KERALA HIGH COURT

P.T. Varghese

Vs

State of Kerala

(P G Nair, C.J. T Kochu Thommen, J.)

10.09.1975

JUDGMENT

T. Kochu Thommen, J.

1. The assessee in all these tax revision cases is the same person. These cases arise from a common order of the Kerala Sales Tax Appellate Tribunal, Trivandrum, relating to the assessment years 1964-65, 1965-66 and 1966-67. The questions of law which arise for our consideration in all the three cases are identical. Therefore, we propose to dispose of these cases by a common judgment.

2. The assessee has been conducting a press under the name and style of St. George Press at Irinjalakuda. He prints bill books, vouchers, receipt books, letter heads, question papers and notices as ordered by his clients. He uses his own paper for printing these materials.

3. The assessee was assessed to sales tax by the Sales Tax Officer in respect of the above-mentioned periods in relation to the turnovers represented by the alleged sales of the said bill books, vouchers, etc. The assessment was confirmed by the Appellate Assistant Commissioner subject to certain modifications. On further appeal, the Tribunal confirmed the order of the Appellate Assistant Commissioner.

4. The assessee had contended before the authorities that he was not a dealer. He only executed works contract, for the purpose of which he used his own paper. He charged his clients for the cost of the paper as well as for the remuneration for work and service. He had produced his order books and bill books before the assessing authority as well as the Appellate Assistant Commissioner. According to him, these documents fully supported his contentions. The assessee maintained that the sale of paper used for printing could not be taxed under the Sales Tax Act as he was not the first seller of paper in the State. The remuneration received by him from the clients for the work and labour could not also be taxed under the Act.

5. The Tribunal, by its order dated 17th July, 1973, rejected the contentions of the assessee and held as follows:

...paper, when printed, becomes printed material, which is different from paper and paper product within the meaning of item 42 of Schedule I of the Act. So it becomes a finished product and when the appellant is realising the value of the paper and the printing charges, he is realising the sale price and he is becoming a dealer in this product also. The Appellate Assistant Commissioner has taken the view that this is taxable at the general rate as finished goods. In these circumstances, we cannot see any reason to interfere with his findings.

6. The following questions of law have been raised for our consideration in these tax revision cases:

(i) Was the Appellate Tribunal justified in law in failing to advert to the individual contract entered into by the customers with the assessee ?

(ii) Are there not two different and separate contracts, one for the supply of paper and the other for printing (work and labour) in each item of work done by the petitioner in the instant case ?

(iii) Is the finding of the Appellate Tribunal that the sale in the instant case is of a finished product, justified in law and based on any material ?

(iv) Whether the Tribunal was justified in law in holding that when the petitioner was realising the value of the paper and the printing charges, he was realising the sale price and that he is a dealer in the finished product ?

7. The answers to the above questions would depend upon the nature of the contract. The Supreme Court in Government of Andhra Pradesh v. Guntur Tobaccos Ltd. [1965] 16 S.T.C. 240 at 255 (S.C.) states as follows:

The fact that in the execution of a contract for work some materials are used and property in the goods so used passes to the other party, the contractor undertaking to do the work will not necessarily be deemed on that account to sell the materials. A contract for work in the execution of which goods are used may take one of the three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials though not accessory to the execution of the contract is voluntary or gratuitous. In the last class, there is no sale because though property passes it does not pass for a price. Whether a contract is of the first

or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods.

8. In the instant case, the authorities have, on the basis of the materials produced before them, come to the conclusion that the orders placed by the customers were for the sale of printed materials in the form of bill books, vouchers, receipt books, letter heads, question papers and notices. The assessee's clients had not indented to buy and he had not intended to sell mere paper. What he had intended to sell and what he had in fact sold were printed materials. In the above cited case [1965] 16 S.T.C. 240 (S.C.) at page 256, the Supreme Court extracts the following passage from its judgment in Gannon Dunkerley's case [1958] 9 S.T.C. 353 (S.C.):

...to constitute a transaction of sale there should be an agreement, express or implied, relating to goods to be completed by passing of title in those goods. It is of the essence of this concept that both the agreement and the sale should relate to the same subject-matter.... Under the law, therefore, there cannot be an agreement relating to one kind of property and a sale as regards another.

9. If what the customers had contracted to buy was not mere paper, but documents or materials in the form of bill books and vouchers, it can hardly be contended by the assessee that he had intended to sell or the customers had intended to buy mere paper. It was clearly understood between the parties at all times that what the customers intended to buy from the assessee were printed materials.

10. The question really is whether in the instant case the contract was for the sale of paper as well as for work and labour or whether it was a contract for printed materials as such or whether it was a contract for work and labour. If it was a contract for the sale of paper and for work it would be a composite contract where it might be possible to separate the sale from the work. If, on the other hand, it was a contract for printed materials, as found by the Tribunal, what was sold was not paper, but printed materials. If the contract was for work and labour, in which the use of materials was merely accessory or incidental, as, for example, in the case of printing judgments, it would be a works contract which would not involve any sale, and the charges received would not be assessable to tax under the Sales Tax Act.

11. The facts of the present cases show that the assessee did not sell mere paper to his customers. It was not a contract for sale of paper in which labour was also involved making it a composite transaction which is capable of bifurcation into a contract for sale of materials and a contract for work and labour. What was sold was something other than paper. This court held in P.K. Dewer

v. State of Kerala 1970 K.L.T. 453 that paper which is drawn upon or printed upon is not any longer mere paper. This court said:

For, when paper is drawn upon, printed upon, or written upon, its utility as paper is lost; but such paper which is printed upon, drawn upon, or written upon is not a product of paper, though it may be said that it is no more paper and it has acquired a new characteristic or utility--the characteristic or utility of a book or picture....A book is neither paper nor a product of paper; that is how it is commonly understood too.

12. In the light of these decisions, it cannot be said that printed materials such as bill books, vouchers, receipt books, letter heads, question papers and notices are mere paper or products of paper.

13. This court held in Srinivasa Printing Works v. Sales Tax Officer 1966 K.L.T. 1139 as follows:

Applying the above principle it is clear that the contract in the cases of printing of letter heads, binding of books and supply of journal forms are contracts for sale. But it seems to me impossible to say that the contract for printing judgments of courts is a contract for sale. It appears to me that this is a contract for work and labour.

14. This principle was restated by this court in Sales Tax Officer, Palghat v. I.V. Somasundaran 1973 K.L.T. 814. This court stated as follows:

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.

15. In the case of a composite contract involving an agreement for sale as well as for labour, the State may be able to bifurcate the contract into two and impose tax on the turnover of the sale:State of Madras v. Gannon Dunkerley and Co. [1958] 9 S.T.C. 353 (S.C.). In a works contract, on the other hand, there is no sale of goods, although materials may have been used incidentally. As the Supreme Court has stated:

...if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale": Gannon Dunkerley [1958] 9 S.T.C. 353 (S.C.).

16. Only in respect of those goods to which title has passed as a result of contract, can it be said that the goods have been sold. Where a person buys a "Picasso" or a "Ravi Varma", he does not indend to buy or pay for the canvas or the paint, although canvas and paint are involved in the production of the painting, and title to such materials is transferred to him. But such transfer of title to the materials is not pursuant to any agreement for the sale of the materials as such. It would never have been in his mind to pay separately for the materials and for the labour. What the buyer buys is a finished product which is a work of art. On the other hand, when a person gets his manuscript printed as an article or a book of verses, the printer does no more than a mechanical or technical job. The printer does not create the article or the poem, but merely renders his services to print which is in the nature of a job-work. The manuscript as such is the result of the skill, industry and scholarship of the author. In such a case, there is no sale of the article or book by the printer; nor would it be possible in such a case to spell out an agreement for the sale of materials such as paper or ink, which may have been incidentally used in the production of the printed work. While the painter sells a finished product which is a work of art, quite distinct and different from the materials used in its production, the printer merely does a job-work involving no sale; one is the work of an artist who is endowed with the finer qualities of imagination and taste and the other that of an artisan who is trained as a mechanic or technician. A printer of judgments, for example, does not produce and sell them; his work is purely that of a technician. This court has therefore held that printing of judgments is only a works contract. The work of a printer in certain cases may involve more than printing; he may be a producer of finished articles such as bill books, vouchers and the like. When such articles are printed and sold to the customers, what is sold is not paper or paper products but printed materials which are finished products. Such contracts cannot be considered as contracts for the sale of paper coupled with an agreement to render service. The sale of paper had never been the subject-matter of the

agreement between the parties. Like in the case of painting which is a finished product being a work of art, the bill books and vouchers are new products being printed materials; and the sale of such goods does not involve a composite contract which can be bifurcated into an agreement for the sale of goods--be they canvas and paint or paper and ink--and an agreement for work.

17. In the light of the above decisions, we are of the opinion that the printed materials such as bill books or vouchers are not paper, but finished products other than paper products and, as such, are liable to be taxed. In the case of question papers, as in the case of judgments, a distinction has to be drawn. The printing of question papers, in our opinion, is a contract for work and labour, for the questions as such have been prepared by persons of special learning and skill, and the printer merely puts them in print which involves work and labour. The use of materials such as paper and ink in such cases is only accessory or incidental. He does not produce and sell question papers or judgments (unlike in the case of bill books or vouchers); he merely prints what is prepared by others, as in the case of an article or a poem.

18. We therefore hold that the Tribunal had, on the basis of relevant materials available to them, come to the correct conclusion in regard to the sale of bill books, vouchers, receipt books, letter heads and notices. These are liable to be taxed as finished products. In the case of question papers, however, we hold that they are the subject-matter of a contract for work and labour and the charges realised by the assessee for printing them are not liable to be taxed under the Sales Tax Act. In view of what is stated above, we direct the Sales Tax Officer to quantify the charges realised by the assessee in respect of the question papers during the relevant years and separate them from the turnovers in respect of the other products which are, as we have already stated, liable to be taxed. Subject to what is stated above relating to question papers, the tax revision cases are dismissed. We direct the parties to bear their respective costs.