(1972) 12 MAD CK 0030

In the Madras High Court

Case No : Tax Case No. 57 of 1968

The Crompton Engineering Company Limited — APPELLANT

Vs

State of Madras — RESPONDENT

Date of Decision : 05-12-1972

Acts Referred:
Central Sales Tax Act, 1956 — Section 5(2)

Citation : (1973) ILR (Mad) 427

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

Bench : Division Bench

Advocate : S. Swaminathan and K. Ramgopal, for the Appellant; K. Venkatatwami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The Petitioners-company are carrying on business as electrical Engineers and Contractors. They manufacture varieties of electrical equipment as well. They also arrange import of machinery for their constituent-purchasers. In April 1955, India Cements Ltd., approached the Petitioners enquiring whether they could arrange for import of certain motors and machinery required by them from United Kingdom. There were oral discussions between the representatives of the Petitioners and Ina Cements Ltd. As a result thereof, the pet i agreed to import equipment and machinery by India Cements Ltd., on a condition that the latter agree to obtain the required import licence from the Government of India. In anticipation of the import licence, the Petitioners made preliminary arrangements for effecting the imports from their foreign principals .In due course, India Cements Ltd., obtained an actual user''s licence, dated 9th September 1955 to import goods of the approximate value of Us. 4,25,000 and also a letter of authority from the Chief Controller of Import and Exports authorising the Petitioners to import the goods on behalf of India Cements Ltd., against the actual user''s license issued. The total value of the goods imported amounted to Rs. 4,73,056 of which goods of the value of Rs.

2,15,997 were received during the year 1957-58. In the assessment for the year 1957-58, the Petitioners claimed that the purchases from abroad were effected by the Petitioners as agents of India Cements Ltd., and in any case the transaction represented sales in the course of import and as such are not liable to sales tax. The Petitioners also claimed among other things that a sum of Rs. 2,22,31995 represented realization of works contract for electric installation work and produced as evidence the contract entered into by the Petitioners in respect of the same and claimed exemption from sales tax. The Petitioners also claimed a sum of Rs. 3,09,292- 34 as representing realisation for carrying out electric installation work but in respect of this the Petitioners did not produce any contract.

All the three items of claims stated above were not accepted by the assessing authority and the Appellate Assistant Commissioner. The Tribunal allowed the claim under the head of works contract where contracts were produced as evidence, except a sum of Rs. 66,487 out of the sum of Rs. 2,22,31995. This sum of Rs. 66,487 was disallowed on the ground that it represented the value of fans and fluorescent fittings utilised in the works contract and that it amounted to sales of those electric goods. The Tribunal rejected the claim of the Petitioners in respect of the other items and confirmed the orders of the assessing authority. In this revision petition, the Petitioners claim that the sum of Rs. 2,15,997 represented sales in the course of import to India Cements Ltd., that the sums of Rs. 66,487 and Rs. 3,09,292-34 are realisations under works contract and therefore not liable to sales tax.

2. It is seen from the correspondence between the Petitioners and India Cements Ltd. produced in this case that there was actually an agreement between these parties in respect of the goods imported and that the goods actually moved in pursuance of the contract and it is the contract that occasioned the import. In the letter, dated 12th April 1955 written to India Cements Ltd. the Petitioners had recorded the oral conversation they had with one Narayanaswami of India Cements and stated further that they thanked sincerely for placing the order with them for the meters, control gear and cables. They further stated that they had instructed the manufacturers to register the order and make preliminary arrangements with regard to the manufacture. There appeared to have been some discussions about the price and the payment of the same and giving of credit facilities. With regard to the letter, the Petitioners appeared to have expressly desired to consult their foreign principles and in fact wrote a letter on 3rd May 1955 to India Cements Ltd., requesting them to inform the Petitioners in the event of their deciding not to avail of the credit facilities. This letter again thanked India Cements Ltd., for the valuable order placed.

3. As agreed between the parties, India Cements Ltd. applied to the Government of India and obtained an actual user''s licence on 9th September 1955. This licence is not transferable. India Cements Ltd. also obtained a letter of authority from the Chief Controller of Imports & Exports along with the actual user''s

licence, dated 9th September 1955 authorising India Cements Ltd. to permit the Petitioners to import the goods against the above licence. As already stated the goods were imported during the assessment year 1957-58.

4. It is seen from these facts that the machineries were ordered by the Petitioners from their foreign principals for the specific purpose of supplying the same to India Cements Ltd. The import licence granted was in favour of India Cements Ltd. and they could not assign or transfer the same to any other person. The letter of authority given to the Petitioners enabled them only to import on behalf of India Cements Ltd. The Petitioners could not have diverted the goods for any other purpose. No doubt, the machineries were ordered from a foreign company in the name of the Petitioners and were also shipped in the name of the Petitioners, but that, in our opinion, is of no significance in view of the fact that the import was against the actual user''s licence granted to India Cements Ltd., and the Petitioners could not have diverted the machineries to any other person.

5. In fact, as already stated, the contract between the Petitioners and India Cements Ltd. contemplated the obtaining of the licence by India Cements Ltd. It is seen therefore that the movement of the goods is an incident of the contract between the parties. This case is directly governed by the principle of the decision in Khosla and Go. (P) Ltd. v. Deputy Commercial Tax Officer (1936) 17 STC 473 wherein the Supreme Court held that, if the movement of the goods from the foreign country to India was in pursuance of or as a result of a covenant of contract or sale and there was no possibility of the goods being diverted by the asseesee for any other purpose than to supply to a particular individual, then the sale is said to take place in the course of import of goods within Section 5 (2) of the Central Sales Tax Act and it did not matter where the property passed.

6. The Tribunal was of the view that the sales could not be treated as sales in the course of import of the ground that there was no firm order of purchase by India Cements Ltd., prior to the date when the Petitioners placed orders with the foreign manufactures. The Tribunal took the view that the letter, dated 12th April 1955 did not constitute a firm order and, therefore, the order placed by the Petitioners with the foreign principles on 13th April 1955 could not be said to be in pursuance of an order placed by India Cements Ltd. It further stated that India Cements Ltd. could be said to have placed a firm order with the Petitioners only after 3rd May 1955 when they were mad aware of the actual cost of the materials or on 9th September 1955 when the import licence was obtained by them. We are unable to accept this view of the Tribunal. The Tribunal overlooked that the letter, dated 12th April 1955 specifically stated, after confirming the oral conversation with them, that they thanked India Cements Ltd., for placing the order with the Petitioners for the meters, control gear and cables and that they had instructed the foreign manufactures to register the order and make preliminary arrangements for manufacture. The price and mode of payment were subject to confirmation from the foreign manufactures. That did not in any way,

in our opinion, detract the factum of the order placed by India Cements Ltd. Further, the Petitioners imported the goods in pursuance of the letter of authority issued by the Chief Controller of Imports and Exports against the actual user''s license issued to India Cements Ltd. The Petitioners could not have imported the materials without that licence and the letter of authority. In any case, before the goods were imported into the country there was a concluded contract between the Petitioners and, India Cements Ltd., in all respects and the import being an incident of the contract itself, the transaction clearly falls u/s 5 (2) of the Central Sales Tax Act. We, therefore, hold that the sum of Rs. 2,15,997 represented the transaction of sale in the course of import and as such is not liable to sales tax.

7. As regards the electrical installation work for Rs. 2,22,319-95 the Tribunal found that the relevant contract was an indivisible contract and that there was no evidence to show that the goods involved in the execution of such contract had be en sold as such. Having held so, in respect of a sum of Rs. 66,487which represented the value of fans and fluorescent lamps used in the execution of the works, the Tribunal took the view that the labour and skill involved in fixing the fans and fluorescent lamps were not considerable and that they represented the sale of materials Here again we feel that the correspondence and the contract entered into in respect of these works clearly show that the supply and fixing of fans and fluorescent lamps form part of the contract and it is not divisible. The Tribunal also is not correct in thinking that the labour and skill involved in fixing these fans and fluorescent lamps were not considerable. It is seen from the letter, dated 17th July 1957 written by the Architects of the English Electric Company Ltd., to the Petitioners that the lighting of the factory would have to be with respect to the intensities as required in that letter. The quotation placed by the Petitioners also include a plan and lay out showing considerable technical skill. The fans and fluorescent lamps were not separately billed for or paid but they were shown as part of the entire bills relating to the works contract and the bills were presented for portions of work completed from time to time. The contract provided for payment of 26 per cent of the total value of the contract along with the order. The contract also required that the English Electric Company shall provide the necessary space for storing the materials and tools free of cost to the Petitioners. These clauses show that the fans and fluorescent lamps were not sold separately. In other words, there is no agreement to purchase or sell the fans and fluorescent lamps independently for any separate money consideration, hut it formed part of the entire works contract.

8. In State of Rajasthan v. Man Industrial Corporation Ltd. (1969) 24 S.T.C. 349 the Supreme Court had occasion to consider a case where a contractor carried on the business of fabricating steel doors, windows, sashes and other goods. The contractor submitted a tender for providing and fixing windows of certain sizes and agreed to voluntarily fix the windows to the building free of charges. The Supreme Court laid the test for determination in the following words:

The test in each case is whether the object of the parties sought to be taxed is that the chattel as chattel passes to the other party and the services rendered in connection with the installation or under a separate contract or incidental to the execution of the contract of sale.

This test was reiterated again in State of Rajasthan v. Nenu Ram (1970) 26 S.T.C. 268 where basing on the fact that the rates paid to the Assessee was as per sanctioned schedule of rates for wood work of Government Departments, that is, for supplying and fixing both it was held that it is a works contract. It is not necessary to multiply the citations as each contract would have to be construed on its own terms. We are satisfied on a consideration of the relevant terms, that the contract was one and indivisible and that the sum of Rs. 66,487 also represented the value paid under the works contract and therefore is not liable to sales tax.

9. With regard to the last item, the Petitioners had not produced the relevant contracts. It is true that a particular contract is a works contract or a contract of sale depends very much on the terms and conditions of the contract itself. The absence of the contract is therefore very much a handicap in establishing that this realisation is from works contract. The learned Counsel for the Petitioners relied on certain, basic factors which appear in the relevant bills and invoices produced by them in respect of this amount and the similarity of these invoices with those of the invoices which were found to have been works contract under the second heading discussed above. These invoices show that the amount payable was with reference to electric installations which involved in some cases laying of underground cables and in others carrying out of the entire wiring work connected with the fixing of the main boards. The prices shown there are for supply and erection in some cases and calculated on the basis of certain standard rates. The invoice also stated that the amount payable was towards charges for electric installation carried out at a particular workshop or factory or premises. In these bills sales tax at 80 per cent of the bills worked at 1-9/16 per cent and an additional sales tax on the sum at 2 per cent have also been included. It may be remembered that at the time when these contracts were entered into the law relating to the liability of works contract for sales tax was not settled and the dealers were made to pay sales tax on a percentage of the total works. That is how the bill divides 80 per cent of the value as being liable to sales tax. The division into 80 per cent and 20 per cent itself shows that the parties had treated these contracts as works contracts. The payment also is made as and when the bills are presented. These bills and invoices are also similar to those bills and invoices issued under contracts which have been found by the Tribunal itself as works contract. Merely on the ground that the Petitioners were not able to produce the relevant contracts in these matters and also on the ground that in most of these cases there were no written contracts between the parties, we cannot hold that the amounts do not represent the realisation of works contract. Having regard to the facts of this case, and the course of business of the Petitioners as evidenced in the other contracts produced, we feel that the claim of the Petitioners to this item also as representing realisation of

works contract is acceptable.

10. For the foregoing reason, the, tax case, allowed and the three amounts mentioned above will have to be deleted from the assessment. There will be no order as to costs.

