KERALA HIGH COURT

The Sales Tax Officer

Vs

I.V. Somasundaran

(P Govindan Nair, C.J. G Vadakkel, J.)

12.07.1973

JUDGMENT

Govindan Nair, Ag. C.J.

1. We propose to dispose of these writ appeals and the original petition by a common judgment because we conceive that notwithstanding the difference in the facts of these cases, writ appeals as a group and the original petition as a separate matter, the question is of general application. The writ appeals are from the judgment of Issac, J., in I.V. Somasundaran v. Sales Tax Officer, Special Circle II, Palghat 1972 K.L.T. 495. The original petition is before us on the basis of an order of reference by one of us in which this decision as well as the other decisions have been referred to.

2. Writ Appeal No. 205 of 1072 by the department and Writ Appeal No. 206 of 1972 by the assessee are from the judgment disposing of Original Petition No. 3445 of 1972 K.L.T. 495. The facts of this original petition are simple. The assessee, the petitioner in the original petition, according to him, was doing job-works. The nature and detail of the works undertaken by the assessee are not clear. He claimed exemption for the entire turnover of Rs. 45,303.34, out of which a turnover of Rs. 8,501.91 was respecting judgments of courts printed by the assessee. The order of the Sales Tax Officer has been produced as exhibit P2 along with the original petition. The Sales Tax Officer had accepted the contention that what has been sold by the dealer are not paper products within the meaning of item 42 of Schedule I to the Kerala General Sales Tax Act, 1963. The officer, however, did not grant exemption for any part of the turnover. He taxed the whole turnover at the general rate of 3 per cent. This was the order that was impugned in O.P. No. 3445 of 1972 K.L.T. 495. Issac, J., held that the judgments and other articles produced by the dealer are not paper products. The learned Judge also took the view that even in the case of printing of judgments where the printer supplied the paper, the cost of the paper is liable to be charged under the Sales Tax Act as if there was a sale of the paper which was used for printing judgments. But the learned Judge also held that the cost of labour of printing judgments was not liable to be taxed. In this view, the order exhibit P2 produced along with the original petition was set aside and a direction was issued that the printing charges received by the petitioner be deducted from the total receipts to arrive at the taxable turnover. The officer was directed to reassess the petitioner in respect of the cost of the paper. The department has contended in Writ Appeal No. 205 of 1972 that even the cost of printing should not have been omitted in reckoning

the taxable turnover, whereas the assessee has contended that the whole of the amount of Rs. 45,303.34 must be exempted.

3. In 0. P. No. 5847 of 1970, the entire turnover relates to the supply of ration cards. The dealer had tendered for a contract for the supply of ration cards to the State and the tender was accepted. He has a large turnover and the question mooted was whether this turnover is liable to be taxed under the Sales Tax Act. This will again depend on the question as to whether there has been a sale of goods or not. If there has been a sale of goods the turnover relating to that sale will be taxable. If, on the other hand, the payment made was for work and labour even if in the process of doing work and labour for which materials have been used or consumed, the turnover will not be taxed. This is the question to be determined in the case. Before we deal with this aspect, we may advert to one or two general aspects which may be eliminated, so that attention can be concentrated on the real question.,

4. This court has taken the view in more than one decision that by printing something on paper as in the cases of printing letter heads or invitation cards or wedding invitations or judgments of courts, the printed matter does not become "paper products" within the meaning of that expression in item 42 of Schedule I to the General Sales Tax Act, 1963. The matter has been discussed at length in the Division Bench ruling in *P.K. Dewer v. Slate of Kerala*[1] Raghavan, J., as he then was, stated that "though it may be said that printed material is a 'produce', obviously it cannot be said that printed material is a product of paper".

5. The same view had been taken by Isaac, J., earlier in the decision in *Srinivasa Printing Works v. Sales Tax Officer, Kasaragod*[2]. The matter may, therefore, be taken to be concluded that in such cases there is no question of applying the 5 per cent rate under Schedule I to the Act.

6. This does not however solve the problem. The question will still arise whether there is sale of goods which can be taxed at all points at the reduced rate of 3 per cent. This is a more complicated question but it may be taken to be established that in order to spell out a contract of sale there must be an agreement which may be express or which may be inferred from the circumstances. That there must be an agreement to sell is established clearly by the decisions of the Supreme Court.

7. The question here before us is even more complicated as to when it can be postulated that the agreement was for work and labour and when it is one for sale of goods. In a decision that was rendered as early as 3rd July, 1963, in *Srinivasa Printing Works v. Sales Tax Officer*[3] I ventured to say that the contracts in the cases of printing of letter heads, binding of books and supply of journal forms are contracts for sale; but it is impossible to say that the contract for printing of judgments of courts is a contract for sale and that such contracts are contracts for work and labour and that imposition of sales tax on the turnover relating to printing of judgments of courts is unwarranted. Reliance was then placed on the Full Bench decision of the Andhra Pradesh High Court in *Guntur Tobaccos Limited v. Government of Andhra*[4] which drew a distinction between three types of contracts: (1) contract for work and labour simply, (2) a mixed contract of labour and materials, and (3) for goods sold and delivered. Cases falling under the first or third category are capable of easy solution, but more cases fall under the second category and the question then is first whether the contract can be said to be partly for work and labour and partly for supply of materials. If a contract is essentially and substantially for work and labour it will fall under item

(1) and if it is essentially and substantially for the sale of material it will fall under item (3). But there may be complex contracts for sale and for work and labour. In such cases, it may be possible and it may be necessary to bifurcate a contract into two by saying that really there are two contracts, one for work and labour and another for supply of materials. But, if this is the view to be taken, there must be material on the basis of which it is possible to say that the contract was not one and composite, but really two.

8. The decision on the Andhra Pradesh High Court had been appealed against since it was relied on by this court in the decision in *Srinivasa Printing Works v. Sales Tax Officer*[5], and though the Supreme Court in its decision in *Government of Andhra Pradesh v. Guntur Tobaccos Ltd*[6]. classified the different types of contracts in words not identical or perhaps even similar, the view of the Andhra Pradesh High Court had been accepted.

9. Isaac, J., had, in more than one case including the one in appeal, Writ Appeals Nos. 205 and 206 of 1972, taken the view that whenever there is a contract for printing and when the printer himself supplied the paper and apparently must have charged the value of the paper as well in his bill, there is a sale of that paper and charges for work and labour and that, therefore, such contract should be bifurcated and the cost of paper taxed, and the charges for printing left out. This will be in variance with the principle that we have stated which we think has been accepted by the Supreme Court. The question must first be what essentially is the nature of the contract. For instance, if there is an agreement for printing judgments, essentially the contract is one for work and labour and if the contract is essentially for work and labour, there is no justification for bifurcating that contract and creating two different contracts which we think will be non-existent, one for cost of labour and the other for sale of paper. There are many activities which cannot be indulged in without material. It may be canvas in the matter of a painter and the paint that he uses, an example which will glaringly illustrate the mistake of applying the theory that in every such agreement, there is an agreement for the sale of the material used and an agreement for work and labour. If a painter has been commissioned to paint a portrait, he uses his own canvas and his own paint. To say when he supplied the painted portrait, there was an agreement for the sale of the canvas and for the paint and separate charges for work and labour for painting would be stretching a point too far, resulting in artificiality, not to say, unreality. In the case of a good painting, canvas is insignificant, but canvas must be there, because nobody can paint without a wall; but it is only incidental, an insignificant part of the contract, which must be ignored, the essentiality of which is the work of good painting. As we said, this is a patent example and as we proceed along the line and come to the judgments, the line of demarcation becomes thinner and when we come to ration cards, letter heads and invitations, the line is obliterated and it may not be possible to say that it is essentially a contract for work and labour. In such cases, if it is not possible to spell out two different contracts, the only view that can be taken is it is an agreement for sale.

10. We think the above discussion is sufficient to dispose of these cases. Writ Appeal No. 206 of 1972 by the assessee has to be allowed. The whole question will have to be considered afresh by the Sales Tax Officer in the light of what we have said above. The different types of turnover excepting that relating to the judgments, which we think must be completely exempted, must be considered separately to find out what is the essentiality of the agreement. If essentially the agreement is one for work and labour, complete exemption from taxation will be allowed. If, on the other hand, it is a contract for sale, the whole turnover will be taxed. We do not know the

nature of the articles and the turnover other than that relating to judgments which we said are not taxable. The matter has, therefore, to be left to the Sales Tax Officer to be dealt with. We dismiss Writ Appeal No. 205 of 1972.

11. The essentiality of the contract relating to printing of ration cards, we think, is a contract for material. Counsel placed before us one of the ration cards and contended that this is a complicated process involving skill and that it should be treated as a contract for work and labour. We are not satisfied it is so. It is in the nature of job-works and it is essentially a contract for the sale of finished articles.

12. However, ration cards are not paper products. So the imposition of 5 per cent tax is not justified. Only 3 per cent tax can be imposed. The assessment on the petitioner will be made on that basis.

13. Original Petition No. 5847 of 1970 is ordered on the above terms.

14. The parties in these cases will bear their respective costs.

Cases Referred.

11970 K.L T. 453
21967 K.L.T. 701
31966 K.L.T. 1139
4(1961) 2 An. W.R. 37
51966 K.L.T. 1139
6[1965] 16 S.T.C. 240 (S.C.)