
(1973) 04 MAD CK 0025

In the Madras High Court

Case No : Tax Case No. 233 of 1969 Revision No. 158 of 1969

State of Madras

APPELLANT

Vs

Champion Motor Works

RESPONDENT

Date of Decision : 25-04-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 12(3)

Citation : (1974) 34 STC 338

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; C. Venkataraman, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The assessee in this case has been undertaking the body-building works on chassis provided by the customers. The assessing authority for the assessment year 1965-66 determined the total taxable turnover of the assessee at Rs. 1,98,010.35 as against the reported taxable turnover of Rs. 7,250 by adopting the figures disclosed in the books and applied the rate of tax applicable to sales of bus or lorry bodies. The assessing authority also found that a turnover of Rs. 31,780.50 out of the total turnover determined had not been disclosed in the returns and, therefore, a penalty of Rs. 3,178 for not disclosing that turnover in the returns was levied.

2. As against the said assessment, the assessee went in appeal before the Appellate Assistant Commissioner, who upheld the assessment order as well as the levy of penalty. There was a further appeal to the Tribunal. Before the Tribunal the assessee not only questioned the assessment on merits but also questioned the propriety of the levy of penalty u/s 12(3) of the Act. The Tribunal set aside the order levying penalty on the ground that though a portion of the turnover has not been disclosed in the returns, it having been disclosed in the accounts which formed the basis for the assessment, the levy of penalty u/s

12(3) was not justified. We are of the view that the Tribunal is right in setting aside the levy of penalty.

3. On the merits of the assessment, the Tribunal held, agreeing with the assessee, that only a sum of Rs. 28,606.25 out of the total turnover determined by the assessing authority related to the receipts from body-building as such, that the sum of Rs. 35,253.10 related to supply of materials outright and, therefore, taxable at 2 per cent and 2 1/2 per cent, as the case may be. In relation to the rest of the turnover the Tribunal held that it either related to pure labour charges.

4. At the stage of hearing of the appeal before the Tribunal, it was urged by the revenue that the assessee has camouflaged the contract for bodybuilding into various transactions such as the contract to supply materials and contract of labour with a view to avoid the payment of tax on the receipts from bodybuilding by issuing bills separately for materials and for labour and that the real nature of the transactions have to be found out with reference to each of the body-building contracts. The Tribunal, however, thought it unnecessary to have an investigation in relation to this said complaint by the revenue. The assessee had filed month-wise statements with reference to the bills it had issued before the Tribunal to show that each bill represented an independent transaction. The Tribunal directed the said month-wise statements to be verified by the State representative and a report to be sent. Accordingly, the State representative verified the said month-wise statements and submitted a report in which he stated that a sum of Rs. 47,800 should be added to the admitted taxable turnover of Rs. 65,259.35 for the reason that certain bills for labour and for materials though issued separately related to the same vehicle and that such a splitting up of the receipts is intended to camouflage the bodybuilding contract into two sets of contracts, one for sale of materials and another for pure labour. The Tribunal agreed with the report made by the State representative that the bills for materials and for labour were in relation to the same vehicle, and the turnover of such bills came to Rs. 47,800. But the Tribunal felt that the bills for materials and for labour cannot legally be combined as the one has preceded the other and, therefore, they should be treated as independent transactions.

5. We are not inclined to agree with the Tribunal in this respect. That a sale of a body built on the chassis supplied by the customer is taxable is clear from the decisions in *Patnaik and Company v. State of Orissa* [1965] 16 S.T.C. 364 and *McKenzie Ltd. v. State of Maharashtra* [1965] 16 S.T.C. 518. It is not disputed by the assessee that the materials supplied and the labour done and billed for were in the course of body-building work undertaken by him. Apart from the separate bills for materials and for labour, no independent contracts for supply of materials first and for supply of labour later have been established. Having regard to the fact that the assessee's work is admittedly that of bodybuilding on chassis furnished by the customer, it has to be necessarily found out whether the bill for material and the bill for labour in relation to the same vehicle were in

relation to an anterior order placed by the customer for body-building. The Tribunal without probing the matter further in this line was willing to take the statement of the assessee that they represent two independent transactions without subjecting it to proof. We are of the view that the mode of billing cannot be conclusive in the circumstances of the case, that having regard to the assessee's business, it is necessary to consider whether the sale of materials and the contract for labour are independent of the body-building contracts entered into earlier by the assessee with the same customer. If really the bills for materials and for labour relate to an anterior order placed for body-building, then it has to be taken that there are no independent contracts for supply of materials and for labour and that they relate only to the prior order for body-building. We find that the Tribunal merely proceeded to decide the case on the basis of the assessee's statement without probing further into the matter with reference to the various records and the correspondence between the customers and the assessee in relation to the body-building works undertaken by the assessee. We therefore consider that it is necessary for the Tribunal to decide afresh on the question of the assessee's liability on the two turnovers, viz., Rs. 36,253.10, which according to the assessee represents only sales of materials, and Rs. 47,800, which is claimed by the assessee to be pure labour charges, but which, according to the revenue, represent portions of the receipts relatable to the body-building contract. The tax case is, therefore, allowed with a direction to the Tribunal to consider the matter afresh, with costs. The order of the Tribunal setting aside the penalty will stand. Counsel's fee Rs. 150.