Commissioner Of Sales Tax M.P. vs Purshottam Premji on 13 April, 1970

Equivalent citations: (1970)2SCC287, [1970]26STC38(SC), AIRONLINE 1970 SC 52

Author: K.S. Hegde

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. These appeals by special leave arise from the decision of the High Court of Madhya Pradesh in references made to that court under Section 44 of the Madhya Pradesh General Sales Tax Act, 1958 (to be hereinafter referred to as "the Act").

2. The sole question that arose for decision in those references was whether the transactions referred to in those references are "sales" within the meaning of the Madhya Pradesh General Sales Tax Act, 1958, or whether they were merely works contracts. The High Court has opined that they were works contracts and as such the turnovers relating to those transactions are not liable to be taxed under the Act.

3. The facts material for the purpose of deciding these appeals are : The assessee entered into two contracts with the S.E. Railway for breaking stones and supplying ballast. Under the first contract he was to break stones into ballast and supply approximately 60,00,000 cubic feet of ballast at Rs. 27-6-0 per cubic foot. Under the second contract, he was to supply in small slacks of a specified size at a flat rate of Rs. 35 per 100 cubic feet. The general and special conditions of those contracts were the same. The quarry from which the stones were to be quarried belonged to the railway administration. The assessee was merely to quarry stones from those quarries, break them into pieces of specified size and supply them to the railway administration. During the assessment period commencing from April 1, 1958, to March 31, 1959, the assessee had received Rs. 19,162.50 and Rs. 21,000 respectively for the works done under the aforementioned two contracts. The total amount of Rs. 40,162.50 so received was treated by the sales tax authorities as the price of the material supplied and the assessee was taxed on that turnover and further penalty was levied on him under Section 18(6) of the Act. During the assessment period April 1, 1959, to March 31, 1960, the assessee under two different contracts, similar to those mentioned earlier, received a sum of Rs. 37,728.13 from the S. E. Railway. The sales tax authorities have levied tax on the said turnover and further have levied penalty on the assessee under Section 18(6).

4. The main features of the contracts with which we are concerned in these appeals are : (1) the assessee was to quarry stones from the quarries belonging to the South Eastern Railway and (2) he was to break those stones into pieces and convert them into ballast of a specified size and thereafter supply them to the S. E. Railway. Prima facie, the S. E. Railway was the owner of the ballast. The assessee's duty was only to do some work on the stones belonging to the S. E. Railway administration. Hence it is difficult to accept the contention of the sales tax authorities that the transactions in question are sales within the meaning of Section 2(n) of the Act. Section 2(n) reads :

> 'Sale' with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for other valuable consideration and includes a transfer of property in goods involved in the supply or distribution of goods by a society or club or any association to its members, but does not include a mortgage, hypothecation, charge or pledge, and the word 'purchase' shall be construed accordingly.

5. From the above definition, it is clear that before a transaction can be considered as a sale, there must be a transfer of property in goods. Without such a transfer, there cannot be any sale. In the instant case, quite clearly, the property in the ballast at all relevant times was with the S.E. Railway. The ballast was never the property of the assessee. Therefore there was no question of the assessee transferring any property in it to the S. E. Railway. Hence it is not possible to uphold the contention of the department that there was any sale within the meaning of Section 2(n) of the Act. If there was no sale, the penalty imposed cannot be sustained.

6. The learned Counsel for the department laid stress on certain clauses in the agreements between the assessee and the S. E. Railway. Under one of the clauses in those agreements, the assessee was required to remove from the railway premises all rejected ballast. On the strength of that clause, it was urged that the assessee was the owner of the ballast. We are unable to accept that contention. Rejected ballast was useless for the railway. Therefore it was arranged under the contract that the assessee must remove those ballast. The only other clause in the agreement on which reliance was placed was Clause (15). That clause reads:

> Without the sanction of the railway, no materials of any kind, whether required for the performance of this agreement or not shall be quarried and/or collected from land belonging to or held by the railway or any land under that held by the railway. If and when the contractor quarries and/or collects materials from or from under railway land for the purpose of supply of materials and/or of work under this agreement he shall be liable to pay a royalty at the flat rates hereinafter set out. Such royalty shall be recovered by the deduction from the contractor's bill for the supply of materials and/or work done under this agreement or from any other sum due to him from the railway.

7. The fact that the railway had provided in the agreement that the assessee shall pay the royalty due to the State Government does not in any manner detract from the legal position that the railway was the owner of the quarry. It is merely an arrangement for the payment of a royalty.

8. In C.B. Gosain v. State of Orissa , this Court ruled that for finding out whether a contract is one of work done and materials found or one for sale of goods depends on its essence. If not of its essence that a chattel should be produced and transferred as a chattel, then it may be a contract for work done and materials found and not a contract for sale of goods.

9. The primary difference between a contract for work or service and a contract for sale of goods is that in the former there is in the person performing work or rendering service no property in the thing produced as a whole notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party for price. Mere transfer of property in goods used in the performance of a contract is not sufficient; to constitute a sale there must be an agreement express or implied relating to the sale of goods and completion of the agreement by passing of title in the very goods contracted to be sold. Ultimately the true effect of an accretion made pursuant to a contract has to be judged, not by an artificial rule that the accretion may be presumed to have become by virtue of affixing to a chattel, part of that chattel, but from the intention of the parties to the contract: see Patnaik & Co. v. State of Orissa .

10. For the reasons mentioned above, these appeals fail and they are dismissed. The respondent is ex parte in these appeals. Hence there will be no order as to costs in these appeals.