(1956) 12 MP CK 0015

Madhya Pradesh High Court (Indore Bench)

Case No: C. Ref. No. 67 of 1953

Jaikishan Gopikishan	APPELLANT
Vs	
Commissioner, Sales Tax, M.B.	RESPONDENT

Date of Decision: Dec. 20, 1956

Acts Referred:

- Madhya Bharat Sales Tax Act, 1950 - Section 13

Citation: (1957) JLJ 101

Hon'ble Judges: Samvatsar, J; Dixit, J

Bench: Division Bench

Advocate: Waghmare, for the Appellant; K.A. Chitale, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dixit, J.

In this reference under S. 13 of the Madhya Bharat Sales Tax Act, 1950, by the Commissioner of Sales Tax, the question that arises for determination is of the liability of the assessee to pay sales tax on the value of Hessian cloth and iron hoops used in the baling process. Messrs. Jaikishan Gopikishan are owners of a Cotton Ginning and Pressing Factory at Sanawad, They press cotton supplied by their clients and deliver it to them in bales covered with gunny cloth and secured by iron hoops They charged an inclusive rate for both the gunny coverings, the iron hoops and also for the pressing; For the year 1950-51, the sales tax authorities assessed the firm to sales tax on the value of hessian cloth and iron hoops. The assessee claimed that the contract between him and his client was a contract Of labour and work; that when he delivered the bales of pressed cotton wrapped in hessian cloth and fastened by iron hoops, there was no sale of the cloth and hoops within the meaning of Sales Tax Act. This contention was rejected by the assessing authority. It, however, found favour with the appellate Judge in an appeal preferred by the assessee. The assessing authority then went up in revision before the Commissioner

Sales Tax. The learned Commissioner agreeing with the view of the assessing authority held that "the business of the factory being of rendering service of ginning and pressing of cotton bales only, any supply of Loha-Patti and Bardana, the price of which has been included by the assessee in the pressing charges charged from his customers, is a sale as defined under S. 2(o) of the Sales Tax Act''. The Commissioner has now made this reference at the instance of the assessee. He has submitted as many as six questions for decision. But all of them overlap and the only question that emerges for consideration is whether the owner of a ginning and pressing factory is liable to pay sales tax on the value of gunny cloth and iron hoops used in the baling process, when he charges his constituent a consolidated rate for pressing as well as for the iron hoops and the hessian coverings.

2. The question has to be answered with reference to the definitions of "dealer" "goods" and "sale" given in the Act. Under S. 3(1) every dealer is liable to pay tax on his taxable turnover subject to the provisions of the Act. Section 2(f) defines "dealer" as meaning any person or association of persons carrying on the business of selling or supplying of goods whether for commission, remuneration or other wise. We are not concerned with that part of the definition which includes in it a Hindu undivided family, society and club etc. "Goods'"' have been defined by S. 2(g) as meaning of all kinds of movable property other than actionable claims, stocks, shares and securities, and includes electrical energy and all materials, articles and commodities, whether or not to be used in construction, fitting out, improvement or repair of movable or immovable property. Section 2(o) defines "sale" thus:--"Sale, with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods made in course of execution of a contract but does not include a mortgage, hypothecation, charge or pledge." The material part of S. 2(q) which defines "turnover" is:-

Turnover means the aggregate amount for which goods are either sold or supplied for the payment received in respect of a contract by a dealer.

Taxable Turnover" for a specified period has been defined by S. 2(p) as meaning that part of a dealer''s turnover for such period which remains after making the deductions enumerated in clause (p). The combined effect of all these definitions is that every person who carries on the business of transferring property in any kind of movable property including articles and commodities used in fitting out, improvement or repairs of movable or immovable property to another for cash or deferred payment or other valuable consideration, is liable to pay sales-tax on the turnover. Now, here, it is not disputed and in view of the wide scope of the word ''goods'' it cannot be disputed that hessian cloth and iron hoops are goods as defined by Section 2(g), There is also no dispute that the assessee acquired property in these goods when he purchased them for using in the baling process and that the property in the hessian cloth and the hoops was transferred to the customers when

bales covered with hesseian cloth and secured by iron hoops were delivered to them on payment of the consolidated charge. If then, as the Commissioner of Sales Tax has found that the price charged by the firm covers both the labour involved in the pressing and baling and the value of the hessian cloth and iron hoops, the transfer of property in the cloth and the hoops is clearly for consideration, that being so, the assessee is liable to pay tax on the value of the hessian cloth and the hoops supplied by him to his customers.

3. The matter is plain enough. But Mr. Waghmare, learned counsel for the assesses, relying on Poppatlal Shah Vs. The State of Madras, , Sales Tax Officer, The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash, and Cannan Dunkerely and Co. Ltd. Vs. State of Madras (AIR 1954 Mad 1136) urged that the assessee-firm was not doing the business of selling or supplying any hessian cloth and iron hoops; that there was no contract between the firm and its constituents as to the price of the gunny cloth and the iron hoops; that the contract between the parties was one of work and labour; and that there was no sale of the cloth and the hoops which were an integral part of the baling process. I am unable to accede to this contention. The decisions of the Supreme Court cited by the learned counsel do not at all support the contention that in a case such as this, when an inclusive price is charged both for the labour involved in pressing and baling of cotton and for the hessian cloth and the hoops, there is no sale of the cloth and the hoops unless the price of the cloth and the hoops is specifically agreed to between the parties, Those cases also do not support the contention that a person cannot be said to be carrying on the business of selling or supplying any particular goods unless the business is confined to the sale of those goods or is unconnected with any work and labour contract. In Poppatlal Shah Vs. The State of Madras,) while dealing with the meaning of the word "sale" as used in the Madras General Sales Tax Act, their Lordships of the Supreme Court pointed out that in the definition of the word "sale" in Section 2(h) of the Madras Act stress was laid on the lament of transfer of property in a sale and no other. In The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash,), the Supreme Court considered the validity of certain provisions of U. P. Sales Tax Act, 1948, in so far as it imposed a tax on forward contracts in connection with that question it was observed that a liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. These cases do not in any way assist the assessee. The Madras case reported in AIR 1954 Mad 1130 (Gannan Dunkerly vs. State of Madras) was cited to support the contention that the contract between the assessee-firm and its clients pressing cotton supplied by the clients and delivered to them in bales was only a work contract. In that case, Messrs, Gannan Dunkerly and Company, entered into a building contract and purchased some materials which were used in the construction. One of the questions that was considered was whether the materials supplied and made part of the building were sold by the assessee to the employer. The Madras High Court held that there was no

transaction of sale between the assessee and the employer and that the materials supplied became an integral past of the building contracted by them under the contract. The Madras view was, however, not accepted by this Court in the case of Pandit Banarasi Das vs. State of Madhya Pradesh and others (1955) 6 S.T.C. 93, where the learned Chief Justice made the following observations at pages 105-106:-

The Madras decision, with all due respect, seems to suggest that the expression ''sale of goods'' received its full and final meaning by 1935 through legislation and decided cases. The cases cited there do not refer to taxation but deal with other matters. So also the statutes, That building contracts are entire, that property in the building materials passes when they are part of immovable property and that payment is in a lump sum and not separately for the materials, may be matters of consequence in some context. But there is always a sale if goods are transferred to another and paid for by him. It cannot be gainsaid that there is payment for materials, though the payment is not made separately but as part of a larger amount. Building materials are goods is clear from The Deputy Federal Commissioner Vs. Stronach (55 C.L.R. 305) and M.R. Hornibrook (Pvt.) Ltd. Vs. Federal Commissioner of Taxation (62 C.L.R. 272) and certain other rulings in Australia. The Sales Tax (Assessment) Acts, 1930-36, lay the tax on goods manufactured or imported into Australia granting exemptions for some building materials and these cases may not be fully apposite. But there is a clear statement, that building materials can be treated as "goods" and the wide definition of that term in the Constitution Act, 1935, renders the dictum easily applicable here. The Canadian Statutes also tax ''manufacture'' but the cases of tailors (e.g. The King Vs. Pedric & Palen 59 D.L.R. 315) are interesting, though again not quite appropriate.
We are here concerned with a taxing measure and the power to levy the tax can only be determined by a fair consideration of the ambit of the entry by which the power is conferred. If the pith and substance of the Act come within that ambit, the power is there, otherwise not. If a building contract was not split up into its component parts, that is to say, material and labour, in legislative practice relating to the ordinary regulation of sale of goods, there is no warrant for holding that it could not be so split up even for purposes of taxation.

In Banarasidas''s case the supply of building material used in the execution of a building contract was held to be a sale of those materials even though the payment for materials was not made separately but as part of a larger amount. Following the decision in Pandit Banarasidas Vs. The State of Madhya Pradesh (1955) 6 S.T.C. 93, it must be held here also that the supply of hession cloth and iron hoops by the assessee-firm to its clients was tantamount to the sale thereof, although the payment for these materials was not made separately but included in the charges for processing and baling. The decision in Pandit Banarasidas Vs. State of Madhya Pradesh (1955) 6. S.T.C. 93 was followed in Babulal Vs. D.P. Dube other (1955) 6. S.T.C. 255 where the asses who ran a yarn shop and a during factory customers but

that they were utilized for dyeing yarn brought by the customers, for which a price was charged without there being a separate price of the dye-stuffs. This argument was rejected following the decision in the case of Banarasidas and it was observed that if the contract of dyeing yarn involves therein the transfer of property in dye-stuff and the price there of is included in the price paid for the finished work, there is no reason why the law cannot isolate the transaction of sale involved from other matters and tax its The instant case is much stronger. In Babulal''s case, the yarn, the dye-stuff and the chemicals became inseparably integrated. But here, there is no such integration even. When the bales are wrapped, in gunny covering and made secure by iron hoops, it cannot be said that the hessian cloth and the hoops got so inextricably mixed up with cotton or with labour and work involved in the baling process that they lose their identity. The hessian and the iron hoops though necessary and convenient for the preservation and the delivery of the cotton bales, remain extraneous and separate marketable materials. Learned counsel for the assessee referred to Nimar Cotton Press vs. Saks Tax Officer, Khandwa (A.I.R. 1956 Nag 27). In that case also the assessee was the owner of a cotton press. But he recovered from his clients only the pressing charges. It was observed that if the assessee received remuneration merely for the pressing of bales he could not be said to be carrying on any business of selling and supplying goods and was not a dealer. The question whether the hessian and from hoops used for packing the bales can be said to have been sold by the assessee when they are supplied by him, was left undecided with the observation that:-
If they are supplied by the owner of cotton, then there is no transfer of ownership of hessian and iron hoops from the petitioner to its client. But if this material, which is indispensable of turning out a pressed cotton bale, is supplied by the petitioner, a question may well arise whether there is any sale of this material.

While not saying that the assessee did not transfer the property in the hessian and the hoops to his constituents, Mr. Waghmare, learned counsel for the assessee, suggested that the price paid by the assessee for the purchase of those materials was a part of establishment charges. Even if the value of the hessian and the iron hoops is treated as a part of the establishment charges, it would still be included in the consolidated price charged by the assessee for the hessian, the hoops and the pressing. The consolidated rate must have been fixed after taking into account establishment charges. It is difficult to believe that in fixing that rate the assessee excluded establishment Charges altogether or that though the establishment charges in respect of other items were taken into account, the value of the hessian and iron hoops as establishment charges was left out The price charged by the assessee thus being an inclusive price for both the baling and pressing processes and for the hessian and the hoops it must be held that there was a sale of the hessian and the hoops when the property therein was transferred to the customers of the assessee firm.

4. Of the other cases cited to us, a case almost identical on its facts with the present case is B.V. Hanumantha Rao vs. The State of Andhra (1956) 7 S.T.C. 486. That was a case where the assessee carried on the business of baling and pressing palmyra fibre and used in that process gunny cloth and iron hoops. He was assessed to sales tax on the value of Hessian and iron hoops. It was contended by the assessee that the transactions did not involve any sale of goods; that the contracts entered into by him with his constituents were works contracts and that the gunny cloth and iron hoops became an integral part of the product entrusted to him for baling and pressing. The assessee entered into three kinds of transactions: (i) where he charged an inclusive rate for both the gunny coverings and also the pressing process, (ii) where the gunny cloth and the hoops were supplied by the customers and rebate was granted by the assessee, and (iii) where the price of the goods and the cost of labour involved were separately shown. It was held by the learned Judges of the Andhra High Court that the packing materials were goods and that in the course of carrying on business of baling and pressing fibre, the assessee transferred the property in the goods and, therefore, he was rightly assessed to sales-tax. It was further observed that in all the three types of transactions entered into by the assessee a charge for the gunny cloth and the hoops was made, A similar question was considered by the Andhra High Court in A, S. Krishna and Co. Ltd. vs. The State of Andhra (1956 7 S.T.C. 26). In that case the assessee was the owner of a plant for retrying raw tobacco. The tobacco given by the customers was ridded by him and delivered to them packed with certain packing materials. The assessee collected from each customer a consolidated charge for retrying as well as packing. The question arose as to whether the assessee was liable to pay sales tax on the turnover of the packing material. It was held that the packing material was extraneous marketable material used to preserve dried tobacco from contamination or loss; that they were goods; and that when the property in those goods was transferred to the customer for consideration, there was a sale in regard to them and the turnover in respect of the transaction was, therefore, liable to sales tax. The decisions in Varasuki & Co. vs. The Province of Madras (1950) 2 S.T.C.; Mohanlal Jogani Rice and Atta Mills vs. State of Assam (1953) 4 S.T.C. 129; Indian Leaf Tobacco Development Co. Ltd vs. State of Madras (1954), 5 S.T.C. 354, are also to the same effect In all these cases the question of the liability of the assessee to pay sales tax on the value of the packing materia when the contents were exempt from sales-tax, was considered and it was held that the assessee was liable to pay sales-tax when he charged the customer for the packing material in the sale price of the exempted goods. There is thus considerable authority to support the view that the assessee in the present case is liable to pay sales tax for the hessian and the iron hoops used by him in the baling process.

5. For the foregoing reasons, I would answer all the questions referred to for decision by saying that the owner of a ginning and pressing factory carrying on the business of baling and pressing cotton supplied by the customers and of delivering

the pressed cotton in the form of bales covered with hessian cloth and secured by iron hoops, and making a consolidated charge for pressing as well as packing, was a dealer within the meaning of the Madhya Bharat Sales Tax Act; that the hessian cloth and iron hoops used in the baling process were goods and that there was a sale in regard to them when the assessee transferred the property in those goods; and that the assessee was, therefore, liable to sales-tax on the value of the hessian cloth and iron hoops used by him in the baling process. There will be no order as to costs.

Samvastar J.

6. I agree.