Saraswati Printing Press Vs Commissioner of Sales Tax, Eastern Division, Nagpur

Court: Bombay High Court

Date of Decision: July 30, 1958

Citation: (1959) 61 BOMLR 607 : (1959) 10 STC 286

Hon'ble Judges: Y.S. Tambe, J; Vyas, J

Bench: Division Bench

Advocate: H.G. Vaishnav and K.B. Deshpande, for the Appellant; R.J. Joshi, instructed by Little and Co., for the Respondent

Judgement

Vyas, J.
This is an application under Article 226 of the Constitution of India by the petitioner press, Messrs Saraswati Printing Press,

wherein the petitioner has prayed for the setting aside of the order dated 7th September, 1956, of the Hyderabad Sales Tax Tribunal, by which

order the Tribunal confirmed the order dated 22nd July, 1955, passed by the Deputy Commissioner, Sales Tax, Hyderabad.

2. The circumstances which have given rise to this application may be briefly stated. The Marathawada Prakashan Limited, a public limited

company, which was registered under the Hyderabad Companies Act, was running a printing press known by the name of the Saraswati Printing

Press. This press is situated in Aurangabad. The above-mentioned public limited company sold this press to Messrs Parmanand Bapuji Muley on

1st March, 1954. The petitioner press contends that it accepts contracts for printing works and for the supply of printed goods. On 10th March,

1955, the Sales Tax Authority under the Hyderabad General Sales Tax Act took accounts of the petitioner press for the years 1950-51, 1951-52,

1952-53 and 1953-54. The Authority found that for the years 1950-51 and 1952-53, the turnover of the press was not of such an amount as to

make it chargeable to sales tax. However, the Authority found that the turnover of the press for the years 1951-52 and 1953-54 was chargeable

to sales tax. Accordingly, the Authority made an assessment order on 31 March, 1955, charging the petitioner press to sales tax for this turnover

for the years 1951-52 and 1953-54. The assessment order was communicated on the same day (31st March, 1955) to the petitioner press. The

petitioner press appealed from that order to the Deputy Commissioner, Sales Tax. The Deputy Commissioner modified the order of the Authority.

The Deputy Commissioner treated the printing work done by the petitioner press as works contract under the Act and allowed a reduction of 30

per cent on the total turnover on the ground that the said 30 per cent represented the cost of labour involved in the printing work. Due to this

reduction of 30 per cent, the turnover for the year 1953-54 went down so low that it did not become chargeable. After the reduction of 30 per

cent, the turnover for the year 1951-52 only remained chargeable to sales tax. From this order made in appeal by the Deputy Commissioner, Sales

Tax, the petitioner press made a second appeal to the Sales Tax Tribunal of the Hyderabad State. The sales Tax Tribunal rejected the petitioner''s

appeal on 1st September, 1956. It is these orders of the Sales Tax Tribunal and the Deputy Commissioner, Sales Tax, made by them on 9th

September, 1956, and 22nd July, 1955, respectively, that are sought to be quashed by the petitioner in this application.

3. Now, the learned Advocate Mr. Deshpande appearing for the petitioner press has raised the following contentions before us :

(1) Section 2, clause (m), Explanation 1, clause (i), of the Hyderabad General Sales Tax Act, 1950, and rule 5, sub-rule (3), of the Hyderabad

General Sales Tax Rules framed under the Act were ultra vires the legislative competence of the Legislature of the former State of Hyderabad.

(2) The provisions of rule 5, sub-rule (3), of the Hyderabad General Sales Tax Rules are ultra vires the Constitution, in that they are arbitrary and

not based upon any rational basis.

(3) Even if the Court holds that section 2, clause (m), Explanation 1, clause (i), of the Hyderabad General Sales Tax Act, 1950, and rule 5, sub-

rule (3), of the Hyderabad General Sales Tax Rules, 1950, were intra vires the legislative competence of the Hyderabad State Legislature and the

Constitution respectively, even so the petitioner''s case would be covered by clause (iv) of Explanation 1 to section 2, clause (m) of the Act, and

(4) The supply of the printed material to the customers by the petitioner press would not amount to a sale of goods and, therefore, the turnover

which would result from the said supply would not be chargeable to sales tax.

4. Now, so far as the first point out of the points raised by Mr. Deshpande is concerned, Mr. Deshpande''s contention is that the provisions of

section 2, clause (m), Explanation 1, clause (i), of the Hyderabad General Sales Tax Act and rule 5, sub-rule (3), of the Hyderabad General Sales

Tax Rules were ultra vires the legislative competence of the State Legislature, in so far as they were hit by item No. 54 of List II mentioned in the

Seventh Schedule to the Constitution. Section 2, clause (m) of the Act provides that ""turnover"" means the aggregate amount for which goods are

either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration. Explanation 1, clause (i) at the foot

of section 2, clause (m), provides :

Subject to such conditions and restrictions, if any, as may be prescribed in this behalf, the amount for which goods are sold shall, in relation to a

works contract, be deemed to be the amount payable to the dealer for carrying out such 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.

5. Rule 5, sub-rule (3), of the Hyderabad General Sales Tax Rules, 1950, provides :

For the purpose of sub-rule (1) the amount for which goods are sold by a dealer shall in relation to works contract, be deemed to be the amount

payable to the dealer for carrying out such contract less a sum not exceeding such percentage of the amount payable as may be fixed by the

Commissioner from time to time for different areas representing the usual proportion in such areas, of the cost of labour to the cost of materials

used in carrying out such contract, subject to the following maximum percentages :

(a) in the case of an electrical contract ... 20 per cent;

(b) in the case of a structural contract ... 30 per cent;

(c) in the case of a sanitary contract ... 33-1/3 per cent;

(d) in the case of other contract ... 30 per cent;

6. Since there is a reference to sub-rule (1) in sub-rule (3), it would be convenient to set out the provisions of sub-rule (1) of rule 5 as well in this

context. Sub-rule (1) provides :

Save as provided in sub-rule (2), the turnover of a dealer for the purpose of these rules shall be the amount for which goods are sold by the

dealer.

7. Now, as I have stated above, the contention of Mr. Deshpande for the petitioner press is that the aforesaid provisions of section 2, clause (m),

Explanation 1, clause (i) of the Act and the provisions of rule 5, sub-rule (3) of the Rules are in violation of the Constitution of India, in that they are

hit by item No. 54, List II, mentioned in schedule VII to the Constitution. Now, if we turn to item No. 54, it relates to ""taxes on the sale or

purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I."" Mr. Deshpande''s contention is that the transactions

of the petitioner press with its constituents are not sales so as to fall within the ambit of item No. 54 mentioned in List II of the Seventh Schedule to

the Constitution. It is Mr. Deshpande''s contention that the dealings done by the petitioner press are contracts for services, in other words works

contracts and, says Mr. Deshpande, the charges levied by the petitioner press from its constituents are in respect of the services rendered by the

press to the constituents. In these circumstances, Mr. Deshpande says that the transactions of the petitioner press would not amount to sales within

the meaning of entry No. 54. We have considered this contention of Mr. Deshpande, but we are unable to see force in it. There is no doubt that

the essential character of the work done by the petitioner press is the supply of stationery. It is not doubt true that upon the stationery supplied by

the press to its constituents, a certain amount of printing work is done by the press. But that is not the essential character of the business done by

the press. It cannot be disputed that the petitioner press brings into existence printed stationery according to the orders of the individual customers,

and when the press brings into existence such stationery, it produces a commercial commodity which is capable of being sold or supplied.

Therefore, when the press sell printed material to its constituents, it sells goods to the constituents upon which sales tax is leviable. The learned

advocate Mr. Deshpande also fairly concedes that when the printed material is sold by the press to its customers, there is a sale of finished goods

to the customers. What Mr. Deshpande contends for, however, is that the essence of the work done by the press is not production of finished

goods, but the printing work. It is in this manner that Mr. Deshpande contends that the transactions done by the petitioner press with its

constituents are in the nature of works contracts. Now, the nature of a contract must be determined by the substance of the contract. As the

learned Judges of the Allahabad High Court pointed out in Kanpur Journals Ltd. v. Commissioner of Sales Tax, U.P. [1956] 7 S.T.C. 661 :

We think it now to be established that in order to determine the nature of a contract the Court has to look at its substance. If the substance of the

contract is the production of something to be sold to the customer - such as a suit of clothes - then that is a sale of goods. If, on the other hand, the

substance of the contract is that skill and labour have to be exercised for the production of the article, and that it is only ancillary to that that there

will pass to the customer some materials is addition to the skill involved - as in the case of an oil painting - the contract will be one of work.

8. In our opinion, there can be no doubt that the substance of the transactions which the petitioner press enters into with its constituents is the

production of something to be sold to the constituents. It is no doubt true that a certain amount of printing work which requires skill and labour is

done on the stationery. But unless there is the base of the stationery itself, there would be nothing upon which the skill of the petitioner press could

be used. It would have been a different matter if the stationery were to be supplied by the constituents to the press. But that is not the case here. It

is a conceded position that the petitioner press itself purchases stationery, and having purchased the stationery, it does printing work upon it. In

these circumstances, the essential character of the business done by the petitioner press is the supply of the stationery itself to the constituents with

the printing work done upon that stationery. It would not matter where the press would purchase the stationery from. So far as the relations of the

press with its constituents are concerned, the constituents purchase the stationery itself together with the printing material upon it from the press.

Therefore, we have no doubt that this is a case in which a commercial commodity, which is a finished product, viz., the printed stationery etc. is

sold by the press to its constituents.

9. Mr. Deshpande has invited our attention to a decision of the Hyderabad High Court in Jubilee Engineering Co. Ltd. Vs. Sales Tax Officer and

Others, . In this case, and be it noted that it was a case of a building contract, it was observed by the Court, agreeing with the view of the Madras

High Court, that the power of the Provincial Legislature to levy a tax on sale of goods was confined and restricted only to the transaction of sale as

understood by the Parliament of the United Kingdom in the law relating to the sale of goods, and any attempt of the Legislature to tax under the

guise or under the pretence of such a power transactions which were wholly outside would be ultra vires and must be declared invalid. Now, it is

to be remembered that a building contract is one entire indivisible contract and in such a contract there is no sale of goods. One fundamental

difference between a building contract and the work done by the petitioner press is that in a building contract, the various materials which are used

in the process of constructing a building lose their original character, viz., the character of movable property and get converted into parts of

immovable property by being fixed to a building. It is this important aspect of a building contract which distinguishes it from the work done by the

petitioner press. As I have mentioned above, the press purchases stationery and brings into existence a finished product, viz., the printed material,

and, therefore, when it supplies that product to its constituents, it sells it to the constituents. We are, therefore, unable to accept the contention of

Mr. Deshpande that the provisions of section 2, clause (m), Explanation 1, clause (i), of the Hyderabad General Sales Tax Act and rule 5, sub-rule

(3), of the Hyderabad General Sales Tax Rules were ultra vires the legislative competence of the Legislature of the former state of Hyderabad.

10. The next point which has been canvassed before us by Mr. Deshpande is that rule 5, sub-rule (3), of the Hyderabad General Sales Tax Rules

is ultra vires the Constitution as it is arbitrary and not based upon any rational basis. Now, if we turn to rule 5, sub-rule (3), it virtually provides that

the sale price of the goods shall be calculated at 70 per cent of the price paid by the customers. Under sub-rule (3), a deduction of 30 per cent is

to made towards the cost of labour in the case of contracts other than electrical contracts or structural contracts or sanitary contracts. The fixation

of the cost of labour at 30 per cent and the fixation of the sale price at 70 per cent of the amount realised from the customers are both arbitrary.

The learned counsel Mr. Joshi appearing for the respondents in this case has not been able to point out to us any rational basis upon which the

above-mentioned percentages were fixed. We are not told that these percentages were fixed upon any enquiry made by the State of Hyderabad or

upon the recording of any evidence. Apart from this infirmity which attaches to sub-rule (3) of rule 5 of the Hyderabad General Sales Tax Rules,

1950, it is also to be borne in mind that sub-rule (3) could only be attracted in the case of a works contract. Sub-rule (3) provides :

For the purpose of sub-rule (1), the amount for which goods are sold by a dealer shall in relation to works contract be deemed .....

11. Now, for the reasons stated in the earlier part of this judgment, we have come to the conclusion that the transactions which are done by the

petitioner press for its constituents are not in the nature of works contracts. They are sales of goods. That being so, a recourse to sub-rule (3) of

rule 5 of the Hyderabad General Sales Tax Rules, 1950, could not validly avail the respondents. Therefore, on both the grounds, viz., the ground

that sub-rule (3) of rule 5 is ultra vires the Constitution in that it is arbitrary and is lacking in any rational basis and also upon the ground that the

provisions of this sub-rule could not be attracted in the present case, which is not a case of works contract, the levy of sales tax upon the petitioner

press could not be justified.

12. The third point which Mr. Deshpande has pressed before us is that even in case the Court holds that section 2, clause (m), Explanation 1,

clause (i), of the Hyderabad General Sales Tax Act and rule 5, sub-rule (3), of the Hyderabad General Sales Tax Rules were intra vires the

legislative competence of the Legislature of the former State of Hyderabad, even so the petitioner''s case would fall within the ambit of clause (iv)

of Explanation 1 to section 2, clause (m) of the Act. We are unable to agree with Mr. Deshpande, Clause (iv) of Explanation 1 provides :

Where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said

customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.

13. Mr. Deshpande says that in the present case, for accommodating its customers, the petitioner press obtains goods from other dealers in the

market and disposes of the said goods in favour of its own constituents and, therefore, the sale in respect of such goods should be included in the

turnover of the constituents and should not be included in the turnover of the press itself. Mr. Deshpande appears to overlook the importance of

the word ""immediately"" which the Legislature has used in clause (iv) of Explanation 1 to section 2, clause (m). Had this been a case in which the

press, after purchasing the stationery from the market, were to hand over the said stationery immediately to the constituents, it would have been a

different thing. Here the press does not immediately dispose of the stationery purchased by it in favour of its constituents. It keeps it in the press. It

prints letter-heads etc., upon the stationery and then supplies the finished product to the constituents. That being so, the provisions of clause (iv) of

Explanation 1 at the foot of clause (m) of section 2 would not be attracted in this case.

14. The last point of Mr. Deshpande is that the supply of the printed material to the constituents by the press would not amount to a sale. We have

already dealt with this point while dealing with point No. 1 of the points pressed before us by Mr. Deshpande. Therefore, it is not necessary to add

any more observations in respect of this point.

15. As, in our view, the transactions done by the petitioner press with its constituents are sales of goods, and are not in the nature of works

contracts, rule 5, sub-rule (3), would not be attracted in the present case, and as this sub-rule itself is arbitrary as held by the Hyderabad High

Court in Jubilee Engineering Co. v. Sales Tax Officer [1956] 7 S.T.C. 423: AIR 1956 Hyd. 79, the turnover of the petitioner press would not be

chargeable to sales tax. Accordingly, the order made by the Sales Tax Tribunal on 7th September, 1956, whereby it confirmed the order of the

Deputy Commissioner, Sales Tax, dated 22nd July, 1955, must be reversed and the application must be allowed. The respondents will bear their

own costs and also pay the costs of the petitioner. The respondents are hereby restrained from recovering the sales tax from the petitioner press

for the year 1951-52, for which a notice of demand was issued upon the petitioner.

16. Application allowed.