

Supreme Court of India

Mohd. Zahoor vs C.S.T on 17 February, 1993

Equivalent citations: 1994 SCC, Supl. (2) 99

Author: K Singh

Bench: Kuldip Singh (J)

PETITIONER:

MOHD. ZAHOOR

Vs.

RESPONDENT:

C.S.T.

DATE OF JUDGMENT 17/02/1993

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

KASLIWAL, N.M. (J)

CITATION:

1994 SCC Supl. (2) 99

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. The following question was referred for the consideration of the High Court under Section 44 of the Madhya Pradesh General Sales Tax Act, 1958 ('the Act'):

"Whether under the facts and circumstances of the case, the iron and cement supplied by the PWD to the assessee for use in the works executed by the appellant for PWD was sale and was liable to purchase tax under Section 7(1) of the Act."

2. The High Court answered the question against the assessee and in favour of the Sales Tax Department. This appeal by special leave is by the assessee against the judgment of the High Court.

3. Section 7 of the Act which is relevant is reproduced hereunder "7. Levy of purchase tax.- (1) Every dealer who in the course of his business purchases any taxable goods from a registered dealer in

circumstances in which no tax under Section 6 is payable on the sale price of such goods or from any other person and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under Section 6."

4. Clause 11 of the conditions of the contract entered into between the parties is reproduced hereunder :

"11. Stores supplied by Government.- If the specification or estimate of the work provides for the use of any special description of materials to be supplied from the Engineer-in-charge's store or if it is required that the contractor shall use certain store to be provided by the Engineer-in-charge (such materials and store, and the price to be charged thereof as hereinafter mentioned being so far as practicable for the convenience of the contractor but not so as in any way to control the meaning or effect of this contract specified in the schedule or the memorandum hereto annexed) the contractor shall be supplied with such materials and stores as required from time to time to be used by him for the purposes of the contract only and the value of the full quantity of material and stores so supplied at the rates specified in the said schedule or memorandum may be set off or deducted from any sums then due or thereafter to become due to the contractor under the contract or otherwise or against or from the security deposit or the proceeds of sale thereof if the same is held in Government securities the same or a sufficient portion thereof being in this case sold for the purposes. All material supplied to the contractor shall remain the absolute property of Government and shall not on any account be removed from the site of work and shall at all times be open to inspection by the Engineer-in-charge. Any such material unused and perfectly in good condition at the time of the completion or determination of the contract shall be returned to the Engineer-in-charge's store if by notice in writing under his hand he shall so require but the contractor shall not be entitled to return any material so supplied to him as aforesaid being unused by him or for any wastage in or damage to any such materials."

5. A bare reading of the above-quoted clause brings out the following binding features of the contract :

(i) The iron and cement to be used in the execution of the work were to be supplied by the Engineer-in-charge. The value of the iron and cement so supplied was to be deducted from the final bill of the contractor.

(ii) The iron and cement supplied to the contractor were to remain the property of the Government and were not to be removed from the site of the work. The material was further open to inspection by the Engineer-in-charge.

(iii) The Engineer-in-charge by a notice in writing under his hand could require the contractor to return such unused material which is in good condition.

(iv)The contractor was not supposed to return by himself any material so supplied to him which is not used by him or for any waste or damage in the material.

6.It is thus, obvious that the contractor had offered to pay the price of iron and cement to be supplied to him by the Government as a part of the tender which had been accepted by the Government. The cumulative effect of the conditions of the contract culled-out above leave no manner of doubt that the iron and cement supplied by the Government and used by the contractor were an outright purchase.

7. The High Court based its conclusions on the following reasoning:

"Thus, so far as the contractor was concerned, the articles supplied were his property for which the price, of course, was, to be deducted at a later stage at the time of payment of the bills. He had no choice to return the unused materials. There is no dispute that the assessee, who was a registered dealer, disposed of the articles supplied in the manner as stated above, i.e. by using the same in the building works. Under these circumstances, the view of the assessing authority that the dealer was liable to purchase tax appears to be correct."

8. We see no infirmity in the High Court judgment. We agree with the reasoning and the conclusions reached therein. We find no merit in this appeal which is accordingly dismissed. No costs.