

State of Rajasthan and Others

v.

Nenu Ram

(Supreme Court Of India)

HON'BLE JUSTICE A. N. GROVER HON'BLE JUSTICE J. C. SHAH
HON'BLE JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 1096 Of 1967 | 31-07-1969

GROVER, J.

1. This is an appeal by certificate from a judgment of the Rajasthan High Court involving the question whether the respondent was liable to pay sales tax for supplying and fixing wooden windows and doors together with frames and painting them when the construction of the police lines building took place at a place called Pali.

2. The respondent is an approved contractor of the Public Works Department of the State. Tenders were invited by the Chief Engineer for doing the work mentioned above in April or May, 1958. The respondent's tender being the lowest was accepted by the Executive Engineer by means of a letter dated July 17, 1958, wherein it was stated "the chowkhats will have to be supplied and fixed at site along with the masonry work". The amount which was payable for the entire work was Rs. 1, 81, 528. While making the assessment for the year 1959-60 the Sales Tax Officer was of the view that the total sales made by the respondent amounted to Rs. 1, 97, 212. The position taken up by the respondent was that the making of doors and windows as also the frames was a part of a single and indivisible works contract and as such no tax was payable. The Sales Tax Officer, however, did not accept this contention and held the respondent liable for payment of tax on sales of materials of the value already stated, the actual demand created being for Rs. 6, 314.07, on the above turnover. The respondent preferred an appeal to the Deputy Commissioner, Excise and Taxation, but the appeal was dismissed because the respondent's prayer for permission to file it without depositing the tax was not acceded to. The respondent then filed a petition in the High Court under article 226 of the Constitution.

3. In the High Court a good deal of argument proceeded on the maintainability of the writ petition. The appellant contended, inter alia, that the Rajasthan Sales Tax Act, hereinafter called the "Act", was a comprehensive and self-contained enactment which provided for a complete set of remedies for the assessee to get his grievances redressed. As the respondent had failed to avail of those remedies the High Court should not grant relief in exercise of its extraordinary writ jurisdiction. The High Court was of the opinion that the present case was one of levy and recovery of tax which was entirely illegal and therefore the court was duty bound to give the necessary relief to the assessee even if he had not availed of the statutory remedies open to him under the Act. Before the High Court the controversy was confined to a turnover of Rs. 1, 81, 528 only. After considering the relevant documents and other evidence the High Court came to the conclusion that "the contract in question was a single and indivisible contract for the supply and fixing of wooden doors on the spot and that this contract was given and taken for an inclusive price". It was found that the goods were not sold as movables and property in them was to pass only when the wooden chowkhats and windows etc. were fixed on the site

4. For the appellant urged before us that the contract was one of sale or was a combination of two distinct agreements, one for sale and purchase of movable chattels and the other for supply of services and labour to fix the movables at the site. We are unable to agree. On the documents and other relevant facts and circumstances the High Court was fully justified in coming to the conclusion at which it arrived that the contract was one and indivisible. It hardly made any difference if it was mentioned in the letter dated July 17, 1958, that the chowkhats were to be supplied and fixed at site along with the masonry work which meant that the same had to be done by the respondent. In the certificate of the Executive Engineer dated December 16, 1960, which was produced by the respondent before the Sales Tax Officer it was mentioned, inter alia, that the rate paid to the respondent as per sanctioned schedule of the rates of the department was for wood work, that is "for completed item of wood, i.e., for supplying and fixing both". It is obvious that the rates which were charged were inclusive of the price of the materials and the wages or charges for fixing the windows and doors etc. at the site. In *State of Rajasthan v. Man Industrial Corporation Ltd.* [Civil Appeal No. 812 of 1966; since reported at 1969 24 S.T.C. 349] decided on February 4, 1969, this court had the occasion to consider a case where a contractor carried on the business of fabricating steel doors,

windows, sashes and other goods. A tender was made by him for providing and fixing windows and composite windows of certain sizes. He had also voluntarily offered to fix the windows in the building and to make no separate charge for that service. It was contended, inter alia, on behalf of the State in that case that the contract was for sale of windows and the turnover in respect of such sale was liable to tax. After a careful consideration to the relevant case law the test was laid down in these words :

"The test in each case is whether the object of the party sought to be taxed is that the chattel as chattel passes to the other party and the services rendered in connection with the installation are under a separate contract or are incidental to the execution of the contract of sale."

5. In that case it was held that the primary undertaking of the contractor was not merely to supply the windows but to fix the windows. If the windows were not properly fixed the contract could not be complete. The view of the High Court was accepted that it was only upon the fixing of the windows-leaves and when the window-leaves had become a part of the building construction that the property in the goods passed under the terms of the contract. A similar position obtains in the present case.

6. The judgment of the High Court must be upheld. The appeal is dismissed but as there is no appearance on behalf of the respondent, there will be no order as to costs.

7. Appeal dismissed.