

(1964) 04 KAR CK 0008

In the Karnataka High Court

Case No : S.T.R.P. No's. 57 and 58 of 1963 with S.T.R.P. No's. 1 to 3 of 1964

Shankar Vittal Motor Co. Ltd. and Another

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 24-04-1964

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 2 (t), 2 (w), 5 (1)

Citation : (1964) 1 MysLJ 372 : (1964) 15 STC 771

Hon'ble Judges : K.S. Hegde, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : P. Vasudeva Aithala and N.T. Raghunathan, for the Appellant;
Advocate-General, for the Respondent

Judgement

Hegde, J.—These cases raise identical questions of law. Hence they can be dealt with in one judgment.

2. From the arguments advanced at the Bar, the following questions of law arise for decision :-

(i) Whether in the circumstances of the cases before us, the assessee's transactions constitute a contract for "sale of goods" or contracts of "work and labour" ?

(ii) Whether, even if those transactions comprise an element of sale of goods, the assesseees are not entitled to exemption from sales tax for the portion of the turnover attributable to "work and labour" ? and

(iii) Under any circumstances, could the respondent levy sales tax in respect of the transactions in question at a rate higher than that mentioned in section 5(1) of the Mysore Sales Tax Act, 1957 (to be hereinafter referred to as the "Act") namely at 2 per cent. on the turnover ?

3. One "The Shanker Vittal Motor Co., Ltd., Mangalore" is the petitioner in S.T.R.P. Nos. 57 and 58 of 1963. S.T.R.P. No. 57 of 1963 is directed against the

order of assessment made in respect of the disputed turnover of the petitioner for the assessment year 1958-59. S.T.R.P. No. 58 is directed against the order of assessment on the disputed turnover of the petitioner for the assessment year 1959-60. The petitioner is a bus transport operator at Mangalore. It also deals in motor spare parts and accessories. It owns an automobile repairs workshop at Mangalore, wherein it constructs bodies of buses, lorries, vans etc., for agreed price, over the chassis supplied by its customers. Its "turnover" for the assessment year 1958-59 in respect of its body building transactions was Rs. 45,900 and Rs. 53,330 for the assessment year 1959-60. According to the Revenue, the assessee is liable to pay sales tax in respect of the "turnovers" in question. But, according to the assessee, the "turnovers" in question are not exigible to tax as they relate to "works contract".

4. In respect of the above S.T.R.Ps. the following are the facts found by the Tribunal. The owners of chassis used to bring them to the petitioner's factory and place orders for construction of bodies on them of the types they want; the petitioner undertook to construct the required body or bodies for a fixed and stated amount in one lump sum and issue debit notes to the parties placing orders; then the petitioner used its own materials, skill and labour to construct bodies; thereafter, the party placing the order took delivery of the vehicle - chassis over which the body had been constructed - and paid the agreed amount. It was further found by the Tribunal that the petitioner fixed up the bodies "plank by plank, screw by screw, nut by nut, etc., directly on the chassis". The Tribunal has also found that the bodies fixed on the chassis supplied by the customers were not ready-made bodies, but were built piece by piece, and part by part on the chassis supplied.

5. S.T.R.P. Nos. 57 and 58 of 1963 are directed against the decision of the Mysore Sales Tax Appellate Tribunal, Bangalore, in S.T.A. Nos. 3 and 24 of 1963-64 on its file. Both those appeals were disposed of by the Tribunal by a common order.

6. The appellant in S.T.A. Nos. 1 to 3 of 1964 is a firm known as "M.G. Brothers, Automobile Dealers, Bellary". In the course of its business, the appellant undertook to carry out fabrication of bus bodies according to the specifications given by the customers on the automobile chassis entrusted to it by its customers. The specifications given by the various customers and the works executed by it varied in scope according to the needs of each customer. Body building charges depended on the nature of the work required to be done.

7. S.T.A. Nos. 1 to 3 of 1964 are filed against the order passed by the Commissioner of Commercial Taxes in Mysore, Bangalore, in C.T.R.P. Nos. 214 to 216 of 1963-64 on its file. Those C.T.R.Ps. arose from the decision of the Deputy Commissioner of Commercial Taxes, Bellary, who held reversing the orders of the Inspecting Officers of the Commercial Taxes, Bellary, that the assessee is not liable to pay sales tax in respect of its "turnovers" relating to body building transactions during the periods 1957-58 (second half year), 1958-59 and

1959-60, as the "turnovers" in question relate to "works contract". The Commissioner of Commercial Taxes suo motu called up the papers by exercising his revisional powers and after hearing the assessee set aside the orders of the Deputy Commissioner of Commercial Taxes and restored that of the Inspecting Officer of Commercial Taxes. Aggrieved by the order of the Commissioner of Commercial Taxes, the assessee has come up in appeal to this Court in S.T.A. Nos. 1 to 3 of 1964.

8. The appellant in S.T.A. Nos. 1 to 3 of 1964 also did not supply any ready-made body to its customers. In these cases also the bodies were built on chassis supplied by the customers part by part and piece by piece.

9. The appellant has produced the agreement entered into by it with the General Manager, Mysore Government Road Transport Department, Bangalore. Following are the material terms of the agreement :-

"1. The contractors hereby agree and legally bind themselves to perform the work, as desired in the annexed schedule and at rates specified therein.

* * * *

3. The materials to be used by the contractors shall be of superior quality and strictly conform to the tender specification to the reasonable standard of buses usually built by other garages.

* * * *

5. The contractors shall not be entitled to claim any sort of concession whatever on account of the rise in prices of raw materials or cost of labour due to whatsoever causes during the contract period.

* * * *

7. The contractors shall make good to Government any loss, which may arise from the failure to accomplish the work satisfactorily in time or in accordance with required specifications as noted in the order or by Government having to get the work done from other sources at rates higher than those contracted for due to the negligence, delay or incomplete workmanship on the part of the contractors.

8. The contractors shall insure the chassis at their cost for safe custody of the same at their premises, and

9. The contractors shall provide all facilities to the General Manager, Mysore Government Road Transport Department, Bangalore, or any of his assistants deputed by him to inspect the work as and when required and instructions given by them shall be carried out by the contractors."

From the above terms, it is clear that the appellant was only a contractor engaged to do some work and labour, on the chassis supplied by the General Manager, Mysore Government Road Transport Department. The "work and

labour" had to be done under the directions and supervision of the employer. The chassis supplied to the appellant continued to be the property of the Mysore Government Road Transport Department; otherwise there was no point in asking the assessee to insure the chassis while they were in the custody of the appellant. The body-building charges were in the neighborhood of about Rs. 7,000 for each body, whereas the price of the chassis on which the body was built was very much more. Comparing the price of the chassis with that of the body built on it, there is no dispute that the chassis was a far more important component. Even if we take into consideration the relative importance of the two, there can hardly be any doubt that the chassis was the predominant element and the body built thereon was merely an accessory.

10. The contention of the appellant in S.T.A. Nos. 1 to 3 of 1964 is that in building bodies on the chassis supplied by its customer it was merely expending labour and work on the property of its customer; it had to use materials as incidental to its work and labour; and the material used by it had become the property of the customer by reason of accession as soon as they were used. To put it differently it was urged that the work and labour expended by it and the material used in executing the work merely resulted in enhancing the value of the property of the customer, as those materials became the property of the customer as and when fabricated to the chassis; neither the work and labour expended by the appellant nor the material used by it ended in bringing up any movable chattel for sale; therefore, there was no sale of goods to attract sales tax.

11. "Contract of sale" must be distinguished from "contract for work and labour"; the distinction is brought out in Halsbury's Laws of England by Lord Simonds, (Third Edition, Vol. 34, at page 6) thus :

"A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the main object of work undertaken by the payee of the prices is not the transfer of chattel quo chattel, the contract is one for work and labour. The test is whether or not the work and labour bestowed end in anything that can properly become the subject of sale; neither the ownership of the materials, nor the value of the skill and labour as compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining, in the circumstances of a particular case, whether the contract is in substance one for work and labour or one for the sale of a chattel."

It is now well settled that the material supplied by the builder or contractor, as soon as they are affixed to the land belonging to the owner or employer, become annexed to and form part of the freehold; the builder has no lien on the work he has done for his employer, and can only obtain payment of his price by bringing an action. Thus the rights of the parties are different from those in an ordinary contract for the manufacture of "future goods", where, for instance, a person is employed on his own premises to construct a chattel, such as a ship, from his

own materials for another : See Halsbury's Laws of England by Lord Simonds (Third Edition, Volume 3, at page 421). The principle is not merely applicable to building contracts, but also applicable to improvements effected to chattels.

12. The different between "sale of goods" and "works contract" is well brought out in Benjamin on Sale (Eighth Edition, Part II, Chapter I, at page 161). The following observation of Blackburn, J., is quoted with approval :

"If the contract be such that it will result in the sale of a chattel, the proper form of action, if the employer refuses to accept the article when made, would be for not accepting. But if the work and labour be bestowed in such a manner as that the result would not be anything which could properly be said to be the subject of sale, then an action for work and labour is the proper remedy."

At page 167 of that book, law on the point is summarised thus :

"1. A contract whereby a chattel is to be made and affixed by the workman to land or to another chattel before the property therein is to pass, is not a contract of sale, but a contract for work, labour and material, for the contract does not contemplate the delivery of a chattel as such.

2. When a chattel is to be made and ultimately delivered by a workman to his employer, the question whether the contract is one of sale or of a bailment for work to be done depends upon whether previously to the completion of the chattel the property in its materials was vested in the workman or in his employer. 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.

Where, however, the passing of property is merely ancillary to the contract for the performance of work such a contract does not thereby become a contract of sale.

3. Accordingly

(i) where the employer delivers to a workman either all or the principal materials of a chattel on which the workman agrees to do work, there is a bailment by the employer, and a contract for work and labour, or for work, labour and materials (as the case may be), by the workman.

Materials added by the workman, on being affixed to or blended with the employer's materials, thereupon vest in the employer by accession, and not under any contract of sale.

(ii) Where the workman supplies either all or the principal materials, the contract is a contract for sale of the completed chattel, and any materials supplied by the employer when added to the workman's materials vest in the workman by accession.

4. The fact that the value of the materials supplied by one of the parties exceeds

the value of the materials supplied by the other does not conclusively prove that the more valuable are the principal materials."

The above passage summaries the law in England. Therefore it is unnecessary to refer to the decisions of the English Courts cited at the Bar.

13. Now turning our attention to the "Act" it was intended as a measure to consolidate and amend the laws relating to the levy of tax on the purchase or sale of goods in the State of Mysore. "Sales" is defined in section 2(t) of the "Act" thus :

""Sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration and includes a transfer of property in goods involved in the execution of works contract, and in the supply or distribution of goods by a co-operative society club, firm or any association to its members for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge."

This definition brings within the concept of "sale" two transactions namely : (i) transfer of the property in the goods by one person to another in the course of trade or business; and (ii) transfer of property in goods involved in the execution of "works contract". But in either case there must be a transfer of property in the goods. Therefore, if there is no transfer of the property in the goods, there is no "sale". In a "works contract", there is no transfer of property in goods.

Hence, a "works contract" as such can under no circumstance become a "sale". Section 2(w) defines "works contract" thus :

""Works contract" means any agreement for carrying out for cash or for deferred payment or other valuable consideration -

(i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property; or

(ii) the installation or repair of any machinery affixed to any building or other immovable property; or

(iii) the fitting out, improvement or repair of any movable property."

The definition of "turnover" in section 2(v)(i) takes in the "turnovers" relating to "works contract". Therefore, it is obvious that the State Legislature intended to bring within the net of taxation the "turnover" realised from "works contract", though there is great deal of incongruity in the definition of the word "sale". Incongruity apart, the State Legislature has no competence to tax the "turnover" relating to "works contract". That topic is outside its legislative field. The source of power of the State Legislature to tax "sales" is derived from Entry 54 of List II of the Seventh Schedule of the Constitution. That entry empowers the State Legislature to enact laws in respect of taxes on the sale or purchaser of goods

other than newspapers subject to the provisions of Entry 92A of List I. Therefore, the State can only levy tax on the "sale" or "purchase" of goods and not on wages received for labour or remuneration paid for service. This position is put beyond controversy by the decision of the Supreme court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,* . The Supreme Court reiterated its view in *Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others,* . It is surprising that despite these decisions the definitions of "sale" and "turnover" in the "Act" remain as they were and the "Act" still carries the definition of "works contract" for no purpose. Quite clearly, there is some dead wood in the "Act". To the extent the "Act" purports to reach the turnover relating to "works contract", the same being ultra vires of the powers of the State Legislature must be left out of consideration.

14. The question for our decision now is, whether the "turnovers" which are in dispute in these cases can be considered as "turnovers" relating to "sale of goods". The expression "sale of goods" is not to be construed in its popular sense but it must be interpreted in its legal sense and should be given the same meaning which it has in the Sales of Goods Act, 1930. It is a nomen juris, its essential ingredients being an agreement to sell movable for a price and property passing therein pursuant to that agreement - See the decision of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,* .

15. We have to see whether if tested by the ratio of the decision of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,* , the agreements entered into by the assesseees with their customers to build bodies on chassis supplied to them can be held as "sales" of movables for price and the property passing therein pursuant to those agreements.

16. From the facts found by the Tribunal, as seen above, it is clear that the contracts entered into by the assesseees with their customers are indivisible. It is not disputed that the parties to a contract might enter into distinct and separate contract, one for the transfer of materials for consideration and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State of separate the agreement to sell from the agreement to do work and render service and to impose tax thereon cannot be questioned. It is neither the case of the assesseees nor that of the Revenue that any of the contracts with which we are concerned in these cases embodies even impliedly two different contracts one for sale of materials and the other for work and labour. The parties before us have taken a definite stand, the Revenue contending that the agreements in question evidence "sales" of chattels, and the assesseees contending that those agreements relate to "works contract". All that we have to see is which one of the constructions is correct.

17. We have earlier seen that the chassis supplied by the customers continued to be the property of the customers, the assesseees being mere bailees. We have also seen that the assesseees did not sell ready-made bodies. What the assesseees

did was "to fix up the body on the chassis, plank by plank, screw by screw, nut by nut, etc., directly on the chassis". The moment a plank was fixed to the chassis, that plank became the property of the owner of the chassis by accession. So is the case with the nuts and bolts or for that matter any other part that may have gone into the building of the body. This Court in *State of Mysore v. A. C. Made Gowda* [1961] Mys. L.J. 218 brought out the distinction between "sale of goods" and "works contract" thus :

"The true rule is that if the work and labour is of the essence of the contract it is a contract of work. If on the contrary the substance of the contract is the production of something to be sold to the customer, it is a contract for sale of goods."

If the essence of the contract is to improve the customer's goods, as is the case in the cases before us, the fact, that in so improving the goods the contractor or the employee not merely uses his labour but also his materials, does not convert the transaction into a "sale". It is essentially a "works contract". The materials used become accretions or additions to the principal chattel and they vest by accession in the owner of the chattel.

18. This Court laid down in *H. Thammiah v. State of Mysore* [1962] Mys. L.J. 551 that one of the tests to find whether a given case is "sale of goods" or "works contract" is to see whether the work done by a person is work done on his own chattel, or on the chattel of someone else. If it is on his own chattel and that chattel is later sold, then it is "sale of goods", but if the work is done on customer's chattel then it is "works contract."

19. Judged by the tests mentioned above, we are of the opinion that the transactions with which we are concerned in these cases are "works contract".

20. Our conclusion finds support from the decision of the Gujarat High Court in *Kailash Engineering Co. Vs. The State of Gujarat*, . Therein the assessee was an engineering concern. It entered into a contract with the railway administration of the Western Railway for the performance of the works of building, erecting and furnishing III Class timber coach bodies on broad gauge underframes, the underframes to be supplied by the railway administration. On the question whether the work done under the contract is "work contract" not amounting to "sale" or whether it is a transaction of "sale" as defined in section 2, sub-section (3), of the Bombay Sales Tax Act, 1953, the Court held that the contract between the parties is one entire and indivisible contract; it is a contract entered into between the railway on the one hand and the assessee as contractors on the other for carrying out of the works specified in great detail in the agreement between the parties; it cannot be regarded as an agreement to sell any materials as materials by the contractor to the railway; the question whether a contract is a contract of sale as distinguished from a contract of work must depend upon the terms of the contract and the intention of the parties. The Court was of the opinion that the contract in the case before it is not a contract for sale of goods,

but one for work and labour.

21. A similar view was taken by a single Judge of the Allahabad High Court in *Kays Construction Company v. The Judge (Appeals) Sales Tax, Allahabad and Another* [1962] 13 STC 302.

22. Similar was the view taken by the Madras High Court in *Sundaram Motors (Private) Ltd. v. State of Madras* [1958] 9 STC 687.

23. For the contrary view reliance was placed by the Revenue on the decision of the High Court of Maharashtra at Bombay in *Mckenzie's Ltd. v. State of Bombay* [1962] 13 STC 602. In that case also the Court was concerned with an agreement relating to building of bodies on the chassis supplied to the assessee by its customers. On the facts of that case the Court came to the conclusion that the transactions entered into by the assessee amounted to sale of goods. The facts found in that case were that the assessee had entered into a contract for the construction of 218 bodies with the Government of India; under that contract the bodies were agreed to be supplied at the rate of Rs. 1,730 per body. Relevant portion of that decision reads thus :

"Now the contract in the present case is that the applicants by their tender contracted to construct and deliver to the Government of India 218 bodies on the dates as specified in the contract. It was agreed under this contract that the applicants will first submit pilot bodies for approval within 45 days from the date of receipt of the accepted tender or chassis, whichever was later, and they would commence delivery of the bodies contracted to be built 45 days after the approval of the pilot bodies."

The Court further observed :

"It appears, however, on reading the terms of the contract that what was intended between the parties was that the applicants should manufacture and sell to the Government of India 218 motor bodies fitted on to the chassis, which were supplied to them by the Government of India. The material for the body, the work of construction and the fitting were all to be done by the applicants and they were to deliver to the Government of India the completed articles."

On the basis of the above finding, the Court came to the conclusion that the agreement in question amounted to sale of goods. That case is clearly distinguishable. It falls within the rule laid down by this Court in *Thammiah's* case [1962] Mys. L.J. 551.

24. The next decision on which reliance was placed by the Revenue is the decision of the Allahabad High Court in *Commissioner of Sales Tax, U.P. v. Haji Abdul Majid and Sons* [1963] 14 STC 435. The assessee before that Court had carried on the business of constructing bus bodies on the chassis supplied by the customers; the materials used for building the bodies were owned by the assessee and when the work was completed the customers took delivery of possession of the bus bodies fixed to the chassis. The Court held that in the

circumstances of the case, the transaction was a contract of sale of bus bodies and not a contract for work and labour. The Court found that bus bodies qua bodies were sold. If that finding is correct then there is no doubt the transactions in question amounted to sale of goods. It may be noted that in that case the Court referred to the earlier decision of a single Judge of that Court in Kays Construction Company's case [1962] 13 STC 302. The Bench did not differ from the decision. It merely distinguished that decision on facts. On the facts found the decision in question falls within the rule laid down by this Court in Thammiah's case [1962] Mys. L.J. 551.

25. Lastly, reliance was placed on the decision of the Punjab High Court in Jiwan Singh & Sons v. State of Punjab and Another [1963] 14 STC 957. There again the fact found was that bus bodies were sold quo bodies. Therein the Court appears to have upheld the contention of the Revenue that the bodies of varying sizes and specifications according to standard sizes of the chassis and according to the requirements of the customer, namely, for transportation of passengers or goods etc., were manufactured on a large scale by the assessee-firm; the price of the body purchased was agreed upon and thereafter the body was fitted on the chassis. This decision is similar to the two decisions referred to hereinbefore.

26. For the reasons mentioned above, we are of the opinion that the transactions with which we are concerned in these cases do not amount to sale of goods but are contracts for "work and labour".

27. Yet another contention advanced by Sri v. Krishnamurthy and Sri Swaminathan, the learned counsel for the assessees, is that whether under the general law the transactions in question amount to "works contracts" or not, the State Legislature for the purpose of the "Act" having converted those transactions into "works contract" as per section 2(w), "works contracts" as defined are not exigible to sales tax and therefore the assessees are not liable to pay sales tax in respect of the turnovers" in dispute. This is an ingenious argument. But, on a closer scrutiny it will be found to be devoid of strength. The Legislature has defined "works contract" for the purpose of bringing the "turnover" in respect of it within the net of taxation. The "Act" does not purport to exempt the turnover in respect of "works contract". On the other hand, the "Act" intends to tax the said "turnover". If the "turnovers" relating to "works contracts" are not subject to sales tax, it is not because that the "Act" does not purport to reach them but because the State Legislature has no competence to levy sales tax in respect of the same. We cannot utilize the definition given in section 2(w) for a purpose not intended by the Legislature. If the assessees want to take their stand on the basis of the provisions contained in the "Act", then the disputed "turnovers" are exigible to tax. If, on the other hand, they contest the vires of the provisions relating to "work contracts" they cannot be permitted to approbate and reprobate by pleading that for certain purposes those provisions are valid and for the other purposes they are not valid. Those provisions - they are integrated provisions - are either valid or invalid. They cannot be both. Now

that we have come to the conclusion that the State Legislature has no competence to tax "turnovers" relating to "work contracts", the provisions designed to bringing them into the net of taxation should be ignored altogether.

28. The second of the three points formulated above has been answered by a Bench of this Court, of which I was a member, in H. Thammiah's case ([1962] Mys. L.J. 551). This is what is stated therein :

"If the transactions in question relate to "sale of goods", they are liable to be taxed. If, on the other hand, they relate to "works contracts", they are not liable to be taxed at all."

That is exactly the position here. As seen earlier, the transactions in question are not splittable. Each of them is a single and indivisible contract.

29. Coming to the third formulated, we are unable to accept the contention that the disputed "turnovers" are exigible to tax u/s 5(1) of the "Act". That provision is a general provision. If we had held that the "turnovers" in question relate to "sale of goods" we would have had no hesitation in holding that they fall either under Entry No. 72 or under Entry No. 73 of the Second Schedule of the "Act". Entries Nos. 70, 71, 72 and 73 form a group. They deal with motor vehicles, its component parts, articles adapted for use as parts of motor vehicles and accessories of motor vehicles, not being such articles as are ordinarily also used for purposes other than as parts or accessories of motor vehicles. Motor vehicles including motor cars, motor taxi cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries fall within Entry No. 70. Entry No. 71 deals with chassis of motor vehicles. Entry No. 72 deals with component parts of motor vehicles. Entry No. 73 deals with articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for purposes other than as parts or accessories of motor vehicles. Goods falling under Entries 70 to 73 are assessed at 7%. The body of a motor is certainly its component part. Even if we are to consider the articles used for building the body separately, those articles having been adapted for use as parts of the motor vehicles, they fall within Entry No. 73. The planks, angle irons, nuts, bolts, etc. adapted and used in building a body of a motor vehicle cannot be considered as separate articles which are accessories of motor vehicles and which are ordinarily used for purposes other than as parts and accessories of motor vehicles.

30. Sri Swaminathan, the learned counsel for the appellant in S.T.A. Nos. 1 to 3 of 1964, in support of his contention that the articles used in building motor bodies are articles ordinarily used for other purpose as well and consequently the "turnover" relating to the sale of those articles should be taxed u/s 5(1) of the "Act" relied on the decision of the Supreme Court of the United States in Universal Battery Company v. United States (74 L. Ed. 1051). We are not persuaded by this argument. In the first place that decision turned on the

language of the provision which the Court was called upon to interpret. That provision is not ad idem with Entry No. 72 or 73. Secondly, the Supreme Court was of the opinion that a construction of a revenue statute which has been adhered to by the Internal Revenues Bureau for nearly 10 years ought not to be disturbed unless plainly wrong, which circumstance appears to have greatly influenced the decision of the Supreme Court. But we are not faced with any such consideration.

31. For the reasons mentioned above, S.T.R.P. Nos. 57 and 58 of 1963 and S.T.A. Nos. 1 to 3 of 1964 are allowed and the orders of assessment impugned in these proceedings are quashed. The Revenue shall pay the costs of the assesseees in S.T.R.P. Nos. 57 and 58 of 1963 and S.T.A. Nos. 1 to 3 of 1964. Advocate's fee Rs. 100 (one hundred) in each case.

G.K. Govinda Bhat, J.

32. I agree.

33. Petitions allowed.