Vasani Cloth Stores Vs The State of Maharashtra

Court: Bombay High Court

Date of Decision: Feb. 6, 1968

Citation: (1968) 22 STC 179

Hon'ble Judges: Vimadalal, J; N.L. Abhyankar, J

Bench: Division Bench

Advocate: Y.P. Trivedi and V.H. Patil, for the Appellant; H.D. Banaji, for the Respondent

Judgement

Abhyankar, J.
The question referred for our decision is worded as follows :-

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in coming to the conclusion that while stitching the

customers" cloth according to their orders the applicants sold the materials such as lining cloth, hair canvas etc. used in the stitching jobs ?

2. For clarification we tried to find out from counsel on either side what is the ambit of this omnibus word ""etc."", and it is agreed that it would

include thread, buttons, but not the cloth out of which suits or garments are stitched. It is unfortunate that, in making the reference and drawing up

the reference order, the Tribunal has not given a clear statement of the case as is required to be done. We have, however, gathered the facts from

other materials on record, about which apparently there is no dispute. The facts appear to be as follows : The assessee-firm is a partnership firm

carrying on business under the name and style of Messrs Vasani Cloth Stores. The applicants sell cloth and also run a tailoring department. The

issue raised in the question referred to us arises out of amounts collected in the tailoring department. For the accounting period 1st April, 1954, to

30th September, 1954, the Sales Tax Authorities did not accept the turnover of sales from the cloth department returned by the applicants, and

enhanced the same by including in the turnover the tailoring charges received by the applicants in respect of the garments prepared by them

according to the orders of the customers. Reference has been made to sample bills on the basis of which the authorities and the Tribunal seem to

have come to the conclusion that the charges for tailoring include the charges for articles like silk lining, and though the question refers to other

materials like hair canvas there is no reference to their use, at any rate, in the bills which form part of the record. But it is possible that hair canvas

may have been used though there is no evidence in the proceedings as to the quantity, or price or value of such hair canvas, or, for the matter of

that, of even the lining separately shown. It may be assumed for the purpose of this reference, however, that hair canvas is used, to the extent

necessary, in stitching cloth in the tailoring department. It also seems to be an admitted position that the cloth out of which garments are to be

stitched in the tailoring department is either purchased in the cloth section of the assessee-firm, or is independently supplied by the customer. Thus

there is no question of the sale of cloth coming into the picture in determining whether, for the purpose of calculating the turnover, the tailoring

charges are liable to be included.

3. Referring to the two bills, one for Rs. 20 in which there is a mention of the use of silk lining, and the other for Rs. 22 in which there is a mention

of English silk lining, the Tribunal observed in its revisional order that the amounts of the bills vary when different kinds of lining cloth are used. It

has also observed that the bills clearly show that there was a separate contract implied in the contract of tailoring for the supply of materials of a

particular quality. Then the Tribunal proceeded to observe that it could not be said that, in a contract for work, labour and materials, sales tax can

never be imposed on the value of the materials employed in the execution of the contract, and the question whether the material used in the course

of carrying out a works contract is liable to sales tax depends on the existence of an express or implied agreement between the parties for transfer

of the material qua material and on proof of an intention to sell the material as such. After referring to certain decisions of this Court, the Tribunal

observed in paragraph 11 of its judgment that it was satisfied that there is involved in the present case as a severable part of the transaction a sale

of the lining cloth used in the execution of the contract regarding tailoring job.

4. It is urged on behalf of the applicant-assesses that, in view of the recent decisions of the highest Court of the land, in the case of a pure works

contract, if it is not reasonably possible to divide the contract as consisting of two agreements, one to sell material as such and the other to charge

for work and labour, it is not permissible to divide the contract on ex hypothesis, and, in order to establish such a contract, there must be material

to show the intention on behalf of both the parties to have these two types of contracts. If the use of the material is ancillary to the work and labour

involved in the contract, the mere fact that either the material is chosen of a particular quality, or that the cost of the material used represents a

certain percentage in the total charge, will not be decisive of the question. Our attention is drawn in particular to the observations of this Court in

the case of Arun Electrics ([1965] 16 S.T.C. 385.). It may be mentioned that the main decision in the case was vacated later in the Supreme Court

on the finding that the evidence which consisted merely of the bill did not justify the finding that there were two separate contracts on the facts of

that case : Arun Electrics, Bombay v. Commissioner of Sales Tax, Maharashtra State [1966] 17 S.T.C. 576. But the judgment of this Court is

useful, as it has considered in detail the factors which enter in the decision of the issue similarly involved at page 389. The Division Bench has

observed as follows :

If A contracts to buy a coat made for him by B for a certain price, there is a contract for the sale of a coat between A and B, although the coat

before it is delivered by B to A for the price, is required to be made by B out of the cloth and other material procured by B himself. It may be, on

the other hand, a contract for the work, as for instance, A takes his manuscript to printer B and asks him to print and deliver a certain number of

copies of the manuscript to him for a price with the paper and ink supplied by B; in such a case what is contracted for is the work and labour

though in the execution of the contract material may have to be supplied. It may also consist of two separate and divisible parts, one for the supply

of material and the other for the supply of work and labour, as for instance, when A goes to a shop and gets a coat prepared for him and pays for

the cloth and the other material required for the coat and also for the stitching charges. In this case, so far as the supply of cloth is concerned for

the making of the coat, it is a sale of goods; and so far as the stitching charges paid are concerned, they are paid for work and labour ... The mere

circumstance that a certain property in movables has ultimately passed from one party to the other in the execution of the contract, is not sufficient

to make the contract consist of a sale of goods. The property must pass under the agreement and the agreement must be for the sale of the very

articles in which eventually the property passes. Thus, for instance, in a contract for the stitching of a coat the dealer has also to supply the

trimmings and the buttons etc., and ultimately when the coat is delivered by the dealer, the buttons and the trimmings also have passed on to the

owner of the coat. There is however no sale of goods involved in so far as the trimmings and the buttons are concerned. For although the property

in the said articles has passed to the owner of the coat, it has not passed in pursuance of an agreement for the supply of the trimmings and the

buttons as such.

5. Our attention is also invited to another recent decision of the Gujarat High Court in the case of A. A. Jariwala and Bros. v. The State of Gujarat

[1965] 16 S.T.C. 942. In that case, the customers sent saris to the applicants for getting embroidery work done on the saris with instructions

regarding the designs required on those saris. The applicants gave the jari materials and the saris to the workers doing the job work in their own

houses and gave them piece-rates according to the work done by them. After completion of the embroidery work on the saris, the applicants

returned the saris to the customers along with a consolidated bill for the entire work done by them. The question was whether the contract between

the applicants and their customers was a works contract, or was a composite agreement, one for sale of the jari materials and another for doing

embroidery work. It was held by the Court that the contract was one and indivisible and was not separable into two contracts, one for service and

the other for the sale of the jari materials. The contract essentially was one of work and labour and the supply of jari materials in the execution of

the embroidery work was merely ancillary. In our opinion, the principle of this decision should apply to the facts before us. In the Gujarat case, the

value of the jari material used represented as much as 30 per cent. of the charges paid for by the customer. The fact that valuable material is

required to be used in the execution of the works contract will not be necessarily decisive of the question whether it was intended between the

parties that there should be an agreement to purchase and an agreement to sell the material as such. When either thread, or buttons, or lining

material is used in the execution of an order for the preparation of a suit or a garment, it is difficult to see that there is any bargain for the purchase

of either thread, or buttons, or lining material, as such. It was suggested on behalf of the department that, if, instead of ordinary buttons pearl

buttons are required to be used, or, instead of ordinary lining material some fine lining material is required to be used, at the instance of the

customer, it would necessarily make a difference in the stitching charges that would have to be paid for, and to that extent it would be considered

that the extra price is for the fine or superior material that is selected by the customer. In our opinion, the question that really falls for consideration

is whether the contract or the bargain could be reasonably divided into two compartments and whether it could be said that there was an intention

on the part of both the parties to have two contracts, one for sale of the material as material as such, and the other for charges for the work or

labour done by the party. If no such agreement can be spelt out and if the use of the material is ancillary to the execution of the work or services

rendered, then it cannot be said that it is possible to split up the contract or divide the contract into two separate agreements. When a customer

goes to a tailor and wants his services for stitching a garment like a suit, the stitching charges would undoubtedly take into consideration the

material required to be used in executing the work, but could it be said that the selection of the material to be used in stitching the garment imports

a separate agreement ? Surely, a customer does not go to the tailoring department to purchase those articles or materials. If he wanted to do so, he

would go to the shop concerned. Moreover, the materials are not delivered to the customer, as such. Thread and buttons are used for stitching the

garment. Lining material is cut and also used to the extent necessary for the preparation of the garment. In such a case, there is nothing to show

how much material is used, nor is it possible to split and find out the separate costs of the different materials used in the preparation of the garment.

At any rate, the materials produced before us do not show that the silk lining or any articles used for the execution of the stitching order have been

separately priced or charged in the bill.

6. Reference was made to two other decisions which arose out of tailoring contracts. The first is the decision in the case of Indralaya Ltd. v.

Additional Commissioner, Commercial Taxes, West Bengal and Others [1958] 9 S.T.C. 633. In that case, the Court laid down four propositions

which are to be found at page 637. With respect, it is very difficult to find out what the ratio of the decision is. The nearest case to the present case

is in the first proposition where the customer brings his own goods or materials to be made up into garments. In such a case, it is said that 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, but this is pure work done and labour supplied. The second proposition consists of a case 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 the case in the first proposition.

But, in either case, we are unable to interpret the decision of the Calcutta High Court to mean that it amounts to a sale of thread and buttons.

Though thread and buttons are used in the execution of the contract, it is really for the work done and labour supplied, for which an all inclusive

price is charged, and, therefore, it is not possible to hold that the ratio of this decision is that, in such a case, it could be said that there is a separate

sale of thread and buttons. The other decision referred to is of the Madras High Court in Bangalore Emporium v. The State of Madras [1963] 14

S.T.C. 870. In that case, the assessee, a dealer in cloth, had also a tailoring department. The customers visiting the piece-goods department

selected the cloth, settled the price, paid an advance and placed orders for stitching and delivering the goods. The assessee sent the selected cloth

to the tailoring department for making the garments. The assessee prepared two separate bills, one for the sale of cloth, and the other for stitching

charges. The customers paid the balance due on the two bills at the time of taking delivery of the goods. On the question whether the turnover of

the assessee related to the sale of garments and was therefore liable to sales tax, it was held that there were two separate transactions, one for the

sale of cloth by the assessee to his customers, and the other for the contract for work and labour, and as both were exempted from sales tax, the

assessee was not liable to pay any tax on the turnover. Actually, it does not appear that the question we are called upon to decide in the present

case arose for decision before the Madras High Court. The decision turned on whether or not, merely because the assessee had two departments,

one for the sale of cloth and the other for tailoring, it could be said that the assessee was engaged in the business of selling cloth. As there were two

separate agreements, separately billed and charged, it was held that both the activities of the sale of cloth and the contracts for work and labour

being exempted from sales tax, the assessee was not liable to pay any tax on the turnover. The learned counsel for the respondents invited our

attention to the observations made in Benjamin on Sale, 8th Edition, page 168, where the learned author has observed that where, however, the

passing of property is merely ancillary to the contract for the performance of work, such a contract does not thereby become a contract of sale.

We have already pointed out that one of the tests which may be useful in deciding such a case would be whether the supply of material or the use

of material which would undoubtedly be involved in execution of the contract, is ancillary to the execution of the works contract, or forms part of a

separate agreement of sale. On a consideration of all the circumstances of the present case, we have found it difficult to accept the view of the

Tribunal that, either from the bill or from any other material on record, it can be said reasonably that two separate contracts can be spelt out, one

for the supply and sale of lining material or hair canvas or, for the matter of that, for the supply and sale of thread and buttons, and the other for

service charges. The two are indivisible. Supply is inevitable, for, without either thread or buttons or lining material, it may not be possible to

execute the work. That these articles are required to be used need not be determinative of the question whether there is no separate agreement for

purchase. Ordinarily, such contracts, where materials to be used are ancillary to the execution of the contracts, do not import agreements to sell

materials, as such. If that is so, it cannot be said that the tailoring bill involves the sale of materials as well as the charges for stitching.

7. We have, therefore, come to the conclusion that the question which is referred to us must be answered in the negative. Accordingly, we hold

that the Tribunal was not justified in law in coming to the conclusion that, while stitching the customers'' cloth according to their orders, the

applicants sold the materials such as lining cloth, hair canvas, buttons or thread or any other ancillary material, to the customers.

8. The respondents will pay the costs of the assessee fixed at Rs. 250, the amount of Rs. 100 deposited by the applicants to be refunded to them.

9. Reference answered in the negative.