
(1974) 02 KL CK 0012

In the High Court Of Kerala

Case No : T.R.C. No's. 12 and 15 of 1973

P.S.N. Motors Private Limited

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-02-1974

Acts Referred:

Citation : (1975) 35 STC 192

Hon'ble Judges : P. Govindan Nair, C.J;V. Balakrishna Eradi, J

Bench : Division Bench

Advocate : N.K. Sreedharan and M.A.T. Pai, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, C.J.—These revision cases taken by the assessee relate to the assessment years 1964-65 and 1965-66 respectively. The three questions said to arise from the order of the Tribunal, which is a common order disposing of the appeals relating to the two years, have been formulated thus in the revision petition, T. R. C. No. 12 of 1973.

(1) Whether, on the facts and circumstances of the case, the Tribunal is right in holding that the distribution of spare parts for repair of vehicles owned by the P. S. N. Lorry Transports constitutes sale.

(2) On the facts and in the circumstances of the case, whether the Tribunal is right in holding that the ratio of 7 : 2 fixed by the assessing authority as between purchases from outside the State and inside the State is correct.

(3) Whether the turnover of Rs. 5,244.86 representing labour charges including value of materials is taxable on the facts and circumstances of the case.

2. The assessee is a limited concern, a company. It supplied spare parts to P. S. N. Lorry Transports which is a partnership. The partners of P. S. N. Lorry Transports are shareholders of the company. The contention raised was that in

view of the fact that the partners were shareholders of the company there was no sale involved in the supply of materials to the partnership by the company for consideration. It is not disputed before us that the parts supplied belonged to the company and that the property in the parts was transferred to the partners and that it was for consideration. In these circumstances, there can be little doubt that there was a sale. The fact that the partners were shareholders of the company does not alter the situation. The Tribunal was right in rejecting the contention of the assessee in this regard. The answer to the first question raised in the tax revision case is in the affirmative that is against the assessee.

3. The parts supplied to the partnership was from goods purchased by the assessee from outside the State as well as from inside the State. The assessee supplied no material to indicate how much of the goods supplied to the partnership were from those purchased from inside the State and those purchased from outside the State. There was however material to show that all the parts supplied were those purchased from outside the State, and from inside the State, by the assessee. The proportion of the purchases was 7 : 2. That proportion has been applied for apportioning the total turnover of goods supplied to the partnership as from outside the State and from inside the State. We think there is nothing wrong in the principle that was applied by the Tribunal. This is particularly so in the absence of other material, which material could have been supplied by the assessee had he been diligent to keep records for that purpose.

4. The third point is peculiar to T. R. C. No. 12 of 1973 and does not arise in T. R. C. No. 15 of 1973. A sum of Rs. 10,489.72 had been claimed by the assessee as representing the amount received by the assessee pertaining to indivisible contracts for work and labour. These contracts, it was admitted, were contracts relating to the repair of motor cars. It has further been admitted that these repairs involved the supply of material and the sum of Rs. 10,489 represented not only the labour charges but also the cost of the materials that had to be used for effecting the repairs. The assessee however was not in a position to state clearly how much was the cost of the materials that was used for the repairs. He contended before the Tribunal that the nature of the contract was similar to works contracts such as that was considered in Gannon Dunkerley's case [The State of Andhra Pradesh v. Gannon Dunkerley & Co., Madras (Private) Ltd. [1965] 16 S.T.C. 120], and from the very nature of it, it must be taken to be contract for work and labour and the entire sum of Rs. 10,489 must be treated as not turnover. That contention was not accepted by the Tribunal. However, one half of the amount claimed was allowed as representing the amount attributable to work and labour.

5. We have had occasion to deal with a similar question in a very recent decision in Sales Tax Officer, Palghat v. I.V. Somasundaran 1973 KLT 814, when we reviewed some of the important decisions on this aspect. The question arising in cases of this type has been pointed out in paragraph 7 of the judgment. We also noticed then the difficulty of distinguishing between the three types of contracts

which we have detailed in the judgment. No decision had been quoted before us and we are not aware of any which has held that in all cases where a motor vehicle is sent for repairs irrespective of the question of the extent of the parts that had to be replaced, the contract must be taken to be a contract for work and labour exclusively. It is in the nature of things difficult to conceive that that should be the position for it will depend upon the nature of the repairs; it will depend upon the nature of the condition of the parts and as to what actually happened during a particular repair in regard to a particular vehicle. If it is possible to say anything generally we believe it will be safer to say that such contracts fall under category 2 mentioned in paragraph 7 of the judgment in *Sales Tax Officer v. I. V. Somasundaran* 1973 KLT 814. In such cases there must of course be material to enable a bifurcation of the contract as relating to work and labour and as relating to sale. When the material is peculiarly within the knowledge of the assessee and when he refuses to furnish the information it is not possible to come to the conclusion that the contract must be exclusively one for work and labour. The Tribunal, we think, has been more than fair in excluding one half of the amount of Rs. 10,489.72 from the taxable turnover. It is also doubtful whether this point has been raised before the Tribunal. There is nothing mentioned in the Tribunal's order on this point at all though a ground had been taken in the appeal memorandum before the Tribunal. We have not even an affidavit of counsel who argued the case before the Tribunal that the Tribunal failed to consider the question argued. We answer the third question also against the assessee.

6. In the result we dismiss these tax revision cases. We direct the assessee to pay the costs of the department including counsel's fee Rs. 200.