

(1964) 07 MAD CK 0026
In the Madras High Court
Case No : Tax Case No. 1 of 1963

Mooljee Ramjee and Sons

APPELLANT

Vs

Deputy Commissioner (Commercial Taxes), Madurai Division

RESPONDENT

Date of Decision : 02-07-1964

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 6(1)

Citation : (1965) ILR (Mad) 481 : (1966) 17 STC 255

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

Advocate : A.V. Narayanaswami Iyer, for the Appellant; G. Ramanujam, for A. Alagiriswami, Government Pleader, for the Respondent

Judgement

Ramakrishnan, J.—The assessees, Messrs Mooljee Ramjee and Sons, contractors of Tiruchirapalli, entered into an agreement with the

Southern Railway for collection and training out of stone ballast. The rate agreed upon was Rs. 168 per 1,000 c. ft. The ballast had to be collected

and stacked alongside the railway line for a length of 10 3/4 miles. It was also provided in the agreement that the work should be completed within

thirteen months from the date of receipt of written orders and that 52,500 c. ft. of ballast should be supplied in every month as basic quantity. The

assessee then applied to the Revenue Divisional Officer, Coimbatore, for a permit to quarry stone jelly for bonafide Government purposes and a

free permit for quarrying 2,000 c. ft. cart loads of stone jelly from a specified unassessed waste land belonging to the Government of Madras was

granted to them, subject to the condition that the jelly was to be used only for bonafide Government purposes. This free permit was granted in

accordance with the provisions of the Madras Minor Mineral Concessional Rules,

1959, which allow the grant of permits for quarrying in State

Government lands, free of charge, in the case of departments of the Government of India and the State Government. The assesseees had a turnover

under the terms of this contract of Rs. 81,790.53, and they claimed exemption of the turnover from assessment, on the ground that they had not

sold any goods to the Railway but had only executed a quarrying contract, which was in substance only for work and labour and not for sale of

goods. It may also be mentioned that by a notification, the Government of Madras had, in exercise of the powers conferred by Section 6(1) of the

Madras General Sales Tax Act, 1939, exempted earthwork, laterite metal, sand, jelly and gravel quarrying contracts from the tax payable u/s 3(1)

of the Act. The assessing authority exempted the turnover as relating to a quarrying contract. But the Deputy Commissioner in suo motu revision,

considered that this was not a case of a quarrying contract but was a case of outright sale and assessed the turnover. The appeal to the Sales Tax

Appellate Tribunal by the assesseees was dismissed and the present revision case is filed against the decision by the aggrieved assesseees.

2. The first point to be noticed is that though the agreement between the assesseees and the Railway is entered in a standardised form, which

describes the agreement as for executing the following work, it is well-known, that it is not the form of the contract, but the substance, that has to

be looked into for deciding the question whether it is a sale or a contract for work and labour with materials supplied. The agreement also refers to

specifications and drawings, but it is common ground that the particular agreement in the present case did not involve conformation to any

specification or drawing. This would show that a printed form intended to cover comprehensively all agreements with the Railway of different

categories, was utilised for drawing up the agreement in the present case. But we have to adopt for the purpose of this case only the relevant

portions of the agreement.

3. The agreement is for collection and training out stone jelly. The term training out appears to be a technical one used in similar contracts, for

meaning that the contractor is obliged to deliver the material at the Railway siding between specified points. The learned counsel for the petitioners

referred to the fact that the schedule of rates for the engineering department of

the Southern Railway issued in 1955, mentions in Chapter XIII, the rate of payments for supply of materials and in the case of hard granite metal of 1½" size the rate comes to Rs. 400 per 1,000 c. ft. But the agreement for collection and training out of ballast is found in Chapter XX of the same schedule and the charges for collection and training out work out to only Rs. 168 per 1,000 c. ft. A look at appendix (ii) of the schedule of rates would show that the rates vary widely for different localities. Thus, the rates are very low near Renigunta, while near Arkonam the rates are very high. This would show that the rates for collection and training out are determined with reference to the availability of the material close to the locality where it is required to be delivered, and that nothing germane to the question at issue can be inferred by the difference in rates mentioned in Chapter XIII and Chapter XX of the schedule of rates. The question, as already mentioned, has to be determined in each case from the substance of the particular contract in that case.

4. The most significant point in this case is that the Railway did not take out a licence for the quarrying. The assesseees applied to the State Government for a quarrying permit and that application was recommended by the Railway. The rules of the State Government enable an applicant for a quarrying permit to get a licence free of charge for seigniorage, if it is satisfied that the material quarried is to be used for the purpose of the Central Government. A permit for free quarrying was granted to the assesseees subject to the condition that the quarried material was to be supplied to the Railway. Thereafter when the assesseees quarried jelly from the unassessed waste land belonging to the Government of Madras, the quarried jelly became the property of the assesseees. The assesseees could not be considered to be the agents of the Railway for the purpose of the quarrying. Under the agreement, they delivered the quarried materials at the specified places in the Railway siding indicated in the contract. It may very well happen that the rate fixed in the contract will include the charges for quarrying the material and also the expenses of transportation. But that will not in any way affect the position that there was a transfer of property in the quarried jelly from the assesseees to the Railway at the place of delivery near the Railway siding. The inference is, therefore, legitimate that this is a case not of a quarrying contract in which the Railway after

taking out a quarrying lease in its name engaged the assesseees as contractors to carry out the actual quarrying. If it was the Railway that had taken out the quarrying lease and thereafter they had entered into an agreement with the assesseees for quarrying, then the mineral would be the property of the Railway as soon as it was won from the quarry, and there would not be any question of transfer of property therein from the assesseees to the Railway. But that is not the case here. That the assesseees were obliged to deliver the quarried goods only to the Railway, and that the quarrying permit debarred them from selling it to anybody else would not make any difference to the question at issue. This obligation arose from a term in the permit for quarrying, that no seigniorage would be levied if the goods were given to the Railway. If the assesseees had sold the materials to somebody else, it would only attract to them some penalties for non-compliance with a condition in the quarrying licence; but it will not affect the position that the mineral became the property of the assesseees as soon as it was quarried and that only after transport to the Railway siding and delivery it became the property of the Railway.

5. Our attention has been drawn during the course of the arguments to some prior decisions. *State of Andhra Pradesh v. Kalva Suryanarayana*

[1962] 13 S.T.C. 317 stresses the point to which we have already adverted, namely, that in determining whether a particular transaction is a sale

or a contract for work and labour, one has to look into the real nature of the transaction and not merely confine oneself to an undue emphasis on

any one aspect of the matter. In that particular case, there was a contract between the Government and the assessee for supply of Gulmohva

flower (used for distilling alcohol), and the assessee was required to collect the flower either from patta lands (when he had to pay compensation to

the pattadar at a certain rate) or from Government lands (when no charge was payable to the Government.) He was paid at a particular rate for

each grade of flower supplied. There were other conditions in the contract that in the case of default, the Government could purchase the flower

from other sources and recover the difference between the price paid and the price fixed under the contract from the assessee. All these terms

were taken together and the High Court came to the conclusion that it was a case of sale and not a case of contract for work and labour. An early

case of the Orissa High Court reported in Krishna Chandra Acharya v. Board of Revenue, Orissa [1955] 6 S.T.C. 400, dealt with a different

situation. There, the contractor entered into a contract with the public works department for repairing an embankment by putting new earth and

turf. The earth was supplied by the Government from their lands and the contract consisted in merely removing the earth to the embankment.

Stressing the fact that the earth involved in the work was Government property both before and after the execution of the work and was never the

property of the contractor, the Court came to the conclusion that the agreement was only for repair of the embankment by using the earth

belonging to the Government. The Court overruled the contention that the transaction was a sale. As already mentioned in the present case, the

jelly was the property of the assessee from the moment they quarried it and the property was transferred to the Railway at the siding, after it was

transported there and stacked. The decision reported in Seth Pamandas Sindhi v. State of Madhya Pradesh [1963] 14 S.T.C. 74, a case of the

Madhya Pradesh High Court, has several features which bore a close analogy to this case. There also the assessee entered into contracts with the

Railway for supply of ballast. It is stated at page 81 of the report:

It is abundantly clear from those documents that the Collectors of various districts gave leases of quarries to the petitioners in their districts for

quarrying stones and sand; and the material was then extracted by the applicant and sold in the form of ballast to the railway authorities at the

contracted rates. It is not as if the execution of any work was entrusted to the applicant and in that execution the applicant used the ballast. There is

here an agreement to sell the materials, namely, ballast as such.

6. A recent decision of this Court in Bakthavatsalu v. State of Madras [1963] 14 S.T.C. 832 dealt with a contract entered into by the assessee

with the Neyveli Lignite Corporation under which he agreed to supply to the Corporation at a particular place blue granite jelly of certain quality

from certain specified quarries. The rates were fixed at so much per 100 c. ft. of the material and this varied according to the place of delivery.

Repelling the plea of the assessee that the contract was one for work and labour and that the exemption for quarrying contracts granted by the

Government of Madras in their notification already cited would apply, this Court

observed (at page 837):

If a person was employed on a quarrying contract, that is to say, to do the work of quarrying only and produce metal or gravel that would appear

to be indubitably a contract for work and labour. If the quarrying was to be done by A in certain quarries belonging to B and the quantity quarried

was supplied to B as a result of the contract, obviously there would be no transfer of property at all involved in the transaction and it seems

doubtful if the notification would have any application in such a case....If A takes a lease of quarrying rights from the owner of the quarry B and

quarries metal as a result of that contract and takes it away, it might, in a manner of speaking, be said that the lease itself involves the transfer of

property in the quantity so quarried. It is quite possible that the notification may apply to such a case. It does not seem to us that this notification

would apply where a person engages himself to supply a certain material, which has necessarily to be quarried. That is a contract for supply and

not a contract for quarrying.

7. Applying the principle of this last cited decision, the case on hand involves not a contract for quarrying, but a contract for supply of materials

which had necessarily to be quarried. In *Chandra Bhan Gosain v. State of Orissa* [1963] 14 S.T.C. 766, the Supreme Court dealt with a case

where the assessee had entered into a contract for manufacturing and supplying large quantities of bricks to a company and there was a clause in

the contract that the land would be given free by the company. Rejecting the contention that it was a contract for skill and labour with materials

supplied, the Supreme Court observed (at page 770) :

The fact that under the contract the bricks had to be manufactured according to certain specifications, and, therefore, the appellant had to bestow

a certain amount of skill and labour in the manufacture of the bricks, does not affect the question. That was not the essence of the contract. The

object of the contract none the less remained the delivery of bricks.

8. Regarding the clause land will be given free, the Supreme Court observed that it only meant that the property in the earth to be dug out for

making the bricks would be transferred to the appellant, and that it might be presumed that it was understood that in quoting his rate for the bricks,

the appellant could take into account the free supply of earth for making the

bricks. It would not make any difference to the transaction being a sale.

9. We are of the opinion on the facts of the case that the transaction amounted to a sale and that it had been rightly assessed. The revision case is dismissed. In the circumstances of the case, there will be no order as to costs.