

(1967) 10 MAD CK 0009

In the Madras High Court

Case No : Tax Case No"s. 257 to 259 of 1966 and Revision No"s. 184, 185 and 186

City Motor Service Private Limited

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 17-10-1967

Acts Referred:

Citation : (1968) 22 STC 485

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : S. Padmanabhan, for the Appellant; The Special Government Pleader, for the Respondent

Judgement

1. These tax cases filed by the same assessee raise a common point, besides two others in one or two of them. The common point is whether the turnover relating to bus body-building contracts is chargeable to tax. The Tribunal has taken the view, agreeing with the department that it is. We accept this view to be correct. Learned counsel for the assessee contends that the terms of the contracts which have been extracted by the Tribunal in its order suggest only an intention to construct bodies and not to sell bus bodies as finished independent units. We do not agree. While accepting the order, the assessee stated that a sum of Rs. 1,250 would be charged towards the cost of constructing one delivery van body on a three wheeler Lambretta chassis supplied by the customer. In another case the sample quotation offered by the assessee to the Commissioner of the Corporation of Madras said that it was for the construction of tipper body on Tata Mercedes Benz and Leyland conventional type chassis supplied by the Corporation. The quotation specified the design, the type of cab, specifications in relation to the rear body, and quoted the price, namely, as so much for constructing each tipper body, plus sales tax at the rate ruling ex-assessee"s works plus any other taxes or duties applicable at the time of the assessee invoicing the bodies. The quotation also contained particulars as to delivery, that is to say, fixing the time within which the bus bodies were to be delivered from

the date of receipt of the relative chassis and order. The quotation contained the terms of payment, to wit, payment against delivery. Strong reliance is placed upon the word "constructing" or "construction" for the contention that the intention gatherable from the terms of the contract was only to do the work of building the bus body and that the intention of the parties was not that the assessee should sell the bus bodies as such.

2. It has been held in numerous cases, some of which were decided by us, that the question whether contracts of this nature amount to sales of goods is one of construction of the relative contract and naturally, therefore, it has to be decided in the light of the terms of the contract in each case. Certain primary tests, however, have to be applied in construing the contract. The principal test is how and when property is intended to pass. There is nothing in the terms of the contracts before us to show that the property in the materials used in the process of bus body-building should pass to the customer who supplied the chassis the moment the materials were affixed to the chassis. On the other hand, the stipulation relating to payment, namely, payment against delivery, clearly shows that the property passed only at the time of delivery of the bus body. It is explicit from this term that if there is no delivery of the bus body as such, there will be no liability for payment. The position would be otherwise if the property in the materials used in the bus body-building passed as and when they were affixed to the chassis. This position also demonstrates that the risk in respect of the materials used in the bus body-building is with the assessee and that before completion of the bus body and delivery thereof, the customer bears no risk in respect of it. It is not stray words used in the contract that by themselves would govern the intention of the parties. The contract will have to be read as a whole and the terms therein will have to be interpreted in the context of each other and also taken together. Undoubtedly, the idea of construction is involved in the process of bus body-building. But the point is whether the parties bargained only for work and labour, or for delivery of the bus body as such fitted to the chassis. In other words, if the parties intended that there should be delivery of bus bodies as units, or as bus bodies though fitted to the chassis, that will be a case where the property passes only at the time of delivery. Such a transaction will be a sale of goods. That precisely is the position in this case. We agree with the Tribunal that the turnover in respect of these transactions was rightly charged to sales tax.

3. In Tax Case No. 257 of 1966 there is an additional point. The department as well as the Tribunal have agreed that sales of aluminium scrap were liable to tax. The contention before us is that the assessee is not a dealer in aluminium scrap and that aluminium scrap is only a by-product in the process of carrying on its business of construction of bus bodies. We are inclined to accept this contention. The assessee is a private limited liability company and its object as disclosed by the memorandum of incorporation is not to deal in aluminium scrap. It is not also in controversy that aluminium scrap is only a by-product which is produced in the course of the assessee carrying on its bus body-building work. We are of the view, therefore, that the principle of *State of Gujarat v. Raipur Manufacturing*

Co., Ltd. [1967] 19 S.T.C. 1 and our judgments in Tax Case Nos. 170 of 1964 Reported as Loyal Textile Mills Ltd. v. The State of Madras [1968] 21 S.T.C. 195 of 1967 Reported as Burmah Shell Oil Storage and Distributing Co. of India Ltd., Madras, and Ors. v. The State of Madras [1968] 21 S.T.C. 227 is applicable. We, accordingly, direct that the turnover relating to sales of aluminium scrap be deleted from the chargeable turnover.

4. There remains for consideration the question of penalty which was imposed in Tax Cases Nos. 257 and 258 of 1966. The Tribunal sustained the penalty levied by the department, though it reduced the quantum. This was on the ground that the assessee failed to include in its return the turnovers relating to sales of aluminium scrap and also bus bodybuilding contracts. The explanation of the assessee is that in its view the two items of turnover were not liable to tax and that failure to include them in the return was bona fide.

5. It is true Section 12(3) speaks of levying a penalty in case of failure to disclose a turnover in the return. But in our view this language is not to be interpreted in a literal fashion. Sub-section (3) of Section 12 is attracted only in case of assessments made under Sub-section (2). These are not cases where no returns were submitted ; nor are they cases in which the accounts submitted by the assessee were rejected. It cannot be disputed that the two items of turnover did find a place in the accounts of the assessee. That being the case, we are satisfied that these are not cases of deliberate suppression of items of turnover from the returns.

6. The tax revision cases are allowed in respect of the penalties and. also the turnover relating to sales of aluminium scrap, but dismissed in other respects. No costs.