

Before Ashok Bhan & N. K. Sodhi, JJ.

M/S RANA PARTAP PRINTING PRESS,—Petitioner.

versus

STATE OF HARYANA.—Respondent.

G.S.T.R. No. 27 of 1986

8th December, 1995

*Haryana General Sales Tax Act, 1973—S. 40—Haryana General Sales Tax Rules, 1975—Rl. 24(j)—Assessee running printing press—Purchasing different kinds of paper after paying sales tax at first stage—Thereafter assessee printing material according to specifications given—Printed material has no utility or use to any other person—Consolidated amount charged for printing—Material printed in execution of works contract and the entire turnover would be exempted from tax as there was no sale of goods.*

Held, that the assessee is printing material according to the specifications given by the clients and on their instructions and as found by the Tribunal printed material has no utility or use to any other person. The assessee is also charging a consolidated amount for the printed material which as such cannot be sold to any person in the market. From all these circumstances, it can be legitimately concluded that the intention of the parties was to get work done for remuneration and supply of paper was just incidental thereto. It has, therefore, to be held that material was printed in the execution of a works contract and the entire turnover would be exempted from tax as there was no 'sale of goods' involved therein. In this view of the matter, the second question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

(Para 5)

M. L. Puri, Advocate, for the Petitioner.

S. S. Kheterpal, Advocate, for the Respondent.

#### JUDGMENT

N. K. Sodhi, J.

(1) This order will dispose of 34 General Sales Tax References 2 to 35 of 1986 involving identical questions of law and fact and arising

out of a common statement of case referred to this Court by the Sales Tax Tribunal, Haryana under Section 42(3) of the Haryana General Sales Tax Act, 1973 (for short, the Act). Since arguments were addressed in General Sales Tax reference 27 of 1986, the facts are being taken from this case.

(2) The assessee is running a Printing Press at Rohtak. It is registered as a dealer under the Act as well as under the Central Sales Tax Act, 1956. It purchases different types and qualities of paper within the State of Haryana after paying sales tax leviable at the first stage in the State. The customers place their orders on the assessee for printing of letter pads, cash memos, bill books, invitation cards, visiting cards, wedding cards, examination papers etc. The quality of paper to be used is selected by the customer who also gives the specifications of the printing job and settles the price. In other words, items are printed according to the instructions of each customer and the printed material as such is of no use of any other person or customer. As found by the Tribunal, the assessee charges a consolidated amount for the printed/ordered material that is supplied to the customer including the paper used therein. For the assessment year 1976-77 the assessee filed its quarterly returns in which the gross turnover was shown as Rs. 50,904.58. The entire amount was claimed as a deduction under Rule 24(j) of the Haryana General Sales Tax Rules, 1975 (hereinafter called the rules) on the ground that the turnover represented the price of paper on which printing had been done and which had already been subjected to tax under Section 18 of the Act. It may be mentioned that Rule 24(j) as it then existed provided that a registered dealer could deduct from his gross turnover the sale of goods which had already been subjected to tax at the first stage under Section 18 of the Act. It is not in dispute that the sale of paper in the State of Haryana is subjected to tax at the first stage under Section 18 of the Act. The Assessing Authority accepted the return and framed an assessment on the basis of which the tax liability of the assessee was nil. The Revising Authority in a *suo-moto* action exercised its powers under Section 40 of the Act and after hearing the assessee allowed a deduction of only Rs. 33,044 instead of Rs. 50,904.58 Ps. which was the purchase value of the paper and the remaining turnover was subjected to tax. The order of the Assessing Authority was accordingly modified and thereby a tax demanded of Rs. 1,102 was created. Being aggrieved by the order of the Revising Authority, the assessee preferred an appeal before the Sales Tax Tribunal. It was contended before the Tribunal that the Revisional Authority was not right in restricting the deduction under Rule 24(j) only to the purchase value of the paper and that it was entitled to

deduct the sale value of the goods which had been subjected to tax under Section 18 of the Act. It was also urged that the assessee was only executing a job work which did not amount to 'sale' and, therefore, the entire turn over was not eligible to sales tax. The Tribunal agreed with the reasoning and conclusions of the Revising Authority on the first contention and held that the deduction to be allowed under Rule 24(j) referred to the value of goods which had suffered taxation at the first stage i.e. the purchase value of goods. On recording this finding, the Tribunal dismissed the appeal without examining the other contention raised before it. Thereafter on an application filed by the assessee, the Tribunal declined to refer any question of law to this Court. However, on a direction issued by this Court under Section 42(3) of the Act, the Tribunal has referred the following two questions of law for our decision :—

- “(i) Whether on a correct interpretation and application of Rule 24(j) of the Haryana General Sales Tax Rules, 1975 as it stood at the relevant time, was the Tribunal legally justified in upholding the impugned order passed by the Excise and Taxation Officer (Inspection) Rohtak under Section 40 of the Haryana General Sales Tax Act, 1973 ?
- (ii) Whether, on an application of the correct principles of law, governing the determination of question as to whether a contract of work and labour or a contract for sale, to the facts and circumstances of the case, the transactions in question (the value or turnover of which had been allowed as deduction by the Assessing Authority) made by the assessee did not amount to sale ; and as such is the impugned order passed by the Excise and Taxation Officer (Inspection) Rohtak under Section 40 of the Haryana General Sales Tax Act, 1973, illegal, unlawful and not sustainable ?”

(3) As we are inclined to answer the second question in favour of the assessee and against the Revenue, it will not be necessary for us to examine the first question that has been referred by the Tribunal. The facts in this case are not in dispute. As noticed earlier the assessee is running a printing press, printing bill books, vouchers, letter pads, question papers etc. as required by its clients for which it uses its own paper and other materials. The argument of the learned counsel for the assessee is that the latter only executed a works contract for which it used its own paper and that sale of paper used

for printing could not be taxed as there was no agreement between the parties for sale of that paper. The agreement according to the assessee was only to supply printed material as ordered and transfer of property in paper was only incidental. Counsel for the Revenue, however, contended that contract between the assessee and his clients was a composite contract for the supply of paper as well as for labour and service rendered by the assessee. In *State of Madras v. Gannon Dunkerlay* (1), the Apex Court held that on a true interpretation the expression 'sale of goods' means an agreement between the parties for the sale of the very goods in which eventually the property passes and in a building contract where the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement and in consideration therefor received payment as provided therein, there was neither a contract to sell the materials used in the construction nor property passed therein as movables. Such a contract was held to be one, entire and indivisible and that there was no sale of goods involved so as to impose a tax on the supply of the materials used in such a contract treating it as a sale. The learned Judges also observed that parties to a contract might enter into distinct and separate contracts, one for the transfer of materials for money consideration and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is one instrument embodying them. In this situation it is open to the Revenue to separate the two agreements and charge tax on sale of materials.

(4) On a consideration of the rival contentions advanced by counsel for the parties, the question that arises for our consideration is whether printing work carried on by the assessee in the circumstances of the present case is the execution of works contract or is there a composite contract for supply of material and for labour and service rendered by the assessee. If the contract is one 'entire and indivisible' then there can be no sale of goods and the turnover will not be liable to tax. But if the contract is a composite one, then sale of paper can be taxed as contended by the Revenue. Whether a transaction is a works contract or not is a decision that depends on the particular facts of each case and the point to be borne in mind is what is the intention of the parties viewing the transaction as a whole. It has to be found out whether the contract is for work or service or is it for sale of any goods. In the former case the person

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(1) 9 S.T.C. 353.

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is performing or rendering service and no property in the thing produced as a whole passes notwithstanding that a part or even the whole of the material used by him may have been his property. In the latter case the contract is one for sale of goods in which property in those very goods passes. In *State of Tamil Nadu v. Anandam Viswanathan* (2), the question arose whether charges for printing of question papers could be included in the assessable turnover of the assessee. It was contended on behalf of the assessee that the contract was for work and labour and that no sales tax was chargeable. The Revenue contended that the contract was for sale of printed material. After noticing the case law, their Lordships of the Supreme Court observed as under :—

“The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property, where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only a works contract. See the observations in *Court press Job Branch, Salem v. State of Aamil Nadu* (1983) 54 STC 382 (Mad.) and *Commissioner of Sales Tax v. Ratha Fine Arts Printing Press* (1982) 56 STC 77 (MP).

In our opinion, in each case the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of a contract for work some materials are used and the 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. Whether or not and which part of the jobwork relates to that depends, as mentioned hereinbefore, on the nature of the transaction. A contract for work in the execution of which goods are used may take any one of the three forms as mentioned by this Court in *Government of Andhra Pradesh v. Guntur Tobaccos* (1965) 16 STC 240.”

In this case the contract was held to be a composite one because the demand notes prepared by the assessee had shown the costs of paper separately and from this fact it was inferred that the assessee treated the supply of paper separately and, therefore, the composite contract could be split up into contract for sale of paper and contract for work and labour. It was held that there could be no liability for sales tax in relation to printing charges.

(5) However, in the case before us the assessee is printing material accordingly to the specifications given by the clients and on their instructions and as found by the Tribunal printed material has no utility or use to any other person. The assessee is also charging a consolidated amount for the printed material which as such cannot be sold to any person in the market. From all these circumstances, it can be legitimately concluded that the intention of the parties was to get work done for remuneration and supply of paper was just incidental thereto. It has, therefore, to be held material was printed in the execution of a works contract and the entire turnover would be exempt from tax as there was no 'sale of goods' involved therein. In this view of the matter, the second question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

(6) In view of our finding on the second question referred to us, it is not necessary to decide the first question. The references accordingly stand answered as stated above leaving the parties to bear their own costs.

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J.S.T.

*Before N. C. Jain, V. K. Bali & Swatanter Kumar, JJ.*

**THE DISTRICT BAR ASSOCIATION, KURUKSHETRA AND OTHERS,—Petitioners.**

*versus*

**THE STATE OF HARYANA,—Respondent.**

C.W.P. 13440 of 1989

8th August, 1996

*Punjab Land Revenue Act, 1887—S. 5—Registration Act, 1908—S. 5—Punjab Land Administration Manual—Paragraph 834—Jurisdiction of State Government to vary the limits of districts and form*