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United Excise Vs. Commissioner of Sales Tax and anr.

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Court : Madhya Pradesh

Decided On : Dec-04-1970

Reported in : 1971MPLJ472; [1971]28STC16(MP)

Judge : Bishambhar Dayal, C.J. and ;S.P. Bhargava, J.

Appeal No. : Miscellaneous Petition No. 372 of 1969

Appellant : United Excise

Respondent : Commissioner of Sales Tax and anr.

Advocate for Def. : K.K. Dube, Government Adv.

Advocate for Pet/Ap. : R.K. Tankha and ;S.C. Mohobe, Advs.

Disposition : Petition allowed

Judgement :
ORDER

Bishambhar Dayal, C.J.

1. This writ petition is against the assessment of sales tax and the imposition of penalty on the petitioner in respect of the period 1st April, 1964, to 31st March, 1965. Another similar writ petition (Miscellaneous Petition No. 379 of 1969) has also been filed by the same petitioner which relates to the period 1st April, 1965, to 31st March, 1966. As a common question of law is involved in both these cases,

they are being dealt with together and disposed of by this common order.

2. The petitioner holds a licence for maintaining a warehouse for country liquor. His work is to take liquor from the distillery, to bottle it and then to supply the bottles to the retail sellers. Under the licence he is bound to keep a certain amount of liquor ready in his warehouse so that supply to retail dealers may not fall short. By Clause 9 of the licence his duty is to 'bottle' the liquor in bottles of different descriptions mentioned in that clause. By Clause 10, when these empty bottles are received and before they are filled, they are checked by the officer in charge of the warehouse. By Clause 11, the petitioner has first to clean the bottles, fill them with liquor and cork them. The corks or capsules have to be fitted tight in the neck of the bottles and must be of a particular length according to the size of the bottles. After the bottles have been corked, their neck has to be dipped into molten asphalt or molten red sealing wax up to a particular depth and the top of the bottles, has to be sealed with the Government Dye. Then labels containing certain specified particulars have to be pasted on each bottle. The whole of this process is called 'bottling'. The petitioner is not permitted to supply liquor to the retail sellers unless it has been properly bottled in accordance with Clause 11 of the licence. For this work of bottling the petitioner is not paid anything by the Government, but he is permitted to charge at the rate of 10 paise per bottle from the retail seller. Empty bottles have to be returned by the retailer to the petitioner after the liquor has been consumed, and for that purpose the retailer makes a deposit with the petitioner. If at the time of returning empty bottles some bottles are found damaged or short, the petitioner is entitled to deduct their cost from the security at a specified rate. The liquor as well as the bottles are free of sales tax. The controversy in these cases is that the Sales Tax Officer has assessed the petitioner on the sale of corks or capsules (if they are used in place of corks), the sealing asphalt or wax used, the labels attached to the bottles, etc. as packing material. The petitioner has also been imposed a penalty for not having paid the tax on the turnover. The petitioner filed an appeal which was heard by the Additional Appellate Assistant Commissioner of Sales Tax and was dismissed. Against these orders the present petitions have been filed.

3. The first contention of the learned Counsel for the petitioner is that the whole of the bottling process is done by the petitioner under the directions of the department according to the rules which are binding. He has no option in the matter and he cannot sell liquor to the retailers except after bottling it according to the rules. This activity, therefore, is in the nature of a works contract performed by the petitioner under the directions of the Government and cannot be said to be an activity which is voluntarily undertaken by him either for his convenience or for the convenience of his customers and no element of any express or implied contract with the customers arises in the case. It cannot, therefore, be said that the petitioner has sold either the corks or the labels or the sealing wax to the customers. He sells only the liquor and, therefore, no question arises of imposition of sales tax on these articles.

The second contention of the learned Counsel is that these articles really become a part of the bottle which is a packing material for the liquor and the bottle is not sold to the customer but is expressly made returnable after the liquor is sold and consumed. Moreover, the bottle is exempt from sales tax and consequently anything which becomes a part of the bottle also must be deemed to be exempt from sales tax.

The last contention on behalf of the petitioner is that these articles are destroyed in the process of consumption of the liquor when the bottles are opened, and there is no intention, either express or implied, of transferring ownership in these articles from the petitioner to the retail seller.

4. The contention of the learned counsel for the department is that at the time of selling the liquor it is necessary for the petitioner to sell it in some suitable containers so that it may not be destroyed or pilfered before it reaches the actual consumer. He has, therefore, to use this packing material and he receives the consideration for it from the retail seller. There is, therefore, an implied contract of sale with regard to these articles, and reliance is placed upon Nimar Cotton Press Factory v. Commissioner of Sales Tax, Madhya Pradesh [1968] 21 S.T.C. 505. That was a case decided by this Court where cotton bales, after they had been ginned and pressed were packed with hessian cloth and iron hoops. The contract

was for ginning the cotton only. It was in those circumstances held that the hessian cloth and iron hoops which were used for packing and despatching the cotton were not a part of the contract and when these articles were handed over to the purchaser, there was necessarily a contract of sale.

5. After hearing learned Counsel for both sides we are of opinion that the present case is distinguishable from the hessian cloth case. In the present case the choice of using these materials is not with the petitioner. He does not himself decide to pack the liquor in the way described in Clause 11 of the licence. He could have very well asked the purchasers to bring their own containers and take away the required quantity of liquor. But he has to undergo this process called 'bottling' on account of the compulsion of law. His work, therefore, in bottling the liquor is in the nature of a works contract and cannot be said to be necessitated by the contract of sale between the petitioner and the retailer. In such a case what is to be seen is whether the whole transaction is primarily a contract for performing the work and not one intended for sale, and we think this contract satisfies the test. See State of Rajasthan v. Man Industrial Corporation Ltd. [1969] 24 S.T.C. 349 (S.C.) and Commissioner of Sales Tax, M.P. v. Madhya Pradesh Electricity Board [1970] 25 S.T.C. 188 (S.C.).

6. Even treating it as a contract for sale of liquor, the main packing material is the bottle which is neither taxable nor is sold, and the cork, the capsule, the sealing wax and the label, etc., are merely attached to the bottle, and are not separately of any use. When the bottle is opened, most of these articles are destroyed, and the value of the material which may remain undestroyed is so insignificant that it is not possible to assume any intention of sale between the petitioner and the retail dealer.

7. We are, therefore, of opinion that no sales tax was chargeable upon the packing material used in the process of bottling. Accordingly, we allow both these petitions and set aside the orders of assessment passed by the Sales Tax Officer and the orders of the Additional Appellate Assistant Commissioner of Sales Tax dismissing the petitioner's appeal against the orders of assessment. The assessment of sales tax having been set aside, the penalty also is set aside. The petitioner will get his

costs of both these petitions from the respondents. Counsel's fee Rs. 100 in each case, if certified. The security for costs deposited by the petitioner in both these cases shall be refunded to him.

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