(1982) 04 MAD CK 0020

In the Madras High Court

Case No : Tax Case (Revision) No. 1286 of 1977 (Revision No. 291 of 1977)

A.S. Hameed Bharath Press — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 21-04-1982

Acts Referred:

Citation : (1983) 54 STC 379

Hon'ble Judges : S. Padmanabhan, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : R.L. Ramani, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyan, J.—In this tax revision arising under the Tamil Nadu General Sales Tax Act, 1959, the question is whether the assessee

sold printing paper and then got it back from the customers for the purpose of carrying out printing work on such paper. The Tribunal has

recorded a finding that the contracts between the assessee and his customers are indivisible contracts under which then assessee undertook to

deliver printed material in accordance with the customers'' instructions. The Tribunal therefore considered the receipts in the assessee''s business as

representing turnover in sales of goods taxable under the Act. For the same reason, they rejected the contention of the assessee that the turnover

only represents receipts from works contracts.

2. The learned counsel for the assessee submitted that the order forms, on the basis of which the transactions took place as between the customers

and the assessee clearly distinguish between the two transactions, one, the supply of paper by the assessee to the customers at a price, and the other, the cost of the printing, the two being set out in separate columns in the order forms. The learned counsel drew our attention to some

writings on the reverse of the order forms which, according to the learned counsel, showed that what the assessee did was only to execute a job

work on paper belonging to the customers. These writings were described as ""conditions"". Paragraph 4 of the conditions is as follows :

In case the press agrees to supply materials, to be used in the execution of the work, such materials shall be deemed to be the property of the

customer placing the order from the date of such supply, and in case of loss, or damage to such material during the course of the execution, such

loss shall be borne by the customer.

3. The Tribunal has not adverted to this condition appended to the order forms, apparently because it was not particularly brought to their notice.

It however seems to us that this condition is only in the nature of a self-serving statement. Even otherwise, we do not see how it lies in the power of

some one who is not a legislative authority to introduce a mere fiction and treat something which does not exist as something which must be

deemed"" to exist. There is yet another tell-tale element in the order forms. If really the paper belongs to the customer concerned at the time when

he places the order with the assessee for printing and the order form truly reflects that position, viz., the ownership of the printing paper as that of

the customer, then there is no reason why the cost of paper should also find a column war for in the order forms. If the one and only contract

between the customer and the assessee is that the assessee should get some printing done on the paper provided by the customer, the assessee

would not be bothered about the quality or cost of the paper, so long as printing work can be done on it. There is no particular reason why in an

order form, which is supposed to request the assessee to execute a printing job, special mention should be made of the cost of paper. The column

provided for this particular really lets the cat out of the bag, which is that the cost of paper really represents the price of paper which is included in

the material ultimately passing from the assessee to the customer.

4. The Tribunal, which had gone into these and other aspects of the order forms, had recorded a clear finding to the effect that the order form is

make-believe and does not reflect the real nature of the transaction between the assessee and his customers. Given the finding by the Tribunal that

the printed conditions in the order forms are not to be accepted at face value, and that the transactions between the assessee and his customers

involve only the supply of printed material at a price, we have to uphold the decision of the Tribunal that the entire receipts in the assessee''s

business must be held to be sales turnover liable for tax under the Act.

5. The learned counsel for the assessee referred to one or two decisions in the course of his arguments. He cited, for instance, an early decision of

this Court in Ramaswami v. State of Madras [1954] 5 STC 250. That was a case where this Court, disagreeing with the finding of the Tribunal,

held that the printer sold paper to the customers and then obtained that paper back on which he executed the printing work afterwards. This Court

was prepared to accept the position that at the time when the order for printing was given by the customer, the paper was the customer''s

property. This Court also was prepared to regard the relations between the printer and the customer in that case as consisting of two separate and

distinct transactions, one a sale of paper by the printer to the customer and the other a supply of printing paper by the customer to the printer for a

job work to be done on it. This case is not an authority for the position that even in a case where a contract is one and indivisible for the purpose

of supply at a price of printed material, the court must hold that part of the receipts represents works contracts pure and simple.

6. The learned counsel cited a later decision reported as Varghese v. State of Madras [1965] 16 STC 184. This was a case of a tailor. The finding

of the Tribunal in that case was based on an order book in which the cost of cloth supplied by the tailor to the customer was separately billed for

and where the cloth was taken back for being rendered into a dress by the tailor. The court rested its decision in that case on the circumstance that

order book was genuine and reflected the truth. The court, with respect came to the right conclusion, based on the finding of the Tribunal that there

were two transactions, one of which represented a pure works contract. This case represents a contract in so far as the basic factual finding of the

Tribunal is concerned.

7. The third case referred to by the learned counsel is not reported, viz., Deputy Commissioner (C.T.), Coimbatore v. Karthikeya Press (T.C. No.

941 of 1977 - judgment dated 15th October, 1981) since reported in [1982] 51 STC 28. This decision offers a study in contrast so far as the

factual finding is concerned. In that case, that the order form, which was on record, seems to have followed more or less the same pattern as in the

present case. It contained inter alia a condition similar to the one which we have referred to and quoted verbatim earlier in this judgment. The

Tribunal, in that case, however, persuaded themselves to accept the genuineness of the order form holding that the order form true reflected the

nature of the transaction between the printer in that case and his customer. When the matter was brought before this Court at the instance of the

Sate Government, this court was not prepared to go behind the finding of the Tribunal on the factual issue, viz., that the order form truly reflected

the nature of the bargain between the parties as a two-in-one transaction, the one for supply of paper and the other for the execution of the printing

contract. If we were to follow the pattern of the decision in this unreported case [Since reported in [1981] 51 STC 28 we should have made this

judgment much shorter than what we are making of it, and disposed of this revision by holding that the order of the Tribunal is correct. However,

for the more elaborate reasons which we preferred to render in the earlier paragraphs, we think this petition deserves to be dismissed, and we

hereby do so. The assessee will pay the costs of the State. Counsel''s fee Rs. 250.

