Port Engineering Works Ltd. Vs The Commercial Tax Officer, China Bazar Charge and Others

Court: Calcutta High Court

Date of Decision: Sept. 18, 1961

Acts Referred: Bengal Finance (Sales Tax) Act, 1941 â€" Section 5(2)(a), 5(2)(b)

Citation: 66 CWN 69

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Subimal Ch. Roy, Sankar Ghose and Surathi Mohan Sanyal, for the Appellant; J. Majumdar and Prodyot Kumar Banerjee, for the Respondent

Judgement

Banerjee, J.
The petitioner Company carries on business, amongst other businesses, as repairers of inland steamers, boats and flats. The

Company is a dealer registered under the Bengal Finances (Sales Tax) Act, 1941 (hereinafter referred to as the Act). For the year ending

December 31, 1955, the Company filed a return, in form IIIA, of Sales Tax payable for the year. In the said return the petitioner showed its gross

turnover at Rs. 24,17,551 and after making deductions therefrom, as u/s 5(2) (a) and u/s 5(2) (b) of the Act, showed the amount on which tax

was payable at Rs. 1,62,961. On the amount, calculated as aforesaid, the company paid a sum of Rs. 7638/13/-, as the tax payable by it.

2. The gross turn-over shown by the petitioner, in the return, did not include a total sum of Rs. 12,69,368-10-0 realised or billed for, during the

year of assessment, as consideration for several agreements for repair of inland steamers, boats and flats and a sum of Rs. 59,501/11/8 realised on

account of sales tax thereon. The stand taken by the petitioner company was that the total lump sum consideration for the several works contract

was not sale price and, therefore, that sum was not required to be included in the aggregate which made up the gross turnover. The further stand

taken up by the petitioner company was that the sum of Rs. 59,501/3/6 realised on account of sales tax, was liable to be refunded by the petitioner

company to the several parties, from whom the same had been realised because sales tax was not chargeable on the consideration for agreements

for repair of inland steamers, boats and flats.

3. Not being sure of the legal position, the petitioner company, at one stage of the assessment proceeding, had climbed down from the stand taken

by it and offered to pay sales tax only on the value of materials supplied by it in the several agreements for repairs of inland steamers, boats and

flats. The offer was not accepted by the respondent Commercial Tax Officer. In this Rule I am not concerned with the offer, because no body

wanted to proceed further on that offer.

4. The respondent Commercial Tax Officer came to the following findings :

(a) As per books of accounts and records, dealer"s gross turnover is found to be Rs. 36,51, 391-14-6. The same is arrived at thus:

Workshop sales Rs.23,54,024- 3-0

Slipway sales Rs.12,69,368-10-0

Sale of Scrap Rs.32,396-14-0

Canteen Sales Rs.9,399- 8-0

Sales Tax on Workshop sales Rs.5,622- 3-6

Sales Tax on Slipway Sales Rs.59,501-11-6 Rs. 37,30,313- 2-0

Less Credit Note Rs.76,133- 9-6

Less bills for charges not involving sales of any materials Rs.2,787-10-0 Rs. 78,921- 3-6

Rs. 36,51,391-14-6

(b) The slipway sales are bills for repairing charges of inland steamers, boats and flats, involving sales of materials. This is submitted in letter No.

STD/PEW/ R/39/l/40/l dated 14-12-59 that as the valuable consideration for the work done was on a lump sum basis, the sales are not taxable

under the Bengal Finance (Sales Tax) Act, 1941. In support of this contention the dealer cites the decision of the Supreme Court in Gannon

Dunkerley"s case. The cases of Pandit Banerashidas Bhakat & Others v. The State of Madhya Pradesh and others in the Supreme Court are also

referred to. The dealer further cites the decision of the Madras High Court in the case of M/s. S. M. Private Ltd. v. The State of Madras.

I do not agree to the contention of the dealer that the repair bills in question are not taxable. In these transactions, there are elements of materials,

labour and profit. And in fact, in any commodity, these elements are present. In my opinion, the repair bills, involving sales of materials, are "sales"

as per definition of "sales" and "sales-price" in the B.F. (S.T.) Act, 1941. Therefore these repair bills are subject to taxation under the Bengal

Finance (Sales Tax) Act, 1941. The cases referred to by the dealer are not applicable in the present case.

(c) Under the circumstances, and in view of time-bar provision in section 11 (2a) of the Bengal Finance (Sales Tax) Act, 1941, the assessment is

being completed to-day considering the transactions to be ''sales''. So the sum of Rs. 12,69,368-10-0 is included in the gross turnover for purpose

of assessment under the Act.

5. With the other findings arrived at by the Commercial Tax Officer I am not concerned, because the petitioner does not dispute those findings.

6. On the findings arrived at by him, the Commercial Tax Officer assessed Rs. 63,125/4/9 as tax payable by the petitioner company and after

deducting therefrom a sum of Rs. 7638/13/- already paid, issued notice of demand for Rs. 55,486/7/9. The propriety of the assessment is being

questioned before me, at the instance of the petitioner company.

7. Mr. Subimal Roy, learned counsel for the petitioner company, contended for two points in support of the Rule. He contended in the first place,

that the definition of ""Contract"" in section 2(b) of the Act, as it stood at the material time, did not include contract for repair for inland steamers,

boats and flats, for lump sum consideration, and as such, transfer of goods involved in the execution of such contracts would not come within the

definition of ''sale'', as in section 2(g) of the Act, and the amount payable to a dealer for carrying out such works contracts would not also be sale

price, as defined in section 2(h) of the Act. Since ""turnover"" means the aggregate of sale prices, the amount received or receivable by the petitioner

company under agreements for repair of inland steamers, boats and flats must not be included in the gross turnover. He contended, in the next

place, that rule 2 of the Bengal Sales Tax Rules, dealing with computation of sale price u/s 2(h) (ii) of the Act, was an arbitrary rule and

computation should not be allowed to be made under the said rule, even assuming for the sake of argument that amounts received or receivable by

a dealer in respect of agreements for repair for inland steamers, boats and flats, on a lump sum basis, at all amounted to sale price.

8. In my opinion both the arguments advanced by Mr. Roy are of considerable substance.

9. Section 2(b) of the Act, defining contract, has undergone several amendments. At the time, material for the purposes of this Rule, the section

stood as follows:

Section 2(b)

Contract"" means any agreement for carrying out for cash or deferred payment or other valuable consideration-

(i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, or

(ii) the installation or repair of any machinery affixed to a building or other immovable property, or

(iii) the overhaul or repair of any motor vehicle or any seagoing vessel.

10. The expression ''vessel'' is defined in the Bengal General Clauses Act, 1899, to include ""any ship or boat or any other description of vessel

used in navigation."" The expression "ship" is denned in the same Act to ""include every description of vessel used in navigation not exclusively

propelled by oars.

11. A ""steam ship"" or a ""steamer"" means a ship in which the principal motive power during the voyage is steam. (See Strouds" Judicial Dictionary,

Vol. IV, page 2861).

12. The Inland Steam Vessels Act, 1917, defines "inland steam-vessel" as:

Section 2(1) : ""inland steam vessel means a steam vessel which ordinarily plies on any inland water.

And ""inland water"" under the same Act means,

Section 2 (2): ""inland water means any canal, river, lake or other navigable water.

13. The word "boat" in its generic meaning includes a ship but when used in contract to a ship or vessel, the word means a small open craft, usually

moved by oars. The word "flat" or "flat boat" means a large flat-bottomed boat for floating goods down-stream.

14. It will thus appear that inland steamers, boats and flats are distinguishable from sea-going vessels, which are those vessels or ships which go to

sea and are ordinarily larger and bigger than inland navigation crafts.

15. When, therefore, the definition of contract, in section 2(b) of the Act, limits itself to agreements for overhaul or repair of sea-going vessels, it

excludes, by necessary implication, agreements for overhaul or repair of inland vessels or steamers and of boats and flats, on lump sum basis.

16. There is no dispute, in the instant case, the ""slipway sales"" only included repairing charges of inland steamers, boats and flats, on lump sum

basis. The Commercial Tax Officer himself finds that. That being so, I have to uphold the contention of Mr. Roy that agreements for such repairs

were not contracts within the meaning of section 2(b) of the Act.

17. As those agreements were not contracts, within the meaning of section 2(b) of the Act, the transfer of property in goods involved in the

execution of those agreements would not amount to "sale" within the meaning of section 2(g) of the Act, which at the material time stood as

follows:

Section 2(g) "" "Sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of

property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.

18. Agreements for repair of inland steamers, boats and flats not being contracts, within the meaning of the Act and transfer of property in goods

involved in the execution of such agreements not being sale, the amount payable to the petitioner company as valuable consideration for the

carrying out of such agreements will not be "sale price", within the definition of section 2(h) of the Act, as it stood at the material time, namely,

19. Section 2(h) ""'Sale price" means the amount payable to a dealer as valuable consideration for-

(i) * * * *

(ii) the carrying out of any contract, less such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour

to the cost of materials used in carrying out such contract.

Since, u/s 2(i) of the Act, turnover used in relation to any period means.

the aggregate of the sale prices or parts of sale prices receivable or if a dealer so elects, actually received by the dealer during such period after

deducting the amounts, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period.

* * * * *

the amounts received or receivable by the petitioner company as valuable consideration for agreements for repair of inland steamers, boats and

flats ("ship-way sales" in the language of the petitioner company) need not be included in the gross turnover for the period of assessment.

20. Mr. Prodyot Kumar Banerjee, learned Advocate for the respondents Nos. 1 to 3, wanted to argue that ""ship-way sales"" came within the first

part of the definition of "sale", being transfer of property in goods, used or involved in execution of repairs, for cash or deferred payment or other

valuable consideration. This argument is misconceived. The theory that a works contract can be broken up in its component parts and as regards

one of its parts there is a sale of goods must fail on the ground that there is no agreement to sell materials as such. This was what was pointed out

by Venkatarama Aiyar, J. in the case of (1) The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., and I am bound by the

observations contained in the judgment.

21. In the result, I have to uphold the first branch of the argument of Mr. Roy and to hold that the Commercial Tax Officer was wrong in including

the following sums of money within the gross turnover:

(1)Slipway sales Rs. 12,69,368-

10-0

(2)Sales Tax realised under mistake of law, on slipway sales, which the petitioner company Rs. 59,501-11-6

proposes to refund

Rs. 13,28,870-

5-6

22. The second branch of the argument advanced by Mr. Roy may be shortly disposed of. Rule 2 of the Bengal Sales Tax Rules have been struck

down by this Court as arbitrary, in the case of (2) Dukhineswar Sarkar and Brothers Ltd. Vs. Commercial Tax Officer and Others, and no

taxation can be made under the said Rule. But I need not concern myself with that, because in my opinion the slipway sales were not taxable at all,

under the law as it stood at the material time.

23. In the result I make the Rule absolute and quash so much assessment as was made after including the sum of Rs. 13,28,870-5-6

aforementioned in the gross turnover. The assessment on other items of sale is, however, affirmed. The case will now go back to the Commercial

Tax Officer for making a correct assessment, in the light of the observations contained in this judgment.

24. Let a Writ of certiorari issue accordingly.

25. I make it clear, however, that I express no opinion as to whether slipway sales will be taxable, under the amended definition of ""contract"", as it

now stands. There will be no order as to costs in this Rule.