(1983) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 46 and 47 of 1981

State of Andhra Pradesh APPELLANT

Vs

P.S.N. Raju and Others RESPONDENT

Date of Decision : 24-03-1983

Acts Referred:

Citation : (1984) 55 STC 178

Hon'ble Judges : M. Jagannadha Rao, J;A. Seetharam Reddy, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; P. Venkataram Reddy, for the Respondent

Judgement

Seetharam Reddy, J.—The question involved herein, which is of frequent occurrence, is whether a particular transaction is a contract for work and labour or outright sale.

2. These two cases involving common point and the assessee being common, could be disposed of by a common order. T.R.C. No. 47 of 1981 pertains to the assessment year 1975-76 and T.R.C. No. 46 of 1981 is for the assessment year 1976-77. The findings of the Appellate Tribunal are : "that on the facts and in the circumstances of the case, transaction of the assessee-appellants, i.e., acting as sub-contractor of the main contractor M/s. Rodio Hazarat, who had entered originally in contract with Visakhapatnam Port Trust for the construction of the Fishing Harbour, Visakhapatnam, amounted to a contract for execution of work and not for sale of goods." The question is whether the Tribunal''s decision while placing reliance on decisions in the cases reported in (i) Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax, , (ii) Arun Electrics v. Commissioner of Sales Tax, Maharashtra State [1966] 17 STC 576(AP) , (iii) Commissioner of Sales Tax M.P. Vs. Purshottam Premji, , (iv) State of Rajasthan v. Man Industrial Corporation Ltd. [1969] 24 STC 349(Raj) and (v) M. Ponnuswamy Udayar Vs. The Government of Madras, is proper or not ? Before deciding, the relevant facts may be set out. The respondent herein was a sub-

contractor of M/s. Rodio Hazarat, who had entered into a contract with Visakhapatnam Port Trust for the construction of the Fishing Harbour at Visakhapatnam. The respondent having completed the work, as per the agreement entered into between himself and the main contractor, received certain payments during the assessment year in question. However, he did not file any return in respect of the amount received from M/s. Rodio Hazarat. But, the assessing authority treated the agreement as one for the supply of materials and so, assessed the respondent to tax. The defence was that the agreement was not for the supply of boulders, etc., but related only to the works executed by him, which was, however, negatived by the original assessing authority as well as the first appellate authority. But, on further appeal to the Tribunal, it was held after careful scrutiny of the details of the contract, that :

"there was overwhelming indication in the contract to speak and show that it is a composite and indivisible one and that what has been agreed and intended between the appellant and M/s. Rodio Hazarat, was not to supply materials in the course of the contract, but as and when such materials were imbedded in the contractual work involved, they became the property of the company, and as such, the question of sale of such materials by the appellant (respondent herein), does not arise."

3. It was further held that :

"On a consideration of the intention of the parties taken as a whole, one has to irresistibly conclude that it is a works contract, in which, use of materials is incidental to the execution of the work and it is not a contract involving sale of goods. The contract is an entire and indivisible contract as the consideration for the entire work of breaking and producing prescribed different grades and sizes of boulders, transporting goods to the work-spot and placing them in lines and levels as shown in the drawing and as directed by the contractor, is the payment of all inclusive lump sum at the agreed rates and as such, it cannot be considered by any stretch of imagination that it is a contract for supply of goods."

4. The contention of the learned Government Pleader is that the contract entered into between the respondent and M/s. Rodio Hazarat is for the supply of boulders for the execution of the work, and therefore, the main object behind the contract is the supply of goods. We apprehend the contention is not well-founded. We may set out for the purpose of analysis the details of the contract entered into between the respondent and M/s. Rodio Hazarat :

-- Rodio Foundation Tender for Site : Fisheries Harbour. Engineering Ltd. and sub-contract Sub-contract No. dated Hazarat & Co., 254-D, company''s copy 15th November, 1975. Dr. Anniebesant Road, Sub-contractor''s Band Box House, copy (cross out Bombay-400 025 DD. one not applicable). --
-- Sl. Description

Estimated Rate Estimated No. quantity value -- (1) Provide and place in approach and reclamation bunds including reclamation behind quay, rock of various level as shown on drawing and as directed by Deptl./Site Engineer. (Rates to include cost of material, seignorage and royalty, as applicable, labour, transport, equipment and placing in position to required levels and slopes.) a. Rock grade ''A'' 1120 cu. m. 50.00 56,000.00 (25 Kg. to 3000 Kg.) b. Rock grade ''B'' 24980 " 33.00 8,24,340.00 (25 Kg. to 500 Kg.) c. Rock grade ''C'' (0 to 25 Kg.) 16640 " 33.00 5,49,120.00 (2) Provide and place in position filter of stone chips of 25 mm. and down grade on the reclamation bund behind Quay as shown on drawing and as directed by Deptl./Site Engineer. 910 cu. m. 30.00 27,300.00 Total 14,56,760.00 --
-- I certify that I have verified and Dear sirs, found that the above tender is complete in all respects and I/we beg to tender for the recommend the same for acceptance. execution of the work specified in the details and at the prices Sd/- Jd. Shenolikar quoted above and subject to the Engineer incharge conditions of the tender Rodio-Hazarat. overleaf. The terms of this sub-contract have been explained Site : to me/us in my/our own language by the Site Engineer in-charge Sd/- S. M. Shah. and have been understood by me/us. Accepted for and on behalf of Rodio Foundation Engineering Signature of sub-contractor : Ltd. & Hazarat & Co. Sd/- P. S. N. Raju Full Name : P. S. N. Raju Address : Visakhapatam Dated. --

5. It is quite manifest from item (1) of the contract that it obligates the sub-contractor for providing and placing in approach and reclamation bunds, including reclamation behind quay, rock of various grades .... and also placing in position to required levels and slopes; and under item (2) for providing and placing in position filter of stone chips of 25 mm and down grade on the reclamation bund behind quay as shown on drawing and as directed by Departmental/Site Engineer. Therefore, the dominant object behind this contract is mainly and essentially the placing in position the material, i.e., boulders, in required levels and slopes, so that, it may reclaim as well as make a protection from seepage. Further, the work will have to be executed in accordance with the specifications and also under the directions of the engineers of the Port Trust and therefore, there is absolutely no scope whatsoever, to hold that the dominant object is the supply of boulders. The main and essential part of the contract is to fix those materials in accordance with the directions and instructions given on the spot by the engineering personnel of the department. The case of Anamolu Seshagiri Rao & Company v. State of Andhra Pradesh [1980] 45 STC 388, on which the learned Government Pleader places reliance, is of little assistance to him, because there the court was dealing with a situation whereunder the contract with the railways entered into by the assessee was for the supply and

stacking of hard stone ballast of particular size at specified places along side the railway tracks, and in stacking the ballast along the railway lines, the petitioner used only unskilled labour; payments had to be made to the assessee after taking measurements of the ballast stacked. Dealing with such situation, a Division Bench of this Court held that the stacking or training out the ballast was only incidental, as the ballast produced had individual existence as the sole property of the assessee at sometime before delivery and the property therein passed to the railways under the contract for a price. Hence, it was held that it was supply of ballast by the petitioner to the railways, which amounts to sale thereby assessable to tax and not works contract. It was, however, held by the Division Bench as under :

"That in the execution of a contract, some materials may be used and the property in the goods so used may pass to the other party and this fact by itself is not decisive of the nature of the contract. In some cases, the passing of the property may be ancillary to the primary contract. While, in a contract for sale, the main object is the transfer of the property and delivery of possession of the property, in the case of a works contract, the main object is not the transfer of the property but one for work and labour. However, there is no well-settled or standard formula by which one can distinguish a contract of sale from a contract for work and labour."

6. It is quite evident that the contract hereunder is indeed a composite and indivisible one and the dominant object of the contract is to execute, under the supervision of the department, involving no skill and labour and therefore, the use of the boulders in the process of execution is only incidental and subsidiary to the main. In view of the above, we unhesitatingly hold that the transaction does not amount to supply of material, but it is a contract for work and labour. Therefore, the contentions of the Government Pleader are rejected.

7. In the result, the T.R.Cs. are dismissed. No costs. Advocate''s fee Rs. 250/- in each.