

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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TAX REVISION CASE Nos.83 and 84 of 2005

Between:

M/s. Kala Jyothi Process Pvt. Ltd.

Petitioner

VERSUS

State of Andhra Pradesh.

Respondent

ORDER PRONOUNCED ON: 16.10.2023

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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! Counsel for Petitioner(s) : Sri Dantu Srinivas

^Counsel for the respondent(s) : Sri K. Raji Reddy

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> HEAD NOTE:

? Cases referred

1. 1960 LawSuit(AP)11
2. 1972 LawSuit (AP) 214
3. Case No. RN-561 of 1989 dt. December 04, 1992 West Bengal
Taxation Tribunal
4. AIR 1952 Mad 718, (1952)
5. (2012) 7 Supreme Court Cases 153
6. AIR 2008 SUPREME COURT 2286
7. AIR 1996 SUPREME COURT 2542
8. AIR 1990 SUPREME COURT 301
9. (1989) 4 Supreme Court Cases 541
10. (2015) 8 Supreme Court Cases 557
11. 1994 S.T.C. Vol. 93 Pg.307 (F.B) (Bom

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
TAX REVISION CASE Nos.83 and 84 of 2005

COMMON ORDER: (*per Hon'ble Sri Justice P.SAM KOSHY*)

The instant Tax Revision Cases arise from a common order passed by the Sales Tax Appellate Tribunal pertaining to the same assessee, and point of contention and grounds raised to challenge the impugned order in these two tax revision cases being common, they are heard together and decided by this common order.

2. Heard Sri Dantu Srinivas, learned counsel for the petitioner and Sri K. Raji Reddy, learned Senior Standing Counsel for Commercial Taxes appearing for the respondents.

3. For the sake of convenience, the facts in Tax Revision Case No.83 of 2005 are discussed herein under.

4. Tax Revision Case No.83 of 2005 has been filed by the petitioner assailing the order passed by the Sales Tax Appellate Tribunal (for short 'the Tribunal') in T.A.No.1586/2003 which was decided on 15.03.2005.

5. The question of law involved is as to (a) whether the petitioner would get exemption of payment of tax on the turnover of books and periodicals printed at the printing press of the petitioner in terms of G.O.Ms.No.625 Rev. (CT-II) dated 31.07.1996 and (b) whether the Tribunal was justified in holding that the nature of job undertaken by the petitioner would fall within the purview of 'works contract' or whether it would be termed as a sales in terms of the definitions provided under the provided under the provisions of APGST Act, 1957.

6. For proper appreciation and adjudication of the dispute, the brief facts relevant are that the petitioner is a limited company incorporated under the Companies Act, 1956. It is into the business of printing books and also printing of periodicals, magazines, brochures and leaflets etc. In the instant case, it is the printing of the books for reading and the periodicals printed at the petitioner's establishment which is the bone of contention and for which the petitioner had sought for an exemption of payment of tax under the APGST Act, 1957, relying upon the G.O.Ms.No.65 dated 31.07.1996.

7. Now to further scrutinize the issue involved in the case, it would be trite at this juncture to refer to the contents of

G.O.Ms.No.65 which for ready reference is being reproduced herein under:

“Exemption to periodicals and printed books for reading

G.O.Ms.No.625 Rev. (CT-II) dt.31.7.1996.

NOTIFICATION XI

In exercise of the powers conferred by sub-Section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act No.VI of 1957), the Governor of Andhra Pradesh hereby exempts the sales tax payable under the said Act on the sales of Periodicals and printed books for reading.

(Published in A.P.Gazette, Part I Extra-Ordinary dt.1.8.1996”

8. Now we may further proceed to take note of the nature of work executed by the petitioner. As has been stated in the preceding paragraphs, the petitioner is a limited company engaged in the business of printing. They have highly automated printing press and they print books and also publish periodicals like magazines etc., apart from printing of brochures, leaflets etc. There is no dispute so far as payment of tax to other materials printed by the petitioner except for the printing of textbooks, magazines and periodicals for which the petitioner

had claimed for an exemption in terms of G.O.Ms.No.65 (reproduced herein above).

9. The contention of the learned counsel for the petitioner was that the nature of work assigned by the petitioner is one which would fall clearly within the ambit of sale in terms of the definition of sale provided under Section 2(n) of the APGST Act, 1957, and further, that it would not be in any manner a nature of works contract that the petitioner is executing.

10. According to the learned counsel for the petitioner, there is a marked distinction so far as a “contract for sale” and a “contract for work and labour”. A contract of sale is a contract whose main object is the transfer of the property and the delivery of the possession of chattel as a chattel to the buyer. Whereas, the main object of the work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour.

11. According to the learned counsel for the petitioner, the nature of work executed by them is getting a CD and a Zip from the persons who want the contents of the CD to be converted into a textbook or magazine/periodicals as the case may be. And in the course of execution of their work, after the printing of the

books, the CD and the Zip is handed over to the publisher and after receiving the consideration for the printing of books and magazines, the printed material i.e. the books and magazines are handed over back to the publisher. It is submitted that once when the printing work is complete, unless and until the entire printed material is transferred to the publisher, it is the petitioner who is the owner of the said property and it is by way of nature of sale that the printed materials are now being handed over back to the publisher and therefore for all practical purposes, the said printing of the books and handing it over back to the publisher on the consideration that was agreed upon amounts to a sale and not a works contract.

12. Learned counsel for the petitioner in support of his contentions had relied upon the following decisions:

***STATE OF ANDHRA PRADESH V/S KRISHNA POWER PRESS*¹**

***S R P Works, Ruby Press V/S STATE OF ANDHRA PRADESH*²**

***Studio Kamalalaya V Commercial Tax Officer decided on 04.12.1992*³**

***Kandula Radhakrishna Rao And Ors. vs The Province of Madras*⁴**

¹ 1960 LawSuit(AP)11

² 1972 LawSuit (AP) 214

³ Case No. RN-561 of 1989 dt. December 04, 1992 West Bengal Taxation Tribunal

⁴ AIR 1952 Mad 718, (1952)

COMMISSIONER OF CENTRAL EXCISE Versus FAVOURITE INDUSTRIES⁵

***Union of India v. M/s. Ranbaxy Laboratories Ltd and Ors.*⁶**

***Indian Farmers Fertiliser Co-operative Ltd v. Collector of Central Excise, Ahmedabad*⁷**

***M/s. Swadeshi Polytex Ltd v. Collector of Central Excise*⁸**

***TATA OIL MILLS CO. LTD. Versus COLLECTOR OF CENTRAL EXCISE*⁹**

13. It was also the contention of the learned counsel for the petitioner that it is a case where the entire raw material is used by the petitioner himself for the preparation of the textbook, magazines and periodicals and it is not being provided by the publisher. For this reason also it has to be considered as an outright sale rather than treating as a works contract.

14. *Per contra*, learned Senior Standing Counsel for the respondents took the Court through the decisions rendered by the Tribunal and also the order passed by the Revisional Authority on 14.09.2003 and contended that the Tribunal as also, the Revisional Authority have extensively dealt with the subject of withdrawal of exemption granted by the Assessing

⁵ (2012) 7 Supreme Court Cases 153

⁶ AIR 2008 SUPREME COURT 2286

⁷ AIR 1996 SUPREME COURT 2542

⁸ AIR 1990 SUPREME COURT 301

⁹ (1989) 4 Supreme Court Cases 541

Officer under G.O.Ms.No.625 and treating the transaction as works contract.

15. According to the learned Senior Standing Counsel for the respondent, it was a clear case where the publishers would enter into an agreement with the petitioner who is basically a printing press operator and it is only in terms of the agreement that is entered into between the parties that the printer would print the printing material provided in the CD/Zip and convert them into textbooks, magazines/periodicals. Thereafter, the entire printed material is transferred to the publisher after paying the petitioner printing charges as agreed upon. It is thereafter that the publisher sells the book in the open market. Thus, the work executed by the petitioner in favour of the publisher is only a contractual obligation so far as the printing work is concerned and that the petitioner is paid at piece meal rate. Thus, it would not constitute an outright sale, but it is only a nature of works contract being carried on by the petitioner.

16. It was also the contention of the learned Senior Standing Counsel for the respondent that except for the printing of the textbooks, periodicals and magazines, the petitioner thereafter is not entitled to sell the same in the open market or to any other

person, but to hand over the entire printed material i.e. the textbooks, magazines and periodicals to the publisher who in turn would have the exclusive right of sale of the said products.

17. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of the definition of sale as also definition of works contract as is defined under Section 2(n) and 2(t) of the APGST Act, 1957. For ready reference, the definition of both these terms is reproduced herein under:

“(n) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods whether as such goods or in any other form in pursuance of a contract or otherwise by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration or in the supply or distribution of goods by a society (including a co operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on goods.”

“(t) "works contract" includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

18. Admittedly, the petitioner is a business organization which is otherwise into the business of printing of textbooks, periodicals and other materials as per the orders/demand received from the various customers. What is also undisputed is

that there is a contract entered with the customers for the printing of the books and magazines as the case may be. The contract is for the quantity of the printed materials in the form of books and magazines. After getting it binded, the material to be printed is provided by the customers in the CD/Zip which after the printing is done is returned back to the customer. The charges for the printing are collected on piece rate basis of the finished product which is otherwise the textbook or the magazines.

19. It is also an undisputed fact that the petitioner is not entitled to sell the textbooks or magazines and he is required to deliver to the customer the quantity of the books and magazines ordered for.

20. What is required to be understood further is that in terms of the contract itself, it is the responsibility of the petitioner to use the required paper for the purpose of printing. Neither the printed material nor the raw material paper can be separated, nor can the aforesaid two materials be sold independently at the first instance and neither can the same can be sold by the petitioner in any manner. It can be sold only by the publisher who has got the materials printed.

21. Yet another fact which needs to be considered is that the charges which the petitioner charge the publisher is only the cost of the printing. That the petitioner is not paid the value of the product, but is only paid based upon the quantity of materials printed that too on piece rate basis i.e. the charges for one textbook or one magazine, as would be the case. Coming to the G.O.Ms.No.625, the said G.O. grants exemption only for the sale of the entire book. The sale price of the textbook or the magazine is entirely different than the cost of the printing of the books and magazines.

22. The fact which needs to be further looked into is that if the transaction between the printer and the publisher is treated as sale, then the publisher in turn would claim exemption on the sale value of the textbook on the ground of the same being second sale. Therefore, the contention of the learned counsel for the petitioner becomes difficult to be accepted.

23. Yet another fact which needs to be considered is that if the contention of the learned counsel for the petitioner is to be accepted, then there shall be no distinction between the printing of textbooks, magazines and periodicals and the printing works of letter heads, bill books, account books, leaflets etc., as any

printing carried on by the printer would have to be treated as sale upon which G.O.Ms.No.625 would become applicable.

24. Hence, we are of the considered opinion that the grounds raised by the petitioner does not appear to be acceptable or appealing nor the analogy floated by the petitioner can be accepted.

25. As regards the judgments cited by the learned counsel for the petitioner are concerned, a plain reading of the judgments would clearly indicate that none of those petitions were decided dealing with a subject like printing of textbooks, magazines and periodicals. Therefore, those judgments cannot be made applicable to the facts of the present case.

26. The Hon'ble Supreme Court of India in the case of **STATE OF KARNATAKA AND OTHERS VERSUS PRO LAB AND OTHERS**¹⁰ dealing with the issue of sale of 'goods' and 'services' in paragraph No.20 held as under:

"To sum up, it follows from the reading of the aforesaid judgment in Larsen and Toubro case that after insertion of clause (29-A) in Article 366, the works contract which was indivisible one by legal fiction, altered into a contract, which is permitted to be bifurcated into two: one for "sale of goods" and other for "services", thereby making goods component of the contract exigible to sales tax.

¹⁰ (2015) 8 Supreme Court Cases 557

Further, while going into this exercise of divisibility, dominant intention behind such a contract, namely, whether it was for sale of goods or for services, is rendered otiose or immaterial. It follows, as a sequitur, that by virtue of clause (29-A) of Article 366, the State Legislature is now empowered to segregate the goods part of the works contract and impose sales tax thereupon. It may be noted that Entry 54 of List II of Schedule VII to the Constitution of India empowers the State Legislature to enact a law taxing sale of goods. Sales tax, being a subject matter of the State List, the State Legislature has the competency to legislate over the subject.”

27. Similarly, the Hon’ble Supreme Court of India in the case of **STATE OF MAHARASHTRA v. SARVODAYA PRINTING PRESS FINE ART PRINTER¹¹** in paragraph No.2 held as under:

“The judgment of the Maharashtra Sales Tax Tribunal is not before us but we find the facts found stated in its order on the reference application. They are that the respondent ran a printing press at Nagpur wherein it carried on printing work for its customers. The respondent entered into an agreement with the Madhya Pradesh Electricity Board for the supply of “revenue money receipt books: at the rate of Rs. 8.88 per receipt book. The judgment of the High Court shows that only job work was done in the respondent’s printing press and that the charge for the supply of the receipt books was of a composite nature. The judgment states that the paper and ink used were the property of the respondent before printing but thereafter they became the property of the Board; while the property in these goods passed to the Board, this was, in the very nature of things, only incidental or ancillary to the contract of printing. The High Court laid stress on this Court’s judgment in State of Tamil Nadu v. Anandam Viswanathan [1998] STC 1 where the printing and supply of question papers to a university was involved. This Court held that though there was sale of paper and ink, it was merely incidental. It was not a case of sale but a works contract having regard to the nature of the job to be done. Following this judgment, the High Court held that there was no sale.”

¹¹ 1994 S.T.C. Vol. 93 Pg.307 (F.B) (Bom)

28. Distinguishing the two elements i.e. sale from that of services, the decision of full Bench of Bombay High Court which stood affirmed by the Supreme Court in the aforesaid two judgments reported in (1999 [Vol. 93]386 Sales Tax Cases) in paragraph 3, 4 and 5 held as under:

“3. Following are the uncontroverted salient features pertaining to the transaction: (1) The applicant runs a printing press where only job-work is done. (2) The applicant does not keep ready stock of any material such as paper, ink or standard money receipt books for general use. (3) The MPEB also does not deal in any goods. (4) Charges for supply are one composite amount for the entire job. (5) The applicant could not sell the receipt books to anyone else and was obliged to destroy the excess left over. (6) The receipt books were of no commercial use to anyone else and hence had no marketable value.

4. Having regard to the special type of job work done and other basic circumstances noticed above, it seems to us that the supply does not represent a transaction of sale but represents a works contract which is not subject to sales tax. The intention of parties is most material and it is obvious. The principal object of the MPEB was to get the material printed and not to purchase the printed material. Charges were composite. The books were specially designed for MPEB as per its specifications as to size, type, colour, format, background, etc. No space was left blank obviously because the books were valuable and upon misuse could cause terrible loss to the MPEB. Under the contract the applicant could not retain or use the printed books and the excess, if any, had to be destroyed. Paper and ink used were no doubt property of the applicant before printing, but thereafter they became the property of the MPEB by theory of accretion. No doubt property in the goods used passed to the MPEB but it was by the very nature of things only incidental or ancillary to the contract of printing. No transfer of chattel qua chattel was involved. The work done was composite or indivisible with separate charges for the material. The applicant was prohibited from selling the books to anyone else or to use them for any purpose. It was the duty of the third parties. Element of heavy responsibility was also involved. In any case they were not standard goods and were not capable of any use to anyone else and thus had no commercial value. Material could not be used even as a scrap is rejected and had to be destroyed.

5. Both parties have referred to several decisions dealing with the difference between a sale and a works contract in the context of

sales tax laws. They are too numerable to be noticed. The last word on the subject has been uttered in the authoritative pronouncement of the Supreme Court in the case of State of Tamil Nadu v. Anandam Viswanathan [1989] 73 STC 1. It was a case of printing and supply of question papers of the University. The Supreme Court held that though sale of paper and ink was involved, it was merely incidental. It was not a case of sale but of a works contract having regard to the nature of the job to be done and the confidence reposed for the work to be done for remuneration. Following observations are apposite:

“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 Tamil Nadu [1983] 54 STC 382 (Mad.) and Commissioner of Sales Tax v. Ratna Fine Arts Printing Press [1984] 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 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 job-work 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.”

29. In the light of the aforesaid judicial pronouncements, if we look into the judgments which have been relied upon by the learned counsel for the petitioner as has been discussed earlier, those judgments are firstly under entirely different contextual background and none of those deal with the printing of the

textbooks, magazines and periodicals or have been dealt under an entirely different jurisdiction other than the taxing regime. In view of the same, we are of the considered opinion that no strong case for interfering with the impugned order of the Tribunal has been made out.

30. The Tax Revision Cases being devoid of merits, deserves to be and are accordingly, rejected. No order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

P.SAM KOSHY, J

LAXMI NARAYANA ALISHETTY, J

Date: 16.10.2023
GSD