
(1976) 12 KAR CK 0001
In the Karnataka High Court
Case No : STRP. 24 to 29 Of 1975

Hindustan Aeronautics Ltd

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-12-1976

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2(1)

Citation : (1977) 100 KarLJ 9

Hon'ble Judges : Srinivasa Iyengar, J;Tewatia, J

Judgement

Tewatia, J.-These six revision petitions, three of them, viz., STRPS. 28, 27 and 29 of 1975, under the Karnataka Sales Tax Act, for the year 1960-61, 1961-62 and 1962-63 respectively, and the remaining three viz, STRPS. 25, 26 & 24 of 1975, under the Central Sales Tax Act for the corresponding years respectively, at the instance of M/s. Hindustan Aeronautics Ltd, Bangalore, involve common questions of law and facts and are therefore proposed to be decided by a common judgment.

The petitioner is the manufacturer of spare parts and accessories of various aircrafts and has also established facilities for assembling, servicing, repairing, overhauling of the aircrafts, their instruments and accessories.

The petitioner also runs two canteens, one in the factory premises and the other in the aerodrome premises.

The sales-tax authorities sought to subject to sales that portion of the total turnover of the petitioner for the relevant years in question which was equivalent of the money value of the spare parts of the aircrafts which it supplied to the Indian Air Force as a result of their use in the process of repairing, servicing and overhauling of the aircrafts, their instruments and accessories which were sent to the petitioner for the said purpose during the relevant years in question.

The sales-tax authorities also sought to bring within the purview of the Sales Tax Act the income of the canteen run by the petitioner at the airport.

The work undertaken and executed by the petitioner in its assembly, repair, servicing and overhauling department were on costs plus 10 per cent profit basis as well on fixed, inclusive quotation basis. The appeals of the petitioner in regard to the latter kind of contracts succeeded as the Appellate Tribunal held such contracts to be exclusively work contracts. Thus the controversy before us survives only in regard to the first category of contracts, which the appellate tribunal held to be composite contracts, as also in regard to the income of the canteen run by the petitioner in the aerodrome premises.

So far as the supply of spare parts to the IAF during the relevant period is concerned, the petitioner's case as put forth before the tribunal was that there had been no sale of the spare parts to the IAF, for the spare parts in question were used during the course and in the process of execution of the work contract relating to the servicing, repairing and overhauling of the aircrafts, their instruments and accessories and that there was no sale contract as such in pursuance whereof, the spare parts in question could be said to have been sold to the IAF.

Regarding the income from the canteen, it was argued on behalf of the petitioner before the tribunal that the canteen was not run as a commercial concern, as it was meant to cater to the employees of the petitioner.

The tribunal found the stand of the petitioner as unacceptable, and rightly so, in our view as would be presently shown.

Whether the supply of the spare parts by the petitioner would tantamount to a sale or not would depend on the fact as to whether there was a sale contract between the petitioner and the IAF in that regard. If the contract entered into between the petitioner and the IAF was in the nature of work contract and the sale of the spare parts was not contemplated therein, then the use of the spare parts in question would be integrally related to the execution of the work contract and not to any sale contract and thus the supply thereof to the IAF would not amount to a sale and accordingly the value thereof would fall outside the purview of the Sales Tax Act.

It has been recognised by their Lordships of the Supreme Court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd*, (1958) 9 STC. 353. that there can be instances of composite contract providing for transfer of material for money consideration as also for payment of remuneration for services and the work done, as is evident from the penultimate paragraph of their judgment which reads:

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in *Hudson on Building Contracts*, at page 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for

money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really 2 agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment."

At this stage, one may also recall the following observation of their Lordships of the Supreme Court in *Govt. of A.P. v. Guntur Tobaccos*, (1965) 16 STC. 240. at page 255:

"....A contract for work in the execution of which goods are used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the works for a price; it may be a contract for work in which the use of materials is necessary or incidental to the execution of the work; or it may be a contract for work and use or supply of materials though not accessory to the execution of the contract is voluntary or gratuitous. In the last class there is no sale because though property passes it does not, pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods."

Whether a contract in question is exclusively a work contract or a composite one providing for remuneration for service as also for payment of money value for transferred goods has to be examined, firstly by taking into consideration the language used in the contract and secondly the other circumstances of a given case having a bearing on the construction that may be put on the language used in a given contract. The above approach has the backing of the high authority of their Lordships of the Supreme Court expressed in the following observation in *State of Himachal Pradesh v. Associated Hotels of India*, (1972) 29 STC. 474.

"Thus, in considering whether a transaction falls within the purview of sales tax, it becomes necessary at the threshold to determine the nature of the contract involved in such a transaction for the purpose of ascertaining whether it constitutes a contract of sale or a contract of work or service. If it is of the latter kind it obviously would not attract the tax. From the decisions earlier cited it clearly emerges that such determination depends in each case upon its facts and circumstances. Mere passing of property in an article or commodity during the course of the performance of the transaction in question does not render it a transaction of sale. For, even in a contract purely of work or service, it is possible that articles may have to be used by the person executing the work and property in such articles or materials may pass to the other party. That would not necessarily convert the contract into one of the sale of those materials. In every case the Court would have to find out what was the primary object of the transaction and the intention of the parties while entering into it. It may in some cases be that even while entering into a contract of work or even service, parties

might enter into separate agreements, one of work and service and the other of sale and purchase of materials to be used in the course of executing the work or performing the service. But then in such cases the transaction would not be one and indivisible, but would fall into two separate agreements, one of work or service and the other of sale."

Now the stage is set to examine and analyse the terms of the contract, if any. While no contract directly concerning the repairing, servicing and overhauling of a specified aircraft, instrument or accessory in which the spare parts had been used in the execution of service contract has been placed on the record either by the petitioner-assessee or by the assessing authority, there is on the record, however, a specimen contract that was entered into between the petitioner and the IAF in 1951 (hereinafter referred to as "1951 Contract"), regarding the servicing, repairing and overhauling of certain aircraft belonging to the Training Command. This has been placed on the record by the petitioner itself, and so also have been placed on the record various correspondences between the IAF Chief and the petitioner and the Government and the IAF Chief. There are also available on the record the bills and invoices as also the price list. These two also have been placed on the record by the petitioner. All these documents find mention in the order of the Tribunal.

Since the entire decision of the Tribunal turns on the language of the aforesaid documents, it is desirable to extract them in this judgment also, in order to test the conclusions drawn by the Tribunal on a consideration of those documents. This is being done at places where a reference to them becomes necessary.

It is not the case of the petitioner-assessee that the contracts entered subsequent to the contract entered in 1951, already noticed, differed in any respect from the 1951 contract in regard to the repairing, servicing, overhauling of the aircraft belonging to the other Commands of the IAF, or the other type of aircrafts maintained and operated by the IAF. Hence we have to proceed on the assumption, as did the appellate Tribunal, that the relevant contracts were in terms of 1951 contract. The perusal of 1951 contract would show that paragraph-2 thereof dealt with the prices, clause (a) whereof provided that the work would be carried out by the contractor and payment made by the owner at cost plus 10 per cent profit basis, or at the contractor's standard fixed rates where applicable. Paragraph-3 of the said contract separately dealt with the supply of spare parts and materials and also provided for the payment thereof. This paragraph is in the following terms:

"Spares and Materials: Generally, the owner will provide the contractor with all the necessary spares and materials (other than expendable materials such as paints, ropes, cleaning rags etc). Where, however, there is delay in the supply of essential items, the contractor will provide those wherever possible either by the purchase or manufacture, within an expenditure authorised by the owner's deputy financial advisor at the contractor's request from time to time. All items provisioned by the contractor will be the property of the owner, and will be issued

on contract loan. The owner agrees to pay the contractor for provision of spares at the following rates:

- (a) for items manufactured by the contractor-cost plus 10 per cent.
- (b) for items purchased from indigenous and overseas sources-actual invoice price plus all other charges the contractor is called upon to pay, such as packing and shipping etc, plus 5 per cent".

From the language of paragraph-3 of 1951 contract, as also of the correspondence, reproduced below, between the IAF Chief of Staff and the petitioner, and the Government and Air Chief of Staff, it is clear that supply of spare parts and materials was specifically envisaged. It is also clear from the language employed in the aforesaid documents that whenever any spare part or raw material became necessary to be used, the petitioner was under an obligation to first refer to the IAF authorities to find out from them as to whether the requisite spare parts and materials were available in their stores. It was only when these were not available in the stores of the IAF authorities that the petitioner was to supply them if these were available in his stock or to procure them from the local or foreign market, as the case may be.

"No.Air HQ/31845/4/I2/1585/D(Air.I)Govt of India, Ministry of Defence, New-Delhi,1st March, 1960 Phalguna 11, 1881 (Saka)

To The Chief of the Air Staff

Sub: Payment to M/s. Hindustan Aircraft Ltd, of charges for major inspection of HT-2 Aircraft belonging to Auxiliary Air Force Squadrons.

Sir,

I am directed to convey the sanction of the President to the carrying out of major Inspection on HT-2 Aircraft belonging to Auxiliary Air Force Squadrons by the Hindustan Aircraft Ltd at their factory at B"lore and payment of charges to them on cost plus 10 per cent profit basis.

2. Spares and ground equipment required for the major inspection of HT-2 aircraft will be supplied by the Hindustan Aircraft Ltd who will provision them from their other resources in cases where the IAF is unable to supply them.

3. This letter has got retrospective effect to cover past cases.

4. The expenditure involved is debitable to Sub-Head "E, (a) (3) under Major Head 60-IAF" of the Defence Services Estimates.

Yours faithfully,Sd/. Das Raj Vij,Under Secy to the Govt of India."

"No.F/3/53/54/11876/D (Air-Stores)Govt of India, Ministry of Defence, New-Delhi,15th December, 1954,To The Chief of Air Staff and Commander-in-Chief,Indian Air Force (with 10 spare copies)

Sub: Payment to M/s HAL of charges for CAT "AC" and "B" repairs of HT-2 Aircraft and overhaul of Cirrus engines.

Sir,

I am directed to convey the sanction of the President to the carrying out of CAT "AC" and "B" repairs of HT-2 aircraft and overhaul of Cirrus Engines by Hindustan Aircraft Ltd, Bangalore. The payment to the firm of charges for CAT "AC" and "B" repairs of the airframe will be made on cost plus 10 per cent profit basis. Payments for overhaul of cirrus engines will be made on a basis to be separately agreed to between the Govt and M/s. Hindustan Aircrafts Limited.

2. Spares and ground equipment for the repair of HT-2 aircrafts and overhaul of Cirrus Engines will be supplied by the Hindustan Aircraft Ltd, who will, before making a provision for these from their other resources, ascertain availability from the IAF stocks for issue against these projects.

3. The expenditure involved is debitable to Sub-Head "E" (a) (3) under Major Head 60 IAF of the Defence Estimates.

Yours faithfully, Sd/- (P.N. Krishnamurthi) Under Secy to the Govt of India."

No. Air HQ/26716/10/Tech. (Plans) 5784/D (Air-St) Govt of India, Ministry of Defence, New Delhi, 16th June, 1954 To The Chief of Air Staff and Commander-in-Chief Indian Air Force (with 10 spare copies)

Sub-Payment to M/s HAL of charges for Cat. "AC" and Cat "B" repairs of Vampire Trainer Aircraft.

Sir,

I am directed to convey the sanction of the President to the carrying out of the Cat "AC" and Cat "B" repairs of Vampire Trainer Aircraft at the HAL, Bangalore and payment to the firm of charges therefor on cost plus 10 per cent basis.

2. Spare and ground equipment for the repair of Vampire Trainer will be supplied by M/s. HAL, who will, before making a provision for these from their resources ascertain availability from IAF Surplus stocks for issue against this Project.

3. The expenditure involved is debitable to Sub-Head "E" (a) (3) under Major Head 60-IAF-of the Defence Estimates

Yours faithfully, Sd/- (P.N. Krishnamurthi) Under Secy to the Govt of India."

"No. Air HQ/11123/37 HQ/AF/8718/D(A) Govt of India, Ministry of Defence, New Delhi, 4th June, 1953. To The Chief of Air Staff and Commander-in-Chief, Indian Air Force (with 5 spare copies) Major Inspection of liberator aircraft of the IAF by M/s. HAL, Bangalore.

Sir,

I am directed to refer to this Ministry's letter No. Air HQ/11123/37/EQ/AF/814/

D(A) dt. the 24th January 1953, as amended by corrigendum No. Air HQ/11123/37/EQ/AF/4218/D(A), dated the 14th March, 1953. and to convey the sanction of the President to the finalisation of the bills subhitted by M/s HAL, Bangalore, for carrying out major inspection and items of work in addition to those mentioned in the inspection schedule considered necessary at the time by the Director of Aeronautical Inspection and certified by the IAF Liason Officer stationed at the HAL, Bangalore, on "cost plus 10 per cent profit basis". The bills will be paid after conducting the "on account" payment made to the firm on the authority of this Ministry letter dated the 24th January 1953, referred to above and after necessary audit.

2. Any other modifications and improvements, in addition to the work referred to the para 1 above will be carried out by M/s HAL. Only if such modifications and improvements are approved by the competent authority with the prior concurrence of the financial authorities.

3. All specific to type spares and materials for this project will be supplied by the Indian Air Force.

4. The expenditure is debitable to the Major Head 60-IAF of the Defence Services Estimates.

Yours faithfully,Sd/- (N.A. Padmanabhan)Under Secy to the Govt of India."

"No.Air HQ/307038/10/EQ/729D(Air-II)Govt of India, Ministry of Defence,New Delhi, 7th January, 1954.

CORRIGENDUM

Paragrah 3 of this Ministry"s letter No.Air HQ/11123/37/EQ/AF/8718/ D (A), dated the 4th June, 1953, regarding major inspection of Liberator Aircraft at HAL is reconstructed as follows:

All specific to type spares and materials for this project will be supplied by the IAF. Where, however, the required items are not readily available from Air Force of Stocks, supplies may be effected by HAL in addition to the consumable items, which will also be suppliedby HAL payment for these supplies will be made on cost plus 10 per cent profit basis."

Sd/- (P.N. Krishnamurthi)Under Secy to the Govt of India."

In the present case, in the light of the above, it cannot be said that supply of spare parts and other materials was not in the contemplation of the contracting parties and that the spare parts in question became property of the owner, i.e., IAF, only by way of accretion to the aircraft on their being used in the process of executing the work contract and not as a result of agreement between the contracting parties.

The two cases-(1) Sundaram Motors (P) Ltd. v. State of Madras, (1958) 9 STC. 687.and (2) Sundaram Motors (P) Ltd. v. State of Mysore, (1967) 19 STC.

290.that have been heavily relied upon on behalf of the petitioner are easily distinguishable, for in those two cases supply of spare parts and raw materials was held never to be in the contemplation of the parties and thus the materials stood transferred in those two cases not as a result of an agreement but as an accretion to the chattel, in that case the cars, in the course of execution of service contracts pertaining to the repairing and servicing of the concerned cars. The contracts in question in those two cases were held to be exclusive job contracts and integral in nature and as such were not held amenable to be disintegrated into two separate contracts, one providing for remuneration for service and the other providing for an implied contract for transfer of goods and the materials to the owner. The only other two decisions viz, (i) Commr for Comm'l Taxes, Mysore v. HAL, (1972) 29 STC. 438.and (ii) State of Gujarat v. Kailash Engg Co, (1967) 19 STC. 13.on which reliance has been placed on behalf of the petitioner are also clearly distinguishable. In those two cases the value of the entire railway coach body that had been constructed by the contractors on the under frame supplied by the railways was sought to be subjected to sales-tax, and not the individual items of material that had been supplied by the contractors for the construction of coaches. Since in the case of HAL the entire material was supplied by the owner and the contractor had merely assembled it, so there was no question of supply of material and the contract was construed to be a work contract. In this regard, the following observation of Sikri, CJ who delivered the opinion for the Court, can be noticed with advantage:

"It seems to us clear that the property in the materials which are used for the construction of the coaches becomes the property of the President before it is used.

(4) It seems that there is no possibility of any other material being used for the construction as is borne out from the report written by the Commercial Tax Officer.

* * * *

On these facts it seems to us that it is a pure works contract We are unable to agree that when all the material used in the construction of a coach belongs to the railways there can be any sale of the coach itself. The difference between the price of a coach and the cost of material can only be the cost of services rendered by the assessee.

If it is necessary to refer to a case which is close to the facts of this case, then this case is more in line with the decision of this Court in State of Gujarat v. Kailsh Engg Co. ((1967) 19 STC 13 (SC)) than any other case."

In the other case, since part of the material and the labour force that went into the construction of the railway coaches in question was supplied by the railways, it could not be said that the property in the entire coach body before it was delivered to the railways belonged to the contractor thus making the entire value of the material used in the construction of the coach subject to sales-tax. In the

aforesaid cases, if the assessing authorities had restricted themselves to the assessing of the vendees (railways) cost of only such goods as had been supplied by the contractor, then perhaps the decision would have been different provided there was a clause in the contract envisaging clearly the supply of material and goods for money consideration or at a price envisaged therein.

The learned Counsel for the petitioner referred to a portion of paragraph-3 of the 1951 contract, which reads:

".....All items provisioned by the contractor will be the property of the ownership and will be issued on contract loan....."

and then stressing the point of similarity between the case in hand and the latter railway coaches case *State of Guj v. Kailash Engg*, (1967) 19 STC. 13. regarding the point of time of transfer of ownership in the "railway coach bodies" in that case and in the "spare parts" in the present case, urged that the contracts in the present case be considered as work contracts as was done in the "railway coaches" case in question. The proposition advanced on behalf of the petitioner, in our view is misconceived.

The importance of the point of time at which the property in the completed "railway coaches" passed from the assessee-contractor to the railways discussed by their Lordships in the *State of Gujarat v. Variet Builders*, 38 STC. 176, in order to contradistinguish the facts of "railway coach" cases from the cases of "bus bodies". In both types of cases the "railway coaches" in one case and the "bus bodies" in the other cases were treated as "chattels" and the question arose as to whether the value of these "chattels" received by the assessee contractors from the other party could be subject to sales-tax. That in turn depended on an answer to the next question whether the assessee-contractor was the owner of "railway coaches" in the one case and the "bus bodies" in the other cases at the time when these were delivered by the assessee-contractor to the other parties, for unless the assessee-contractors were owners of the aforesaid two "chattels" at the delivery time, the question of their sale by the assessee-contractors to the other parties in pursuance of contract of sale could not have arisen. While considering this aspect of the matter, it was held by their Lordships in *Gujarat's* case (*supra*) that the assessee-contractor had no ownership right in the "railway coaches" at the time of delivery of the same to the railways, as during the course of construction itself the railways had acquired property rights in the said coaches while according to them such was not the case in regard to the "bus bodies" in which upto the point of delivery, the assessee-contractor continued to have the ownership rights and so in the former case it was held that the contract was a "work contract" and in the latter case it was held that the "bus bodies" stood transferred from the assessee-contractor to the other party as a result of contract of sale.

In the present case, what is sought to be brought within the purview of the Sales Tax Act is the cost to the vendees of the spare parts supplied by the petitioner. In

such a case the stage at which the property therein passed to the owner is not material; what is material is as to whether the goods in question were the property of the petitioner-assessee before the same became the property of the other party, i.e., the President of India, under a contract of sale.

The clause in the 1951 contract providing that the moment the spare parts were provisioned by the petitioner for the purpose of repairing, servicing and overhauling of the IAF aircraft they would become the property of the President of India and thereafter they would be issued on loan to the petitioner for being used in the repairing, servicing and overhauling of the aircraft has to be understood in the context of the peculiar and special requirement of the IAF to have the aircrafts in battle worthy condition at a short notice. In so providing, the intention was to preclude the petitioner-assessee from making use of the provisioned items for repairing, servicing and overhauling of any other aircraft, so that the repairing, servicing and overhauling of the IAF aircraft is not delayed.

Yet another contention advanced on behalf of the petitioner-assessee is that for construing a contract as a sale contract in regard to a particular chattel or goods, the goods in question had to be specified in the contract and since in the 1951 contract or in any other correspondence placed on the record the identity of the spare parts to be supplied was not disclosed, so the supply of such spare parts as became necessary for execution of the work contract, could not be considered to have been made in pursuance of a sale contract between the parties in regard to them.

We do not think the contention is well founded. Para-3 of the 1951 contract as already noticed and the correspondence placed on the record clearly anticipate that as and when the use of spare parts in the course of the execution of the work contract becomes necessary then IAF would be consulted as to whether the specified parts were in their stores or the HAL had to supply from their own stock or procure them from the local or foreign market. At that stage, the identity of the spare parts in terms of para-3 of the 1951 contract would come to be established and thus their supply by the petitioner would be in pursuance of the said sale contract.

As revealed by the 1951 contract and the correspondence already noticed, the basis of payment provided was cost plus 10 per cent. If the contract had been intended to be purely a job contract, then the said basis of payment would have taken care of the payments regarding the spare parts and other goods used during the execution of the work contract as well, as thus there was no necessity to provide separately regarding the basis of payment for the spare parts in the contract. In providing separately for the basis of payment of the spare parts in the contract, the intentions of the parties were clear and unambiguous, that is the parties clearly agreed to the sale of spare parts on the price agreed in the contract. The following invoices, which can be taken as specimen, placed on the record by the petitioner itself support the above conclusion, as therein the labour charges have been itemised separately from the price of the spare parts and

whenever any spare parts had been provided by the IAF authorities, the price thereof had been deducted from the price indicated for the spare parts supplied by the petitioner.

"Hindustan Aircraft LimitedHindustan Aircraft Post, Bangalore-17 (India)

No. HT2/CAT.B/F-1 Dt. 28th February, 1962.

Invoice

Mr/MessrsThe Chief of Air Staff,IAF, Air Headquarters,New-Delhi Your Order/letter No...Dt.....Our Order No.SO/A/6072" A 6513dt.27-4-59. Mode of delivery.Our packing sheet No... Dt...Terms of payment

Description Price Total

HT-2 Aircraft Cat. "B" Project Aircraft No. 1X-509. To carry out Cat."B" repairs and major inspection on the above aircraft Labour charges 26,837-69

Materials and spare used from HAL stock as per schedule attached 32,187-92-----

59,025-61

Less: Payment reced. Vide Invoice No. HT2/Cat."B"/P-1 dt. 7-8-61 48,892-00

-----10,133-61-----

Hindustan Aircraft LimitedHindustan Aircraft Post, Bangalore-17 (India)

Camp. Cat.B/F.-68Date: 31-3-1962

INVOICE

To

M/s. The Chief of Air Staff,IAF, Air Headquarters,New Delhi. Your Order/letter No...Dt....Our Order No.SO/V/235/dt. 17-9-1961

Vampire CAT. "B" Project-Aircraft No. EY-405 To carry out Cat "B" repairs on the above aircraft-labour charges 3,554-93

Materials and spares used from HAL stock as per schedule attached 377-26-----

3,932-19

Less: Value of DGISD materials 212-82-----

3,719-37

Less: Adjusted out of payment received vide invoice Nos.VAMP/CAT/B/P-22 dt. 16-10-61 invoice Nos. VAMP/CAT/B/P-23 dt. 23-10-61 25,314 3,719-37

Balance -----Nil"-----

"Hindustan Aeronautics Ltd,Hindustan Aircraft Post, Bangalore-17 (India)

No. LIB/F-34Date: 28-2-1962

INVOICE

The Chief of Air Staff,IAF, Air Headquarters,New-Delhi Our Order No.SO/A/6304to 6306 dated 21-1-60

Liberator Aircraft overhaul project Aircraft No. HE-773 To carry out major inspection on the above aircraft Labour charges 1,99,242-16

Materials and spares used from HAL stock as per schedule attached 20,971-40-----

2,20,213-56

Less: Payment received vide Invoice No.LIB/P-10 dated 5-7-1961 2,01,957-00

Balance Rs. ----- 18,256-56"-----

For the reasons stated, we have no hesitation in holding that the sale of the spare parts was clearly in the contemplation of the parties and the instrument in question contained a composite contract, one relating to the remuneration for the service rendered and the other for the sale of goods.

In view of the above, the appellate Tribunal in our opinion, was right in dismissing the appeal of the petitioner, so far as the same related to this particular turnover of the petitioner.

In regard to the sales of the canteen run by the petitioner, within the aerodrome premises, it has been urged on behalf of the petitioner, on the strength of the decision in The Indian Institute of Technology, Kalyanpur, Kanpur v. State of Uttar Pradesh, (1976) 38 STC. 428, that the income of the said canteen could not be brought within the purview of the Sales Tax Act as the canteen was meant to cater to the officers and the supervisory staff of aerodrome.

We do not think the contention advanced on behalf of the petitioner is tenable. The decision relied upon by the Counsel for the petitioner is clearly distinguishable on facts. In that case, the facts were that the Indian Institute of Technology, Kalyanpur, Kanpur, under the statute framed in exercise of the powers conferred by S. 26 of the Act, was envisaged to be a residential institution and all students, research scholars and research fellows had to reside in the halls of residence and hostels built by the institute. In pursuance of the said objects the institute had also constructed a visitor's hostel where eminent technologists, academicians invited by the institute to participate in conferences and seminars and to deliver lectures used to be housed. So also research scholar;, research fellows, students and teachers who could not be immediately accommodated in the other halls of residence or hostels or anywhere else in the campus of the institute also used to be temporarily accommodated in the said visitor's hostel where the petitioner-institute had made provision for supply of

tea, breakfast, lunch and dinner, in which regard charges as prescribed by the Director of the Institute here recovered as fee. It was held on these facts that the petitioner-institute could not be dubbed as a dealer. In coming to that conclusion reliance was placed on the decision in *Secy, Madras Gymkhana Club Employees Union v. Management of the Gymkhana Club*, AIR. 1968 SC. 554, wherein the argument that Madras Gymkhana Club was an industry within the meaning of the Industrial Disputes Act was repelled on the reasoning that because the services rendered by the club were to the members themselves and for their own pleasure and amusement and the material goods were for their consumption and the fact that occasionally strangers also took the benefit from its services was not relevant, for they used to do so on the invitation of the members alone and that no one outside the list of members had the advantage of the services rendered by the club as a matter of right, and the services were available only to the members or through members. Such is not the position in the present case because the services of the canteen were not limited to the supervisory staff of the aerodrome or the officers or through them to others. Here, admittedly, as already observed, outsiders could come and avail facilities provided by the canteen, as a matter of right. This being the position, the conclusion is inescapable that the canteen was and is run as a business concern on commercial lines.

For the reasons stated, we find no merit in these revision petitions and the same are dismissed. However, the parties are left to bear their own costs.