : G.N. Chary, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The second appeal arises out of a suit for refund of sales-tax paid by the plaintiff, and the question to be determined is whether the transaction under consideration is a "works contract" as defined in Sec. 2(i)(1) of the Madras General Sales-tax Act, IX, of 1939.

2. The undisputed facts of the case show that the plaintiff supplied articles of stationery such as bill books, account books, and other things to customers and during the year 1947-1948 the turnover was Rs. 11,701-14-0 and in the next year 1948-1949 the turnover was Rs. 11,581-15-6. It is conceded that the customer did not supply the paper for the account books or the bill books etc. but that the plaintiff supplied them and printed the necessary things on paper belonging to him. Thereafter the finished books were sold to the customer at a fixed price.

3. The lower appellate court has held that even granting that this is a works contract, according to the statute itself, the price of the goods is only 70 per cent and 30 per cent of the turnover should be considered to be cost of labour, manufacture and supervision. Viewed in that light, the turnover in the two years would be much less, than the assessable turnover and therefore, the assessment

was illegally levied.

In - " D. Ramaswami, Proprietor, the Court Press, Job Branch, Salem Vs. State of Madras, , the supplier was a job printer and his turnover showed during the particular year (1) a sum of Rs. 3664-4-3 for receipt for civil-court work; (2) a sum of Rs. 10,194-3-6 for printing, perforating, numbering and binding charges, and (3) a sum of Rs. 5362-15-9 being the paper-used by the press. The learned Judges have held with regard to item No. 2, that it cannot be considered to be taxable at all. As regards item No. 1, viz, receipt from civil court work, it was said, that even if it is to be viewed as a works contract, since the turnover on the proportion allowed under the statute would be less than the taxable amount, there is no necessity to express an opinion.

Mr. G. Ramanujam for Government Pleader contends that if the plaintiff had differentiated between the cost of paper and the, charges for labour, supervision etc, then certainly the second category of turnover would not be liable to tax. I do not think that the mere fact that there is no such differentiation, would make the whole amount taxable. If the argument of the learned counsel is accepted, then it would be that on account of mixing or mingling of the two items together, the charges for labour and supervision would be taxable. I do not think that is contemplated by the statute at all.

4. My attention was drawn to a decision of the Privy Council in - "Dominion Press v. Minister of Customs and Excise", 1928 AC 340 (B), where their Lordships held that the appellants there who were suppliers at an agreed price of printed bill heads and other commercial stationery were liable to be taxed under the Canadian Taxing: Enactments, and they held that contracts for supply of such stationery were contracts for sale. From the report it is not clear what exactly was the definition of the word "sale" in the Canadian. Act, and whether there was any separate definition for "works contract" as "is found in our statute.

5. In Benjamin on Sales, 8th Edn. at page 159, the learned author in discussing the case of -"Clay v. Yates", (1866) 25 LJ Ex 237 (C), was of opinion that when there was a contract for printing the second edition of a book and the printer was to find the materials including the paper, it was not a contract for the sale of a thing to be delivered at a future time, nor was it a contract for making a thing to be sold when completed, but it was a contract to do work and labour, furnishing the materials. From this it is clear that it is a works contract.

6. So far as the present case is concerned, I have no doubt whatever that when a person entrusts a press to print, say stationery like letter paper, or visiting cards, and the press itself supplies material, the transaction is nothing but a works contract in which the allocation of 70 percent and 30 per cent as defined in the Act will apply. Viewed in that light, the taxable amount in question in each of the years would be less than Rs. 10,000 and therefore the plaintiff was wrongly taxed.

7. The second appeal is therefore dismissed with, costs. No leave.