Jiwan Singh And Sons vs State Of Punjab And Anr. on 31 May, 1963

Equivalent citations: [1963]14STC957(P&H)

Author: A.N. Grover

Bench: A.N. Grover

JUDGMENT

S.S. Dulat and A.N. Grover, JJ.

1. Both these matters shall stand disposed of by this judgment. By an order dated 3rd May, 1961, this Court directed the Financial Commissioner under Section 22(3) of the East Punjab General Sales Tax Act, 1948 (to be referred to as the Act) to state the case and to refer it on the following questions of law :-

> (a) Whether in the circumstances of the case, the contract of fitting and building the bodies on the chassis supplied by the customer, and the amount charged therefor could be said to constitute a 'sale' within the definition of the word 'sale' as given in the Punjab General Sales Tax Act, 1948 (Act 46 of 1948) ?
>
> (b) Whether it was necessary to separately mention the items for the material to be used and for the labour involved so as to be entitled to the exemption ?

2. As the points of law involved in both the cases were the same, a single reference has been made.

3. The petitioner-firm deals in repair of motor-cars, trucks and old bodies and manufactures bodies on the chassis supplied by the customers. In the assessment years 1952-53 and 1953-54, the Assessing Authority held the firm liable to sales tax on the sale of such "bodies" fitted on the chassis and did not allow any deductions for labour charges, including them in the sale of the "bodies", on the ground that the dealer had sold complete "bodies" in a finished state and not the material thereof. In these circumstances the Assessing Authority did not allow any deduction on account of labour charges at the rate of 60 per cent. as claimed by the petitioner-firm and as had been allowed to other similar manufacturers before by the department. Aggrieved by the order of the Assessing Authority, the petitioner-firm went up in appeal before the Deputy Excise and Taxation Commissioner on the ground that the buses, trucks or chassis were not owned by the petitioner-firm but all that was done was that bodies were fitted thereon. These appeals were dismissed. Revision petitions were filed before the Excise and Taxation Commissioner, who made an order on 6th March, 1958. According to his order, the petitioner-firm built complete bodies, which are fitted on the chassis of the vehicles belonging to the customers and charged for them and the charges are not made on the basis of the material used and the cost of labour employed. To put it in his own words,

"it is, thus, the body and not the material going into it that is sold and as such the entire cost of the body has to be taken into consideration for the purposes of sales tax." He further held that the cost of labour could only be excluded under Section 2(i) of the Act from the turnover in a case of contract as defined by Section 2(c) and as the supply of the body was not covered by this definition, the petitioner-firm was not entitled to any deduction on account of the cost of labour in respect of the bodies. On revisions being filed before the Financial Commissioner, he confirmed the view of the Excise and Taxation Commissioner. According to him, the bodies are charged as a whole and there are no separate agreements, one for the sale of material and the other for work and labour. He held :-

> In the present cases before me, as mentioned above already there has been a transfer of title to goods, supported by money consideration; and the 'bodies' were built duly charged for and then transferred to the owners of the chassis. So the 'sale' is complete in the cases.

4. Mr. Viswanatha Sastri, who appears for the petitioner-firm, has mainly argued the first question and with regard to the second question he has quite fairly and properly stated that it does not arise in view of the definition of the word "contract" contained in Section 2(c) of the Act which does not apply to the present cases. His principal contention is that the contract for fitting and building the bodies on the chassis supplied by the customer could not be regarded as a contract for sale of goods but it is a single indivisible contract for work and labour. He submits that there is no question of the sale of a body as such and what was undertaken by the petitioner-firm was to fit and build the body on the chassis according to the specifications and the design supplied by the customer. This may vary with each chassis and according to the purpose for which the vehicle is to be ultimately used. If it is to be used for purposes of transportation of passengers, then a different kind of body will have to be built on the chassis, but if the purpose is to use the truck for carrying material or goods, naturally the construction of the body will have to be different. Similarly the size of the body would vary according to the size of the chassis. A good deal of emphasis has been laid by him on the fact that the chassis is supplied by the customer whereas when the body is built and fitted on it, the finished vehicle turns out to be a bus or a truck. Therefore, the contract essentially is one for work and labour, although the materials are also to be supplied by the petitioner-firm. The contention canvassed on behalf of the respondents is that the sale necessarily is of goods, namely, bodies which are manufactured on a large scale by the petitioner-firm and which are of varying sizes and specifications according to the standard size of the chassis and according to the requirements of the customer, namely, for transportation of passengers or goods etc. A price is agreed upon for the sale of the body which is only then to be fitted on the chassis and even if any work of building or fitting is involved, that will not detract from the real nature of the contract which is one of sale. It will be presently examined which contention should prevail on the facts of the present cases.

5. In Gannon Dunkerley and Co. (Madras) Ltd. v. State of Madras A.I.R. 1954 Mad. 1130, the question which came up for consideration was whether building contracts, which term includes contracts for the construction of dams, road work, construction of bridges etc., are entire and indivisible contracts in law and whether there is any element of sale of the materials or the contract is for work to be done. It was held that the building contracts which the assessees entered into on

which the turnover was calculated did not involve any element of sale of the materials and were not in any sense contracts for the sale of goods. It may be mentioned that before the Madras General Sales Tax (Amendment) Act 25 of 1947, works contracts were not made subject to levy of sales tax in any form. The Act of 1947 added a definition of "sale" in the Madras Act by including also a transfer of property in goods involved in the execution of a works contract. A new Clause (ii) was introduced in the definition and Section 2 defined "works contract" as meaning an agreement for carrying out for cash or deferred payment or other valuable consideration the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of movable property. It was the validity of this provision which was the subject-matter of consideration. The contracts which had been entered into in that case were for a lump sum for the quantity of the work specified. After referring to the contracts of sale in Roman Law and various English and Indian authorities, the following observations were made at page 1140 :-

> It is clear from the foregoing discussion that there is no element of sale of the materials in a building contract and that the contract is one and entire and is indivisible. Unless the work is completed, the builder is not entitled to the price fixed under the contract or ascertain-able under the terms of the contract. It does not imply or involve a contract of sale of the materials for a price stipulated. The property in the materials passes to the owner of the land not by virtue of the delivery of the materials as goods under and in pursuance of an agreement of sale which stipulates a price for the material. The property in the materials passes to the owner of the land because they are fixed in pursuance of the contract to build, and along with the corpus, which ultimately results by the erection of the superstructure, the materials also pass to the owner of the land.

6. It was finally held that as no element of sale was to be found in the contract, the impugned amendments were bad as the Provincial Legislature had no power to tax transactions which were not sales of goods. In Jubilee Engineering Co. Ltd. v. Sales Tax Officer[1956] 7 S.T.C. 423, the Andhra Court followed the above view holding that where under a works contract a person undertakes to build a particular building or to make a particular thing, the materials involved in the building or making of the finished product, are not the subject-matter of sale because there is no agreement to sell the materials nor is the price of the goods fixed nor is there a passing of the title in these goods as such, except as part of the building or the thing in which they are embedded. The building contractor in such a case cannot be said to have sold any goods or materials used in the building. In the appeal which was taken to the Supreme Court in Gannon Dunkerley and Company's case [1959] S.C.R. 379, their Lordships approved of the view expressed by the Andhra Court. At page 389 the point for decision was stated:-

> The sole question for determination in this appeal is whether the provisions of the Madras General Sales Tax Act are ultra vires, in so far as they seek to impose a tax on the supply of materials in execution of works contract treating it as a sale of goods by the contractor, * * * *

7. In the present cases it is not being sought to impose a tax on the supply of materials in execution of a works contract. What the respondents are doing is to tax the sale of the body fitted on to a chassis as chattel or goods. Mr. Sastri, however, contends that the principles which were laid down in Gannon Dunkerley and Company's case, [1959] S.C.R. 379, by the Supreme Court would apply equally to the present cases and further that no distinction can legitimately be made in the application of those principles to a building contract in which the work is essentially to be executed on land which is immovable property and contract for the building and fitting of a body on a chassis which is movable property. Mr. Sastri has relied largely on the following observations at page 413:-

> It has been already stated that, both under the common law and the statute law relating to sale of goods in England and in India, 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. Where the goods delivered under the contract are not the goods contracted for, the purchaser has got a right to reject them, or to accept them and claim damages for breach of warranty. Under the law, therefore, there cannot be an agreement relating to one kind of property and a sale as regards another. We are accordingly of opinion that on the true interpretation of the expression 'sale of goods' there must be an agreement between the parties for the sale of the very goods in which eventually property passes.

8. Their Lordships further proceeded to observe that in a building contract the agreement between the parties is that the contractor should construct a building according to the specifications contained in the agreement and receive payment in consideration therefor, but in a building contract there is no agreement to sell the materials used in the construction nor does property pass as movables. According to Mr. Sastri the agreement between the parties in the present cases was not for the sale of the very goods in which eventually the property passed, e.g., the bodies. He also says that the agreement and the sale did not relate to the same subject-matter. If the view which has been taken by the departmental authorities on the facts is to be accepted as correct, it is difficult to see how the agreement and the sale in the present cases did not relate to the same subject-matter. If the agreement was for the sale of the body when ready and complete and duly fitted on the chassis, then property passed eventually in that very goods, with the result that it would be a transaction of sale according to what has been laid down by their Lordships. It would, therefore, essentially depend on the facts of each case what the true nature of the transaction is. Mr. Sastri then relies on the passage at page 424 from the judgment of Blackburn, J., in Appleby v. Myres (1867) L.R. 2 C.P. 651 at pp. 659-660 :

> It is quite true that materials worked by one into the property of another become part of that property. This is equally true, whether it be fixed or movable property. Bricks built into a wall become part of the house ; thread stitched into a coat which is under repair, or planks and nails and pitch worked into a ship under repair, become part of the coat or the ship.

9. Their Lordships examined the application of the principle quicquid plantatur solo, solo cedit to the case where a building had to be built with materials which were movable property and observed that the law with regard to buildings which are constructed in execution of a works contract is that the title to the same passed to the owner of the land as an accretion thereto. This is another point of distinction which has been made by the learned counsel for the respondents from the present cases as according to him the decision of the Supreme Court with regard to building contracts was influenced by the applicability of the principle of accretion, particularly with regard to immovable property. Mr. Sastri contends that no distinction has been made in the decided cases or can be made on the ground that the accretion was to immovable or movable property. He relies on a passage in Benjamin on Sale, 8th Edition, at page 167, which is as follows :-

> Where a contract is made to furnish a machine or a movable thing of any kind, and before the property in it passes, to fix it to land or to another chattel, it is not a contract for the sale of goods. In such contracts the intention is plainly not to make a sale of movables, as such, but to improve the land or other chattel, as the case may be. The consideration to be paid to the workman is not for a transfer of chattels, but for work and labour done and materials furnished.

10. The cases in the footnote on which this statement is based were of a different nature and it is not possible to derive much assistance from them for the purposes of answering the first question. There are at least two decisions directly on the point which support the contention canvassed by the learned counsel for the respondents. In Mckenzies Limited v. State of Bombay [1962] 13 S.T.C. 602, the applicants had contracted to construct and deliver to the Government of India several motor bodies fitted on to the chassis supplied to them by the Government. The price was stated as a lump sum per body. The material for the body, the work of construction and the fitting were all to be done by the applicants, who had to deliver to the Government the completed articles. The question was whether the applicants were dealers and liable to sales tax. The learned Bombay Judges applied the test whether or not the work and labour bestowed end in anything that can properly become the subject of sale. According to them, neither the ownership of the materials, nor the value of the skill and labour as compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining in the circumstances of a particular case whether the contract is in substance one for work and labour or one for the sale of the chattel. The number of bodies ordered was stated to be 218 in the contract and the price was stated to be Rs. 1,730 per body Ex-Works Bombay. It was held on reading the terms of the contract that what was intended between the parties was that the applicants should manufacture and sell to the Government of India 218 motor bodies fitted on to the chassis, which were supplied to them by the Government. It was found that the work and labour was to end in the finished article, viz., the completed body, which was to be delivered as an article under the contract for the price to be paid for it. On that view it was held to be a contract for the sale of goods. The decision of the Supreme Court in Gannon Dunkerley and Company's case [1958] 9 S.T.C. 353 was held not to lend support to the proposition that in no contract in which construction work was involved there was passing of property as in the sale of goods. After considering the passage in Benjamin on Sale to which reference has been made and Anglo-Egyptian Navigation Co. v. Rennie and Anr.(1874-75) L.R. 10 C.P. 271, the learned Judges came to the conclusion that the mere circumstance that the chattel made is fitted on to another

chattel belonging to the buyer under the terms of the contract will not of necessity make the contract one of work and not of sale. It will depend upon whether the intention is to improve the chattel to which the chattel made is affixed as incidental to improvement as in the case of a contract for repairs of a motor-car or to make the sale of movables such as in the case of a contract to make and fit plastic covers to the seats of a motor-car. Mr. Sastri sought to distinguish the above decision on the ground that it was decided on the interpretation or construction of the contract in that case but the principles which have been considered and discussed cannot be ignored. In a still more recent decision in Commissioner of Sales Tax v. Haji Abdul Majid and Sons[1963] 14S.T.C. 435, the Allahabad Court had to decide a similar point. The question referred there was :

> Whether in the circumstances of this case the entire cost of ready-made bodies of the buses is liable to tax under the U. P. Sales Tax Act or only the cost of materials used in the manufacture thereof would be taxable.

11. There, as in the present case, it was not disputed on behalf of the assessee that a ready-made bus body would be "goods" and if a dealer carried on the business in the supply or distribution of ready-made bus bodies by way of sale, then the aggregate amount for which such bus bodies were sold would represent his turnover liable to be taxed under the Act. It was found in that case that the materials which were used for building the body on the chassis were owned by the assessee and the body built by the assessee by bestowing its work and labour ended in a product which could become a proper subject of sale and when the work was complete the customer or purchaser took delivery of possession of the bus body fixed to his chassis. It was observed:

> In the circumstances the conclusion is inescapable that there takes place a transfer of the property in the bus body built by the assessee and it would be difficult to hold that the transaction so made is not a contract of sale of the bus body, but is a contract for work and labour.

12. The Bombay case was relied on as also certain other English and Indian cases which were referred to, including the Gannon Dunkerley and Company's case [1958] 9 S.T.C. 353. Desai, C.J., in the concluding portion of his judgment held :-

> In the instant case what the customer wanted was the construction of bodies on the chassis of his buses. The assessee could have prepared the bodies first and then fixed them on to the chassis or could have started the construction of the bodies by putting one plank after another on the chassis themselves. All the materials were to be supplied by the assessee. The element of sale predominated over the element of contract of work.

13. We would respectfully adopt these observations for the purposes of answering the first question. On the facts stated in the reference the conclusion is inescapable that the transactions which were entered into by the petitioner-firm were one of sale within the meaning of the word "sale" as given in the Act. The question is answered accordingly. In view of the nature of the points involved, we make no order as to costs.