M.U. Varghese Vs. the State of Madras

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Court : Chennai

Decided On : Aug-03-1964

Reported in : AIR1966Mad7; [1965]16STC184(Mad)

Judge : Ramakrishnan and ;Ramamurti, JJ.

Appeal No. : T.C. No. 124 of 1963 (Revn. 80)

Appellant : M.U. Varghese

Respondent : The State of Madras

Judgement :

Ramakrishnan, J.

(1) The turnover in dispute in this case is Rs. 60842, and odd, which, according to the view of the assessing authority, the Appellate Assistant Commissioner and the Sales-tax Appellate Tribunal, represented the value of finished garments sold by the assessee. The assessee has got a stock of cloth in his premises. He is also a tailor skilled in stitching garments. Customers go to him, select a cloth, settle its price and also, settle the stitching charges, and then an order is prepared in a standardised order book showing the quality, the quantity and the price of the cloth selected and also the stitching charges, separately. The two orders are found in the same order sheet. An advance is taken from the customer. Then the assessee stitches the clothes and then prepares a bill for the customer, wherein the price of

the cloth and the tailoring charges are separately shown and the advance deducted. In the view of the Sales-tax Appellate Tribunal, the simple fact that the customer has selected certain goods from which a garment is made does not constitute sale of the materials and the sale is complete only after the garment is made and delivered

For this view, the Tribunal purported to follow the decision in Indralaya Ltd. v. Addl. Commr. of Commercial Taxes, West Bengal : AIR1958 Cal343 where the possible types of transactions which might be entered into in such cases have been summarised under four categories. In the Tribunal's view, the present case fell under the fourth category, which deals with a case where a customer goes to a shop, selects certain material and then it is made by the dealer into a garment. In such a case, the Calcutta High Court observed that there could be no transfer of property at the time of selection and it is transferred only when the material is made as a complete garment and delivered to the customer.

(2) The important and relevant point to be considered in such a case appears to us to be whether there was only one contract between the customer and the assessee and that contract was for making and delivering the finished garment, or whether there were two contracts to begin with, viz., a contract for purchase of cloth and another contract for labour charges. That question can be answered only with reference to the particulars of the contract at the time when it was entered into. The order book in this case in our opinion, plays an important part in deciding whether there were two contracts or only one contract. In this case, there is no attack on the genuineness of the order book. It was prepared at the moment the customer settled his bargain with the assessee. The order book clearly shows that there was a distinct bargain for the purchase of cloth of certain quality and at a certain price and also another distinct bargain for stitching charges. No doubt, in this case, the assessee does not sell cloth of which he has a stock in his shop to a customer who wants to buy the cloth alone.

It is not in dispute that the cloth he stocks is sold by him only for such customers as are prepared to buy the cloth as well as entrust the stitching work to him. But, on that account, it cannot be held that the two contracts, one for the sale of cloth and another for stitching the material, cannot be entered into. That will depend upon, as we have already mentioned, on the facts of each case. In the present case, the order book clearly supports the inference of there having been two contracts entered into, one for the sale of cloth and the other for stitching it into a garment.

(3) We are, therefore, of the opinion that the assessment of the assessee on the disputed turnover as representing the sale of finished garments is not supportable. It is also common ground that at that period the cloth as such was not assessable to sales-tax. Therefore, we allow the revision petition and set aside the assessment on the disputed turnover. No order as to costs.

(4) Revision allowed.