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Court : Kolkata

Decided On : Mar-14-1958

Reported in : AIR1958Cal343,[1958]9STC633(Cal)

Judge : Sinha, J.

Acts : Bengal Finance (Sales Tax) Act, 1941 - Section 2(4); ;Sales of Goods Act

Appeal No. : Suit No. 177 of 1956

Appellant : indralaya Ltd.

Respondent : Additional Commissioner, Commercial Taxes, West Bengal and ors.

Judgement :

ORDER

Sinha, J.

1. The petitioner is a company which carries on business in piece goods as also tailoring. It is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941. It has been stated in the petition that the company has now suspended its business and surrendered the registration certificate. In the petition it is stated that

the two businesses of the petitioner viz., the sale of piece goods and tailoring are distinct and unconnected with each other. It is further stated that separate accounts are maintained in respect thereof. This, however, is not admitted. It has been stated in the affidavit filed by the Assistant Commissioner of Commercial Taxes that in the account books, accounts of the piece goods business and of the tailoring business are maintained under separate headings but 'ultimately the accounts are of the same'. So far as the piece goods business is concerned there is no dispute. For sales of piece goods to customers the petitioner has paid sales tax and that is not disputed. Dispute arises with regard to the tailoring business. According to the petitioner, its tailoring business consisted of (i) executing orders of customers upon materials supplied by them, and (ii) making up materials, selected, supplied and purchased by the customer from the piece goods department of the petitioner. It is stated that materials sold by the petitioner for carrying out of the customer's orders were appropriated against a specific order placed by the customer and the material was duly handed over to the tailoring department under instructions from the customer. This again is not admitted on behalf of the respondents and I shall presently refer to their point of view. It appears, however, that the tailoring charges are entered in the account books in a separate heading and in the bills that were made out, price of cloth and tailoring charges are charged for and shown separately. The way that the petitioner company paid sales tax was as follows: It paid sales tax on all goods sold by the piece goods department to the tailoring department but excluded the pure tailoring charges. It is on this footing that the company was assessed for three quarters ending 30-9-1951. On 10-2-1954 a notice was served upon the petitioner by the Assistant Commissioner of Commercial Taxes with the object of reopening the assessment proceedings for the said three quarters. The Assistant Commissioner thereupon proceeded to re-assess the tax in respect of the said three quarters and also to assess the tax for the subsequent i.e. the fourth quarter of 1951. In this re-assessment or assessment, as the case may be, he has proceeded to levy the sales tax on the total sales of the tailoring department but of course excluding the sale of piece goods for which, I take it, the sales tax has already been paid. It is this assessment that is being challenged. Mr. Chowdhury, appearing on behalf of the petitioner, formulates his case thus: He states that Hie

company had two distinct departments viz., the piece goods department and the tailoring department which were wholly unconnected. A customer may go to the piece goods department & purchase materials & thereupon the property passes to the customer. The customer then takes it to the tailoring department which makes it up. So far as the work of the tailoring department is concerned, it is pure work and labour and, therefore, cannot be assessed to sales tax. Mr. Chowdhury cites the case of *State of Madras v. Vijaya Baghavan* AIR 1956 Mad 191 (A). It has been held there that when a person entrusts a Press to print stationery like a letter paper, or visiting cards, and the Press itself supplies the material, the transaction is nothing but a works contract in which the allocation of 70 per cent and 30 per cent as defined in the Madras Sales Tax Act will apply. Mr. Chowdhury also refers to another Madras case, *D. Ramaswami v. State of Madras*, : AIR1954 Mad980 . That was also a case of printing. It was found that the printing Press, which was the assessee, charged its customers separately for the paper and for the printing charges. Rajagopalan J. said as follows:

'The tribunal apparently did not consider the possibility of a sale of paper by the printer himself as a dealer. When paper purchased from others and turned over to the printer can be undoubtedly the purchaser's property, i.e. the customer's property, we fail to see why a sale of paper by the printer himself cannot make that paper the purchaser's property, i.e., the customer's property. If it was the customer's paper that was used, and if that paper was sold by the printer himself, that sale would be liable to tax if the total turnover of these sales amounted to over Rs. 10,000/-. But that is not the case here. Since the asscssees took precaution of showing the sales of paper and labour charges separately the labour charges did not come within the scope of the definition of works contract, and as pure 'labour charges they were not taxable; as the taxable turnover was below the minimum which is not liable to be taxed.'

2. Mr. Chowdhury has also drawn my attention to Benjamin on Sale where it has been stated as follows;

'Where the employer delivers to a workman either all or the principal materials of the chattel on which the workman agrees to do work, there is bailment by the

employee, and a contract of work and labour, or for work, labour and material (as the case may be), by the workmen. 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.'

3. Mr. Chowdhury has cited the case of *Mohomed Khasim v. State of Mysore*, (S) AIR 1955 Mys 41 (C) and my own decision in *Dukhineswar Sarkar and Bros. Ltd v. Commercial Tax Officer*, (S) : AIR1957 Cal283 .

4. Mr. Ghose appearing on behalf of the respondents has pointed out that the sales tax authorities did not accept the statement that the accounts kept by the two departments were separate. Further, they did not accept the fact that the customers purchased the goods from the piece goods department and took the goods to the tailoring department. What they did was to select goods belonging to the petitioner, which were to be made up. There was also sale of completely tailored garments. Those being the facts according to the respondents, my attention is drawn to the definition of 'sale price' in Section 2(h) in the Bengal Finance (Sales Tax) Act, 1941. The relevant portion of the definition is as follows:

'Sale price' means the amount payable to a dealer as valuable consideration for -
(i) the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, other than the cost of freight or delivery or the costs of installation when such cost is separately charged;'

5. It is argued that even if goods are bought from the company then any sum charged for anything done by way of tailoring to the goods is included in the sale price.

6. I do not think that the facts and circumstances in this case are comparable to the case of building constructions which are the subject-matter of the Mysore case and *Dukhineswar Sarkar's* case (C) (supra). The only way in which assistance can be derived from the latter case is the principle delineated therein that sale for the purpose of the Bengal Finance (Sales Tax) Act, must mean sale as known to law

and as governed by the Sale of Goods Act. It has been pointed out there that if any other definition of the sale of goods is attempted, there was a way of making it legal, but that constitutional procedure must be followed first before such a special definition can be permitted. That procedure had not yet been attempted so far as the said Act is concerned. Bearing that in mind, I think that the transactions such as were likely to arise in the present case can be divided into four distinct groups as follows:

(1) Where the customer brings his own goods or materials to be made up into garments. In such a case, there is no sale of goods except for such things as buttons or thread etc., which may be supplied by the dealers and which may be the subject matter of sales tax. This is pure work done and labour supplied.

(2) Where the customer goes to the piece goods department, purchases certain material, pays the price, takes delivery and then goes to the tailoring department and orders it to be made up. If all such facts were strictly proved, it would be, so far as the tailoring department is concerned, in the same position as group No. (1).

(3) Where the customer buys ready made, that is to say, completely tailored goods. Here again, it is an out-and-out sale of such goods, and so far as the customer is concerned he purchases the goods and has nothing to do with the material and labour.

(4) In the fourth and last group, the customer goes to the shop and selects certain material and this is made up by the tailoring department. In this case, the mere fact that certain material has been selected is not enough to transfer the property. The property is transferred when the material is made up as a completed garment and delivered to the customer.

7. Coming to the facts and circumstances of this case, it is stated in the petition that part of the transactions belong to group No. (1). In paragraph 5 of the petition it has been distinctly stated that part of the transactions which were the subject matter of assessment consisted of the execution of orders of customers in respect of materials supplied by them. In the affidavit in opposition filed by the Assistant Commissioner it is stated as follows:

'With reference to paragraph 5 of the said petition I state that I am not aware whether the petitioner's tailoring business executed orders of customers with materials supplied by such customers. I further state that the petitioner used to accept orders for supply of garments prepared from the materials in the shop of the petitioner selected by such customers and also used to sell tailored garments to customers.'

8. In the appellate and revisional orders I find that the entire reasoning is based on the assumption that the transactions relate to group No. (4). With regard to the reasoning in respect of group No. (4) I think that the appellate and the revisional orders are correct. The simple fact that the customer has selected certain goods from which a garment is made up does not constitute a sale of the materials. The sale is completed after the garment is made up and delivered. It is immaterial to consider as to how the two departments act in the matter, and how they adjust the accounts or whether the price of materials and the tailoring charges are kept separate or not. Also with regard to group No. (3) there is no difficulty With regard to group No. (2), that obviously is a question of fact and since it has been held that the transactions were not of such a nature, it is not possible to disturb the finding in an application under Article 226 of the Constitution.

9. I lastly come to the transactions under group No. (1). That, in my opinion, can never be considered as sale of the goods and cannot be the subject matter of sales tax under the Act. Where the customer brings in his own material to be made up, that is purely work and labour, save and except, as I have mentioned above, the supply of buttons or thread etc., which may be considered as sale of goods. In so far as the Bengal Finance (Sales Tax) Act attempts to include within its ambit and declares such transaction as sale of goods it is doing so contrary to the definition of sale of goods to be found in the Sale of Goods Act. For reasons stated in *Dukhineswar Sarkar's case* (C) (*supra*) this cannot be allowed and the provision of law contained in Section 2(4), of the Act is to that extent *ultra vires*. In this case if the respondents did state that there were no such transactions or if it was stated that upon investigation it was found that there were no such transactions as mentioned in group (1) that would be quite a different matter. But in the affidavit here, a naive assertion that the Assistant Commissioner was not 'aware' of the fact

does not seem sufficient to me and is certainly not the way in which the assessment should have proceeded. It is not stated that the petitioner did not claim exemption for such transactions, but the matter is dismissed summarily in the manner stated above. Neither the appellant nor the revisional authority has considered this aspect of the matter. In my opinion the assessment should/ be set aside on this limited point. In other words, while the rest of the assessment is upheld, the respondents must specifically consider whether the petitioner's tailoring business during the period under assessment executed orders of customers in respect of materials supplied by such customers direct, that is to say, whether they belonged to group No. (1). These transactions cannot be made the subject matter of sales tax. The rule is therefore made absolute in part and the impugned assessments are set aside and / or quashed to the extent that the matter will go back and the respondents will consider as to whether any of the transactions of the petitioner during the assessment period come within group (1) mentioned above, and exempt the same from payment of sales tax, but otherwise the calculations as made are declared to be correct. The further assessment will be made upon this footing and in accordance with law. Nothing in this order will prevent such assessment. There will be no order as to costs.