
(1960) 01 AP CK 0013

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 20 of 1958

The State of Andhra Pradesh

APPELLANT

Vs

Sri Krishna Power Press

RESPONDENT

Date of Decision : 19-01-1960

Acts Referred:

Citation : (1960) 1 AnWR 384 : (1960) 11 STC 498

Hon'ble Judges : Chandra Reddy, C.J;Narasimham, J

Bench : Division Bench

Advocate : D.V. Sastry, for The Second Government Pleader, for the Appellant;
E. Venkatesam and P. Kodanda Ramaiah, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—The question to be determined in this revision petition filed by the Government against the order of the Sales Tax Appellate Tribunal is whether the supply of some printed material to a customer at an agreed price would amount to a sale of goods or would constitute a works contract.

2. The respondent is running a printing press called Sri Krishna Power Press at Vijayanagaram. His business consisted, among other things, in printing to the order of individual customers stationery of a business character such as letter heads, bill books and account books at an agreed price. For the year 1953 54, he was assessed to sales tax on a turnover of Rs. 12,580. The respondent objected to the assessment on the ground that the furnishing of the printed goods by him to his customers was in the nature of a works contract and, as such, he is entitled to a deduction of 30 per cent, from the gross turnover and since the turnover after this deduction falls short of Rs. 10,000 he is exempt from taxation u/s 3 (3) of the Madras General Sales Tax Act which corresponds to Section 5(1) of the Andhra Pradesh General Sales Tax Act. This plea did not prevail with the taxing authority. On appeal, the Deputy Commissioner of Commercial Taxes confirmed the assessment. The further appeal filed by the assessee before the Sales Tax Appellate Tribunal succeeded. The Tribunal accepted the foregoing

contention of the respondent following the judgment of Govinda Menon, J., in *The State of Madras v. Vijayaraghavan* [1955] 6 S.T.C. 237 . It is to revise this order that the present revision petition is brought by the State Government.

3. In support of the petition, it is urged that transactions such as these have to be regarded only as sales and not as works contracts and that *The State of Madras v. Vijayaraghavan* [1955] 6 S.T.C. 237 . does not embody the correct law and has to be dissented from. Reliance is placed on some decided cases to substantiate this proposition.

4. Before we discuss the rulings cited to us on either side, we will read the material provisions of the Madras General Sales Tax Act, 1939. Section 2(h) of the Madras General Sales Tax Act, which corresponds to Section 2(n) of the Andhra Pradesh General Sales Tax Act, omitting the unnecessary portion, reads : " "Sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes also a transfer of property in goods involved in the execution of a works contract or in the supply or distribution of goods by a co operative society, club, firm or any association to its members but does not include a mortgage, hypothecation, charge or pledge."

Works contract "is defined as" any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property.

5. It is also useful to refer to the relevant rule of the Madras General Sales Tax (Turnover and Assessment) Rules. Sub-rule 3 provides :

For the purpose of Sub-rule (1), the gross turnover of a dealer shall in relation to works contract, be deemed to be the amount payable to the dealer for carrying out such contract less a sum not exceeding such percentage of the amount payable as may be fixed by the Board of Revenue, from time to time for different areas representing the usual proportion in such areas of the cost of labour to the cost of materials used in carrying out such contract, subject to the following maximum percentages :

* * * * (cc) in the case of textile dyeing and printing works contract : 50 per cent.

6. Prima facie, the transactions in question attract the definition of "sale", since all the ingredients contemplated by the section are present. This is not seriously disputed but what is urged is that none the less they fall within the ambit of "works contracts." This argument is mainly based on *The State of Madras v. Vijayaraghavan* [1955] 6 S.T.C. 237 which is on all fours with the present case. In that case, the assessee supplied articles of stationery like bill books, account books and other things to his customers, the customers not supplying the paper

for making these books. The learned Judge held that it was only a works contract. In his opinion, when a person entrusts a press to print stationery articles like letter paper or visiting cards and the press itself supplies the material, the transaction is nothing but a works contract. In support of this view, he cited *Clay v. Yates* 108 E.R. 461 (Vide Benjamin on Sales, 8th Edition, page 159).

7. With great respect, we cannot assent to this proposition. We feel that such transactions fall within the connotation of "sale" as defined in the Madras General Sales Tax Act and are outside the purview of a works contract. We are not persuaded that the rule stated in *Clay v. Yates* 108 E.R. 461 is applicable to the supply of printed material as in this case. That was a case of a contract for printing the second edition of a book and the printer himself had to find the materials including the paper. It was held that it was not a contract for the sale of a thing to be delivered at a future time or a contract for making a thing to be sold when completed, but a contract to do work and labour furnishing the materials. That does not furnish any analogy here.

8. Dealing with this case, this is what Hill, J., said in *Lee v. Griffin* 30 L.J.Q.B. 252 (Vide Benjamin on Sale, 8th Edition, page 160):

That is a case *sui generis*. The printer, the plaintiff there, in effect does work chiefly on the materials which the defendant supplied; although, to a certain extent, the plaintiff may be said to supply materials; moreover, the printer could not sell the book to anyone else.

9. It was this view, that, when the subject matter of the contract is a chattel to be afterwards delivered, then the cause of action is goods sold and delivered and the seller cannot sue for work and labour.

10. *Lee v. Griffin* 30 L.J.Q.B. 252 was a case of an action by a dentist to recover money due for two sets of artificial teeth made for a deceased lady, of whom the defendant was the executor, on the basis that the skill of the dentist was the thing really contracted for, that the materials were only ancillary and that the count for work and labour was therefore maintainable. In support of this position, *Clay v. Yates* 108 E.R. 461 was quoted. This did not find favour with the learned Judges.

11. The observations of Blackburn, J., in that case are also apposite in this context :

If the contract be such that it will result in the sale of a chattel, the proper form of action, if the employer refuses to accept the article when made, would be for not accepting. But if the work and labour be bestowed in such a manner as that the result would not be anything which could properly be said to be the subject of sale, then an action for work and labour is the proper remedy.

12. All the Judges in that case referred to *Clay v. Yates* 108 E.R. 461 and distinguished it. It is seen that *Clay v. Yates* 108 E.R. 461 turned upon the

peculiar circumstances of the case, namely the particular subject of the contract in that case.

13. The distinction between a sale and work and labour is elaborately discussed in Benjamin on Sale, 8th Edition. The following propositions were deduced by the author from the various authorities noticed by him bearing on the topic.

1. A contract whereby a chattel is to be made and affixed by the workman to land or to another chattel before the property therein is to pass, is not a contract of sale, but a contract for work, labour and materials, for the contract does not contemplate the delivery of a chattel as such.

2. When a chattel is to be made and ultimately delivered by a workman to his employer, the question whether the contract is one of sale or of a bailment for work to be done depends upon whether previously to the completion of the chattel the property in its materials was vested in the workman or in his employer. If the intention and result of the contract is to transfer for a price property in which the transferee had no previous property, then the contract is a contract of sale.

Where, however, the passing of property is merely ancillary to the contract for the performance of work, such a contract does not thereby become a contract of sale.

3. Accordingly.

(i) Where the employer delivers to a workman either all or the principal materials of a chattel on which the workman agrees to do work, there is a bailment by the employer and a contract for work and labour, or for work, labour and materials (as the case may be), by the workman. Materials added by the workman on being affixed to or blended with the employer's materials, thereupon vest in the employer by accession and not under any contract of sale.

(ii) Where the workman supplies either all or the principal materials, the contract is a contract for sale of the completed chattel and any materials supplied by the employer when added to the workman's materials vest in the workman by accession,

14. It is plain that transactions like the present fall within the latter part of proposition 2, namely, "if the intention and result of the contract is to transfer for a price property in which the transferee had no previous property then the contract is a contract of sale."

15. In this connection, we may cite another decision of an English Court, *Love v. Norman Wright (Builders) Ltd.* [1944] 1 K.B. 484 in which we find another example of this principle. There the defendants to an action entered into an agreement with the Secretary of State to supply black out curtains and curtain rails and fix them in a number of police stations. They in their turn entered into a sub contract with the plaintiffs that they should prepare those curtains and rails

and erect them in the police stations. The question that called for determination there was whether the sub contract was one for sale of goods or for work and service and it was held that it was one for sale. The ground of decision was stated by Goddard, L.J., in these words :

On this point we agree with the learned Judge who has held that as the contract involved transferring to the defendants for a price chattels, namely, curtains in which they had no previous property, it was a sale of goods. If one orders another to make and fix curtains at his house, the contract is one of sale though work and labour was involved in the making and fixing.

16. Our attention was next drawn by Sri Venkatesam for the respondent to *Ramaswami v. The State of Madras* [1954] 5 S.T.C. 250. There the supplier was a job printer and his turnover showed during the particular year (1) a sum of Rs. 3,644 3 3 for receipts 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. 5,362 15 9 being the paper used by the press. The learned Judges held, with regard to Item (2), that it could not be considered to be taxable at all. As regards the first item, no view was expressed for the reason that, even if it could be viewed as a works contract, it would be below the taxable turnover. We do not think any assistance can be derived from that judgment in this enquiry for the reason that the assessee charged the customer separately for the paper and separately for the printing charges. That seems to have weighed with the learned Judges in coming to the particular conclusions there. They did not consider the scope of Section 2(h) of the Madras General Sales Tax Act.

17. Our view that the supply of letter heads, bill books, account books etc., to the order of an individual customer at a price stipulated by the parties comes within the contemplation of Section 2(h) of the Madras General Sales Tax Act corresponding to Section 2(n) of the Andhra Pradesh General Sales Tax Act is reinforced by the pronouncement of the Privy Council in *Dominion Press Limited v. Minister of Customs and Excise* [1928] A.C. 340 . In that case, the controversy raised was whether the supply of printed bill heads and other commercial stationery to the order and to suit the requirements of individual customers would amount to "sale" within the meaning of the Act of 1922 which imposed a tax of 2? per cent, "on sales and deliveries by Canadian manufacturers or producers and wholesalers or jobbers". Their Lordships ruled that these transactions were sales within the words of that enactment. It is interesting to note that an argument was advanced in that case on the basis of *Clay v. Yates* 108 E.R. 461 that the contract was a contract for work and labour done and materials supplied. Their Lordships were not prepared to accede to this theory. They held that it was a contract of sale and delivery within the authority of *Lee v. Griffin* 30 L.J.Q.B. 252 .

18. We may now turn to the opinion of other Courts, which accords with our view. Construing similar provisions, a Bench of the Bombay High Court at Nagpur in *Saraswati Printing Press v. Commissioner of Sales Tax* [1959] 10 S.T.C. 286 .

decided that, when the assessee press itself purchased stationery and did printing work upon it according to the; orders of individual customers and supplied the printed stationery to them, it sold goods to the customers upon which sales tax was leviable and that it was not in the nature of a works contract.

19. To a like effect is the ruling of the Madhya Pradesh High Court in *Sardar Printing Works v. Sales Tax Commissioner* [1958] 9 S.T.C. 75 . It was decided there that/when a printer accepts orders from his customers for job works, such as receipt books, registers, forms, letter heads etc. and prints them in accordance with the requirements of his customers on paper supplied by the printer himself, the orders placed by the customers for such job works are contracts for sale of goods and not contracts for work and labour.

20. The view taken by the Allahabad High Court in *Kanpur Journals Ltd. v. Commissioner of Sales Tax* [1956] 7 S.T.C. 661 is in consonance with the principle stated above.

21. In *Indralatya Ltd. v. Additional Commissioner, Commercial Taxes, West Bengal* [1958] 9 S.T.C. 633 Sinha, J., brought out the distinction between a contract or sale of goods and a contract for work and labour. There, the assessee Carried on business in piece goods and also tailoring and he was sought to be made liable to sales tax in respect of the turnover of the tailoring "department. In dealing with this matter, the learned Judge said that, where the customer purchased tailored goods or where the customer selected the materials from the piece goods department and this was then made up into a garment by the tailoring department, there was a sale of goods and it was exigible to tax; whereas if the customer brought his own material to be made into a garment or purchased the material from the assessee for that purpose, there was not sale of goods, since the charges made by the tailoring department were for work and labour. In our opinion, this doctrine represents the correct law. We may add that, even in cases where the customer advances money for buying the material to be made into garments or other kinds of commercial commodity, it partakes of the same character as the latter category mentioned by the learned Judge.

22. All these cases except the Bombay case are sought to be distinguished on the ground that the Acts that fell to be interpreted by them did not contain the definition of "works contract" as in the present case. In our considered judgment, this does not make any difference because the concept involved in the definition of "works contract" is the same, namely, labour and service. This notion is implicit in the latter part of the definition, which relates to movable property, namely, "fitting out, improvement or repair of any movable property". It could be gathered from these expressions that what is contemplated is doing some work in connection With the property belonging to the customer. This clause could have reference only to work and service or labour to be expended and has nothing to do with the transfer of property in finished goods. In a Works contract, there is no intention to sell or buy, the work consisting merely of fitting out, improving or repairing the property of another. If the intention is to sell the

materials as such, it is a contract of sale as distinct from a pure works contract. On the other hand if the agreement is purely to supply Work and service, it will be a works contract.

23. It is contended by the learned counsel for the respondent that if the works contract mentioned in Sub-rule (3) does not mean making things to the order and to suit the requirements of an individual such as the printing and the supplying of letter heads, bill books etc., it has no meaning because there can be no other kind of works contract. We are not impressed with this argument. There could be various kinds of contracts outside "sale of goods "attracting that definition, such as repair or re conditioning of motor cars or other articles and various other types of work, some of which are enumerated in Sub-rule 3. Even in regard to works contracts, some material has to be used by the person undertaking the work. For instance, in regard to Clause (cc), some materials have to be used for the dyeing or printing.

24. In this context, we may cite a passage from the judgment of Blackburn J., in *Appleby v. Myers* (1867) L.R. 651 which was quoted with approval by the Supreme Court in *State of Madras v. Gannon Dunkerley & Co., Ltd.* [1958] 9 S.T.C. 353 .

It is quite true that materials worked by one into the property of another become part of that property. This is equally true whether it be fixed or movable property. Bricks built into a wall become part of the house; thread stitched into a coat which is under repair, or planks and nails and pitch worked into a ship under repair become part of the coat or the ship.

25. The above passage explains the nature of a works contract in that it serves to illustrate the principle that an essential constituent of a works contract is labour of service, any material used in the process of the work being merely ancillary to it.

26. An instance of a works contract is contained in *Sundaram Motors Limited v. The State of Madras* [1958] 9 S.T.C. 687 . The question there was whether the use of a motor part by a company while reconditioning and repairing a car belonging to a customer would amount to a sale of the motor part. The learned Judges, Rajagopalan and Ramachandra Iyer, JJ., held that there was no sale of that part and that the charges for the fabricated material should be treated as charges in respect of a works contract and not independent sales of those materials. This decision shows that the repair of a motor car is a works contract.

27. It is unnecessary for us to multiply examples of works contracts. It is sufficient to say that a transaction which results in the transfer of property in finished goods to a third party Cannot be described as a works contract. If there is an agreement between the parties for the sale of any article, it is nothing but a sale within the enacting words of Section 2(h). If such a transaction fulfils the definition of "sale" within the purview of that clause, as conceded by the learned counsel for the respondent here, we fail to see how it could equally be governed

by the definition contained in Section 2(i-1).

28. Nor is there any substance in the argument of the counsel for the respondent that since these goods have no commercial value in the sense that they cannot be exhibited for sale to the general public, the transaction should be regarded as a works contract. It may be that these commodities have no general market in the sense that they could not be exhibited for sale generally. But that is not decisive of the matter. The only test is whether the contract was for the sale of finished products. If the goods prepared by the assessee could not be sold to other customers the person who placed the order could be compelled to accept it or to pay damages to the printer. In fact, most of the cases cited to us including the one of the Privy Council related to goods prepared according to specific requisitions and to suit the requirements of individual customers. Yet, it was held that the contracts were for the sale of goods. For all these reasons, we hold that the payments made by the customers for the printed material in this case constituted the price of goods sold by the assessee and, therefore, the whole turnover was subject to tax.

29. In the result, the revision is allowed and the order of the Tribunal is set aside. There will be no order as to costs in the circumstances of this case.