(1967) 07 KL CK 0014

In the High Court Of Kerala

Case No : Tax Revision Case No''s. 14, 20 and 21 of 1966

Rane (Madras) Ltd., Nadakkavu, Kozhikode — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 26-07-1967

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 3, 41
Sales of Goods Act, 1930 — Section 19

Citation : AIR 1968 Ker 74 : (1967) 11 KLJ 866 : (1968) 21 STC 420

Hon'ble Judges : V. Balakrishna Eradi, J;T.S. Krishnamoorthy Iyer, J;Mathew P. Muricken, J

Bench : Full Bench

Advocate : K.V. Suryanarayana Iyer and T.L. Viswanatha Iyer, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Krishnamoorthy Iyer, J.—These revision cases arise out of proceedings assessing the petitioner to sales tax under the General Sales Tax Act, 1125 in respect of the years 1958-59, 1960-61 and 1961-62, The petitioners who are dealers in motor vehicles were the authorised dealers of Messrs. Premier Automobiles Ltd., Bombay in respect of Dodge Trucks for Kerala State during the years in question. It is the common case that the petitioners entered into contracts for the supply of motor vehicles fitted with bodies with the Kerala State Electricity Board and some other customers in the State in these years. The main contention of the petitioners which is common in all these cases is that the contracts with the Kerala State Electricity Board and the other customers were only for the sale of Dodge chassis and bodies were fitted up in the chassis by Messrs. Simpson and Co.. Madras and Sree Rama Vilas Motor Service (Private) Ltd., arranged by the petitioners on behalf of the several purchasers at their request. The plea of the petitioners is that the contracts for the construction of bodies on Dodge chassis are not contracts of sale but only contracts of work and the turnover resulting therefrom has to be exempted from taxation and even if such turnover is assessable to tax the petitioners can be assessed only at the rate of 2% and not

7p.c. All the 3 appeals giving rise to the revision cases were heard together and disposed of by a common order by the Appellate Tribunal on the ground that the controversy between the parties in all the appeals is identical.

2. In view of the decision in Mckenzies Ltd. v. State of Maharashtra 1965 16 STC 618 (SC) the contention that the contracts for building of bodies are only for execution of works was not pressed before the Appellate Tribunal. The Appellate Tribunal observed thus:

"The appellant''s learned advocate submitted that he does not press the contention that cost of body building would amount to works contract in view of the decision of the Supreme Court in (1965) 16 TC 518 (SC),"

In view of the above statement, it is not open to the petitioners to raise the contention before us that the contracts relating to the building of bodies are not contracts of sale but merely for performance of service.

3. The Appellate Tribunal posed the question for decision in the appeals thus:

"Whether the sales effected by the company to the Electricity Board would take in only the chassis and whether in the matter of bodies built, the appellant company has acted only as an agent of the Electricity Department or whether the sale is of the entire vehicles inclusive of the body or in other words whether the sales were of body built chassis."

It is agreed that the above statement embodies correctly the contentions raised by the petitioners. The assessing authorities as well as the Tribunal found that the contracts between the petitioners and the Kerala State Electricity Board and the other customers were not for sales of mere chassis alone but for vehicles, that is chassis fitted up with bodies of the types specifically mentioned by the purchasers.

4. In T. R. C. No. 14 of 1966 the dispute relates to 18 vehicles of which 11 were supplied to the Kerala State Electricity Board while the remaining 7 were supplied to the other customers. It is agreed that there are no written agreements for the supply of 8 vehicles to customers other than the Kerala State Electricity Board. The supply of 11 vehicles to the Kerala State Electricity Board was in pursuance to written contracts between the parties The Appellate Tribunal observed:

"Out of the total number of 18 body built-in-vehicles 11 were supplied to the Kerala State Electricity Department while the 7 were supplied to other customers. The appellants'' learned advocate concedes that there are no written agreements for the supply to the latter while the supply to the Electricity Department was made on written contracts and that the findings based on the contract with the Electricity Department are applicable for the supply to other also."

In view of the above concession all the appeals were disposed of by the Appellate Tribunal on the basis of the finding based on the interpretation of the contracts between the petitioners and the Kerala State Electricity Board. The transactions involved in TRC Nos. 20 and 21 of 1966 are with customers other than the Kerala State Electricity Board. The learned counsel for the petitioners submitted that the appeals which have given rise to TRC 20 and 21 of 1966 should not have been disposed of on the basis of the contracts between the Kerala State Electricity Board and the petitioners and the concession extracted above will not extend to the transactions involved in those cases. The learned counsel for the petitioners has also filed the documents before us to prove the nature of the transactions involved in TRC Nos. 20 and 21 of 1966. The Appellate Tribunal has not entered any independent finding regarding the nature of the transactions which are the subject-matter of these revision cases. We accept the contention on behalf of the revision petitioner that the concession made before the Appellate Tribunal was only in respect of the transactions involved in TRC No. 14 of 1966 and does not extend to the other two cases. If so, the Appellate Tribunal should be directed to dispose of Tribunal Appeal Nos. 663 and 664 of 1963 afresh.

5. T.R.C. No. 14 of 1966 has to be disposed of on the merits. As already stated the main contention of the revision petitioners was that the contracts with the Kerala State Electricity Board were for sale of Dodge-chassis and not for sale of chassis fitted up with bodies. According to them, the property in the chassis passed to the purchasers even before the bodies were built and in the matter of construction of bodies they were merely the agents of the Kerala State Electricity Board. The alternative plea was that even if it is held that there were sales in respect of the bodies they are separate sales different from the sales of chassis and the resultant turnover is assessable only at 2% and not 7%

6. We are satisfied that there is no substance in any of the contentions of the petitioners. The Chief Engineer, Kerala Electricity Board by notice dated 15-11-1967 called for tenders for the supply of motor vehicles of the types mentioned therein. The petitioners by their letter dated 23-12-1957 expressed their willingness to accept orders for "(a) supply of Dodge Chassis only, (b) supply of Dodge Chassis and our arranging with Messrs Simpson & Co., Ltd., Madras for the body building as per quotations submitted." They also enclosed a demand draft for Rs. 11,035 being 1% of the total value of the tender, which represented the cost for the supply of chassis fitted up with bodies. The tender of the petitioners was accepted by the Kerala State Electricity Board by their letter dated 29-4-1958 subject to the terms and conditions mentioned therein. An agreement was executed between the parties on 10-1-1959 which evidences the contract for the supply of the disputed items. The earnest money paid by the petitioners for the due fulfilment of the contract was with reference to the total value of the vehicle that is chassis with the body constructed.

The letter of acceptance shows that the vehicles are to be delivered in places in Kerala State. The contention that the property in the chassis passed to the Kerala Electricity Board at Bombay is without any substance at all. This argument of the petitioners'' counsel was founded upon the price of the chassis ex-plant Bombay given in the quotation given by the petitioners is for delivery of the vehicle in the different places in Kerala. The contract shows that the price has to be paid only after the receipt and survey of the article by the Board. Under the agreement the Board is given the option to reject the goods if found not to conform to the description and quality guaranteed within specified period after the delivery in several places in Kerala. The governing principle which should determine as to the passing of the property in the goods must be to find cut what is the intention of the parties. Ones perusal of the entire documents we have no hesitation to agree with the finding of the Appellate Tribunal that the property in the vehicles passed only after they were delivered in the State of Kerala the chassis when it was taken to Madras for fitting them up with bodies remained the property of the petitioner. If so the case of the petitioners that in the matter of body construction they were merely acting as agents of the purchasers cannot stand.

7. The next matter to be considered is whether there is a separate sale in respect of the bodies alone. The notice calling for tender was not for mere chassis and in the tender given the petitioner was agreeable to supply Dodge chassis with bodies to be constructed by Messrs. Simpson and Co. Ltd., Madras. The course of transaction between the parties shows that the intention of the petitioner was to sell motor vehicles to the Kerala State Electricity Board. Along with the tender 1 % of the total value of the chassis with the body was given by the petitioners. The security furnished for the fulfilment of the contract was also on the total value of the contract. From the copies of the bills furnished it is seen that in some cases separate invoices for the construction of the body are given. But in some other cases joint invoices are given. The fact that two separate invoices were given cannot be of much use in this case as the other documents establish beyond any doubt that the contract between the parties is for sale of chassis fitted up with bodies. The contract between the parties shows that it is with reference to single item i.e., chassis with the body fitted up and not for the sale of two items namely chassis and body. The passing of property to the purchasers was in the vehicles sup-pied as such. If so, the conclusion reached y the Appellate Tribunal on this issue is Correct.

8. One further contention arising in T.R.C. 14 of 1966 and pressed before us was that the appellants were not the 1st sellers in the State in respect of the 1948 model tuck and the turnover for the same has to be exempted from assessment. This plea was overruled by the Tribunal on the ground that the petitioners have not proved that they are not the first sellers in the State. There is absolutely no tenable ground to interfere with that finding. The order of the Tribunal in T.R.C. 14 of 1966 has only to be confirmed.

9. In the result, we dismiss T.R.C. No. 14 of 1966. We set aside the orders of the Appellate Tribunal which are the subject-matter of T.R.C. Nos. 20 and 21 of 1966 and direct the Tribunal to take back Tribunal Appeals 663 and 664 of 1963 to its file and dispose of the same in accordance with law. We make no order as to costs in all the cases.

