(1962) 09 KL CK 0003

In the High Court Of Kerala

Case No : Tax Revision Case No. 54 of 1961

Harrisons and Crosfield Ltd. APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 07-09-1962

Acts Referred:
General Sales Tax Act — Section 2(1)

Citation : (1962) 13 STC 964

Hon'ble Judges : M.S. Menon, C.J;Mathew P. Muricken, J

Bench : Division Bench

Advocate : K.V.R. Shenoi, P.K. Kurien and K. Sitkumaran, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—The assessee, M/s. Harrisons & Crosfield Limited, Quilon, is the petitioner before us. The question of law raised for decision is formulated in the petition as follows :

Whether on the facts and circumstances of the case, the fabrication of steel to the specification of the customers amounts to ''works contract'' as defined in Section 2(1) of the General Sales Tax Act ?

2. The definition of the expression "works contract" in Section 2(1) of the General Sales Tax Act, 1125, is :

''works contract'' means any agreement for carrying out for cash or for 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 any movable property.

The contention of the assessee is that what we are concerned with are agreements for the "fitting out" of movable property.

3. The Appellate Tribunal said :

The only question that arises for consideration in this appeal is whether the supply of fabricated steel goods against orders placed by customers will constitute a sale of goods or only the execution of a works contract"; and

The nature of the transaction as evidenced by the documents before us is as follows: These documents filed before the Tribunal relate to the supply of goods to one Roobi Rubber Works Ltd., Changanacherry. The letter dated 13th August, 1956, from the customer to the appellant reads thus:

''We intend to construct a factory building 80 ft. X 40 ft. and shall thank you to let us know whether you can supply the necessary steel trusses. The roofing trusses will be supported by masonry walls on all sides. If you can undertake supplies of the above, we shall thank you to let us have your lowest quotation with full details.''

To this letter the appellant has replied under date 17th August, 1956, undertaking to supply the goods and quoting the price. It may be noted that the charges for work and labour have not been quoted separately. The goods involved are trusses, purlins, asbestos, cement sheets, ridges, etc. This is made clear by the revised order dated 6th December, 1956, placed by the customer.

It then went on to consider the various arguments advanced and to hold that the transactions spelt a sale of goods and not the execution of works contracts.

4. We entertain no doubt that the conclusion reached by the Appellate Tribunal is correct. As stated by Benjamin :

If the intention and result of the contract is to transfer for a price property in which the transferee had no previous property then the" contract is a contract of sale." (Benjamin on Sale, Eighth Edition, page 167).

5. There is nothing on evidence to show that the customers of the assessee had any property in the goods until the fabrication is over and the delivery is effected. The entire case-law on the subject was reviewed by Chandra Reddy, C.J., in State of Andhra Pradesh v. Sri Krishna Power Press, Vizianagaram [1960] 11 S.T.C. 498 and we consider it Unnecessary to go over the ground afresh. The learned Judge said :

It is sufficient to say that a transaction which results in the transfer of property in finished goods to a third party cannot be described as a works contract.

We find it impossible to construe the contracts before us as anything else other than contracts for the sale of the fabricated material.

6. The T.R.C. fails and is dismissed, though in the circumstances of the case, without any order as to costs.

