(1990) 12 MAD CK 0034

In the Madras High Court

Case No : Tax Case No''s. 435 and 436 of 1981

State of Tamil Nadu — APPELLANT

Vs

Ambika Press — RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Citation : (1990) 12 MAD CK 0034

Hon'ble Judges : Mishra, J;Govindasamy, J

Bench : Division Bench

Judgement

Mishra, J.—By these two petitions, the State has questioned the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),

Coimbatore, holding that besides printing charges for question papers and court judgments, labour charges in relation thereto should also be

excluded. The Tribunal has opined that ""on an examination of the order book, the stock book and the bill books for sale of paper and for labour

charges we are of the view and opinion that the appellants had only undertaken works contract and realised amounts that do not amount to

contract of sale, and as such the turnover relating to the labour charges disputed in these appeals are not liable to be taxed.

2. Responding to a similar contention raised on behalf of the petitioner-State in the case of State of Tamil Nadu v. Anandam Viswanathan [1989]

73 STC 1 the Supreme Court has stated :

.... in each case the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is

found out. The fact that in the execution of a contract for work some materials are used, and the property in the goods so used, passes to the other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials. Whether or not and which

part of the job-work relates to that depends, as mentioned hereinbefore, on the nature of the transaction. A contract for work in the execution of

which goods are used may take any one of the three forms as mentioned by this Court in Government of Andhra Pradesh v. Guntur Tobaccos Ltd

[1965] 16 STC 240

3. It is relevant here to notice that the Tribunal has applied that very test and come to the above conclusion.

4. The Supreme Court has further observed :

The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or

rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have

been his property. Where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold

in the market to any other person, the transaction is only a works contract.

5. Similar observations can be found in the judgments of this Court as well as other judgments of the Supreme Court to understand a clear

distinction between sale of goods and the contract for work. Facts which are not in dispute show that the printing work was done with paper

supplied by parties for remuneration. It was contract for work pure and simple without any element of sale involved. That being the position, we

have no alternative but to hold that the Tribunal has correctly approached the problem and rightly held that labour charges are not exigible. There

being no merit, the tax cases are dismissed. There will be no order as to costs.

6. Petitions dismissed.