(1970) 02 OHC CK 0017

In the Orissa High Court

Case No : S.J.C. No''s. 7 to 13 of 1968

State of Orissa — APPELLANT

Vs

Ramanath Panda — RESPONDENT

Date of Decision : 12-02-1970

Acts Referred:

Citation : (1970) 36 CLT 1017 : (1971) 27 STC 98

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : , Sales Tax, for the Appellant; K.C. Lenka, for the Respondent

Judgement

G.K. Misra, C.J.—These references relate to the quarters ending June, 1960, to December, 1961.

The following questions have been referred to us:

(1) whether under the facts and circumstances of he case, the Honourable Tribunal is correct in holding that in all cases where the dealer charged in the sale bills separately for the cost of paper, printing and binding, the cost of paper only should be taxed and not the full value charged.

(2) Whether the mere mention of cost of paper, printing charges and binding separately in the bills by the dealer in respect of sale of printing materials to customers, entitled the dealer to claim that the amounts separately mentioned towards printing and binding cannot be included in the sale price of the materials.

(3) Whether in a case where the contract was for sale of finished printed articles, and where the sale of finished printed articles was made by a dealer to customers, mere mention of the cost of paper, printing charges and binding charges separately in the bills issued by the seller to the customers in respect of such sale of finished printed material would entitle the dealer to claim that he sold only paper to the customers and not printed materials and that the cost of printing and binding separately shown in the sale bill should not be treated as

part of the sale price.

2. The short facts are that the assessee sold printed materials. In some case paper was supplied to him, and mere printing was done on those papers. Such sales were exempted from sales tax as they were pure works contracts. There were however other cases in which the dealer himself supplied printed material.

3. The first tow assessing authorities were of opinion that the printed materials sold were liable to tax. The Tribunal, however, held that the price of paper alone was liable to tax and excluded the turnover arising out of the cost of printing. The State of Orissa came up for reference being aggrieved by the appellate order of the Tribunal.

4. The sole question for consideration is whether in he facts and circumstances of this case, printed materials, where paper was not supplied, were liable to tax. Law is now well settled. The agreement between the arties may take various shapes. If the purchaser supplies papers clearly the seller does nothing except printed on those papers. In such a case there is no sale. The work of the seller is one of labour. There may also be another type of cases were the purchaser enters into an agreement that he would separately pay for the papers and the seller would merely printed on those papers. Such as case would be analogous to the first type of case where the purchaser purchases the papers form outside and supplies the same to the printer. Another type of case would be where the purchaser does not enter into any separate agreement but merely asks the printer to supply printed materials. The obligation to purchase the paper an to print thereon remains with the seller. In such a case, the contract remains indivisible and what is agreed to be sold is the printed materials.

5. In this case, the findings of all the authorities are that the agreement was to supply printed materials. In fact the first appellate authority has observed:

In the course of hearing, the appellant admitted before me that the payments were received from different concerns for supply of printed materials only, although he charged for the same separately in the bills.

The agreement being one and indivisible the printed materials are liable to sales tax. The fact that the bills indicated separate payment for both is not decisive of the matter. In certain cases such separate charging in the bills may constitute a piece of evidence for ascertaining the real intention of the parties entering into the agreement. Here, the factual position is clear. The agreement was for purchase of printed materials. Charging separately for the paper and printed does not alter the essential character of the agreement.

6. We accordingly hold that the printed materials were liable to sales tax. The Tribunal took a wrong view in separating the cost of printing from that of the paper and in saying that paper alone was taxable.

7. All the three questions are accordingly answered in the negative. The references are accepted. Hearing fee Rs. 50 (Rupees fifty only).

S. Acharya, J.

I agree .

