

Arun Electrics, Bombay

v.

Commissioner of Sales Tax, Maharashtra State

(Supreme Court Of India)

HON'BLE JUSTICE K. SUBBA RAO HON'BLE JUSTICE J. C. SHAH
HON'BLE JUSTICE S. M. SIKRI

Civil Appeal No. 104 Of 1965 | 16-12-1965

SHAH, J.

1. The appellants carry on business as contractors for electric installations and are registered as dealers under the Bombay Sales Tax Act (51 of 1959). On July 13, 1960, the appellants submitted an application to the Deputy Commissioner of Sales Tax, Bombay City Division, stating that they were carrying on business in "electrical goods and were also licensed electrical contractors", that they undertook contracts for electric fittings and the rates for the same according to the general practice in the business were consolidated rates for the materials consumed and labour charges involved in carrying out the contracts, that a question had arisen whether the value of the materials consumed in carrying out the contracts for electric fittings is taxable under the Bombay Sales Tax Act (51 of 1959) and that they desired to obtain elucidation on the question whether they were liable to pay tax on the materials consumed in carrying out contracts for electric fittings. With the application they filed a copy of an invoice :

"Bill No. 12

1. Supplying and fixing the materials of light points complete with 1/8 CTS wire, brass clips, tapes and all approved accessories ... 2 Pts. Rs. 32.00

2. Supplying and fixing 9" brass ... 1 Pc. Rs. 1.75 Swan type wall brackets with holders

3. Supplying, wiring and fixing 40 K.W. 4 ft. tubes complete with Resmi choke, imported starters and Elora holders, etc ... 5 Pc. Rs. 132.50

Rs. 166.25"

2. The Deputy Commissioner rejected the contention of the appellants that the transaction evidenced by the invoice was an "indivisible works contract" and was not a contract for sale of goods. In the view of the Deputy Commissioner the contract evidenced by the invoice "clearly indicates that there were separate contracts, one for the sale of the materials in question, and another for carrying out job-work", and that part of the composite contract which consisted of supply of goods constituted a sale within the definition of that expression under the Act. He therefore determined that under clause (c) of sub-section (1) of section 52 of the Bombay Sales Tax Act, 1959, the transaction as evidenced by "bill No. 12, dated May 3, 1960" was a sale within the meaning of section 2(28) of the Act. In appeal, the Sales Tax Tribunal held that the invoice in question evidenced a single contract, that the parties did not intend that the goods should be sold as in the case of sale of chattels, and that the property in the goods passed only after the material had been affixed to the building of the customer. The Tribunal then drew up a statement of the case under section 61(1) of the Act and submitted the following question of law for the opinion of the High Court of Bombay :

"Whether the transaction represented by the bill produced by the opponents amounts to a sale and whether the same is taxable under the provisions of the Sale Tax Act, 1959 ?"

3. The High Court was of the view that "the transaction of the respondent with its customer of the nature evidenced by" the invoice is not a "pure works contract", but a combination of two distinct and separate contracts : one for the supply or the sale of goods for consideration and the other for supply of work and labour, and the part of contract which consists of supply of goods for consideration is a sale as held by the Deputy Commissioner of Sales Tax. With special leave, the appellants have appealed to this Court.

Section 52(1) of the Sales Tax Act at the material time provided :-

"If any question arises, otherwise than in proceedings before a court, or proceedings under section 33 or 35, whether for the purposes of this Act

(c) any transaction is a sale or purchase, or

(e) any tax is payable in respect of any particular sale or purchase, or if tax is payable the rate thereof,

the Commissioner shall make an order determining such question."

4. Any question whether of fact or of law, or of mixed law and fact may, it appears, be submitted for determination by the Commissioner and the statute requires the Commissioner to determine that question. Relying upon section 52 the appellants submitted for determination by the Commissioner the question whether the transaction evidenced by the invoice was a sale within the meaning of the Act. In the petition for the opinion of the Commissioner, the terms of the contract in execution of which the work was done and the invoice was supplied, were not set out and it is common ground before us that no evidence was tendered by the appellants in proof of the case that the contract evidenced by the invoice was a composite contract. There is accordingly on the record no evidence about the terms of the contract between the appellants and the customer to whom the invoice was delivered. The invoice merely sets out the amount chargeable to the customer for "supplying and affixing" certain electric fittings and equipment, and it throws no light on the nature of the contract. In a contract for supply of electric equipment and a separate contract for labour, an invoice in the form tendered by the appellants may appropriately be issued. An invoice may also, with equal propriety, be issued in the same form where under the terms of the contract the appellants have undertaken to instal electrical fixtures in the building of the customer.

5. The terms of section 52 are undoubtedly wide, and the section also imposes upon the Commissioner an obligation to make an order determining the

question submitted before him. But in answering the question, especially if it be one of fact or of mixed law and fact, the Commissioner must take evidence, and on that evidence alone he may determine the question submitted for determination. The nature of the jurisdiction conferred upon the Commissioner and the manner in which it may be exercised was apparently not appreciated by the Deputy Commissioner and without recording evidence about the terms of the contract, the Deputy Commissioner who tried the application under section 52 of the Act, determined the question submitted to him and held that the invoice evidenced two separate contracts, one for sale of goods and another for work to be done in respect of those goods. The Tribunal took a contrary view.

6. The conclusions recorded by the Deputy Commissioner and the Tribunal must be held to be based on no evidence. In our judgment, no answer should have been recorded by the High Court on the question framed, for the question whether in respect of a transaction sales tax is exigible may be determined only on the terms of the contract, and not from the invoice issued by the person entitled to receive money under the terms of the contract. The invoice did not represent any transaction, nor did it evidence a contract for work or for sale of goods. Without, therefore, expressing any opinion on the question whether the view taken by the Tribunal or by the High Court was correct, we discharge the answer recorded by the High Court on the ground that the question submitted for their opinion was not one which brought out the true question which was submitted to the Deputy Commissioner for opinion, and even if the question be amended, there is no evidence on which the question may be answered. The parties to bear their own costs in this Court and the High Court. Answer recorded by the High Court discharged.