

(1981) 10 MAD CK 0072

In the Madras High Court

Case No : Tax Case No. 941 of 1977 (Revision No. 226 of 1977)

The Deputy Commissioner (C.T.), Coimbatore Division,
Coimbatore

APPELLANT

Vs

Karthikeya Press

RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:

Citation : (1982) 51 STC 28

Hon'ble Judges : Sethuraman, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; V.K.T. Chari and S. Vijayaraghavan for V. Srinivasan, for the Respondent

Judgement

Sethuraman, J.—This revision petition has been filed by the State against the order of the Sales Tax Appellate Tribunal (Additional Bench),

Coimbatore, dated 5th October, 1976.

2. The assessee was a printer and book-binder. The matter relates to the assessment year 1974-75. The assessee reported a turnover of Rs.

2,57,636.50 and claimed the whole of it was not liable to be taxed. The assessee claimed before the assessing authority that the orders placed by

the customers consisted of two parts, one being for the supply of the required paper and boards and the other being for the printing of the ledgers

and account books. As far as the first part was concerned, the assessee agreed that there were sales of goods but contended that those sales being

second sales, were exempt from assessment. As far as the second part was concerned, the assessee's claim was that they were works contracts.

The assessing authority held that the orders placed by the customers related only to the finished goods and did not consist of separate contracts for

the supply of materials and for work. The turnover was, therefore, considered to be subject to tax. He determined the turnover at Rs.

2,70,520.00. On appeal, the Appellate Assistant Commissioner confirmed the assessment. The assessee took the matter on further appeal to the

Tribunal, which held that the transactions were not in respect of finished products and that the parties had entered into two distinct and separate

transactions, one in respect of the supply of materials and the other for labour charges. The material, viz., paper, was held to be exempt as second

sales and the labour charge was also held to be not taxable as sales. It is in this view, the Tribunal accepted the assessee's claim. It is this order of

the Tribunal that has given rise to the present revision.

3. The learned Additional Government Pleader contended that there was a single and indivisible contract in the present case and that the

transactions could only be treated as transactions of sales rather than as works contracts. It is necessary to examine this contention in the light of

the materials placed before the authorities and also before us.

4. The Tribunal has examined the order books, invoices, etc., and brought out in a succinct form what is disclosed by them in paragraph 5 of its

order. The position is expressed as follows :

The order book has been produced before the Tribunal. No doubt, it mentions that the customer has required the assessee to execute the work

described thereunder as per particulars furnished and to deliver the finished articles and therefore, the authorities below and held that the order was

in respect of the finished articles only and that therefore, the entire transaction was in the nature of sales exigible to tax. It may be relevant,

however, to consider the other details mentioned in the order form in order to determine the real nature of the transaction. The order form itself

provides separate columns for the cost of materials, if supplies by the press, and for labour charges. The invoices have also been maintained

separately by the assessee for the cost of material wherever they had been supplied by the press and for the labour charges. The conditions

stipulated in the order form, however, clearly show the true nature of the transactions contemplated by the parties. Clause 3 therein provides that

the press is not bound to supply materials to be used in the execution of the work ordered therein. Clause 4 provides that in case the press agrees

to supply materials to be used in the execution of the work, such materials shall be deemed to be the property of the customer placing the order

from the date of such supply and in case of loss or damage to such material during the course of the execution, such loss shall be borne by the

customer. Clause 5 further provides that unless otherwise specified, the customer shall assume all responsibilities for the quality of the materials

utilised in the execution of the work.

5. It was in these circumstances that the Tribunal considered that though the order form was for the execution of the work and for the delivery of

the finished articles, the parties had kept in view two distinct and separate contracts, one for the supply of materials and other for the labour

charges. The Tribunal has also pointed out that the transfer of the property in the printing and binding materials had specially been contracted to

take place from the date of supply of the same for the execution of the work by the assessee and that it could not be said that the transfer of

property in the goods passed from the press to the customer only after the printing was over. On an analysis of the order form and the conditions

mentioned therein, it was clear to the Tribunal that the parties entered into separate agreement, one for works and service and the other for sale

and purchase of materials to be used in the course of executing the work. The Tribunal has, in these circumstances, held that the transactions could

not be said to be one and individual, for, the parties had deliberately provided for two distinct and separate contracts. The Tribunal has also

examined the question as to whether the separation in the manner done could be taken to be a make-believe affairs for the purpose of sales tax

and answered it in the negative.

6. We, thus, start with the finding that the transactions, as envisaged by the parties, fall into two parts and that the transactions have been properly

and genuinely recorded in the books. It is in the light of this finding that we have to examine the cases brought to our notice by the learned

Additional Government Pleader.

7. In T.V. Sundram Iyengar and Sons Vs. The State of Madras, the Supreme Court was concerned with the taxability of the receipts on the

construction of bus bodies on chassis provided by customers. It was held that the property in the materials used by the assessees in constructing

the bus bodies never passed to their customers during the course of construction and that it was only when the bus body fitted to the chassis was delivered to the customer that the property in the bus passed to the customer. Therefore, the supply of bodies was taken to constitute a sale and the assesseees were held liable for sales tax. The determination of the question before the Supreme Court turned on the nature of the contract that was entered into between the parties. A claim like the one before us has necessarily to be adjudicated upon on the basis of the materials. It is not as if every case is likely to have the same pattern or the parties would enter into transactions only in a particular manner. Therefore, the guidance to be availed of from decided cases, except where the transactions are more or less identical, would not be substantial.

8. The learned Additional Government Pleader drew our particular attention to page 31 of the above reported case, wherein the Supreme Court pointed out that if a fire takes place on the premises of the body builder and before delivery of the bodies and they were destroyed or spoilt, the loss would fall on the body builder. In that particular case, the Supreme Court had also pointed out that the chassis themselves had been insured. Supposing any damage resulted to the chassis, then the person who provided the chassis would be entitled to reimbursement from the insurance company. It is only in the case of the body, that the question as to what would happen if the body before its construction and delivery was destroyed, was posed and answered. Until and unless the entire body was constructed and delivered, there would have been no sale on the facts of that particular case. But, that is not necessarily the position in every other case that arises in this branch of law. The nature of the transaction depends upon the terms of the contract.

9. Another decision which was brought to our notice is that of the Orissa High Court in *State of Orissa v. D. N. Joshi* [1971] 27 STC 100. The assessee in that case was the proprietor of a printing press. He was assessed to sales tax for selling printed materials. He supplied paper from his own stock and got the printing done on that paper according to the orders of the customers. In the receipts granted by the assessee to the customers at the time of the receipt of consideration, the payments made for paper and printing were separately shown. The learned Judges held

that the agreement was of a composite character and that the contract was indivisible. The assessee was, therefore, held liable to pay sales tax on the entire sum. The significant point to be noticed about this decision is that there was no pre-existing contract between the printer and the customers as regards the supply of materials. Merely because the printer itemised the consideration to be received from the party as if one part related to the printing and the other to the printed materials, it would not follow that there were two separate pre-existing contracts. The contract, if any, would have taken place long before the delivery. The details in the bill could only be traced to an anxiety to satisfy the customer as to the components of the bill. We do not, therefore, find any assistance from this decision either.

10. The next decision brought to our notice was that of P. M. Venkatachalam Pillai v. State of Madras [1969] 23 STC 72. That was also a case of a printer and the question was whether the turnover consisted of the aggregation of labour charges and the cost of materials in printing work or of outright sales of finished commodities. The assessee relied on certain bills which showed the cost of materials and labour charges, but he did not produce the order books or other documents. In those circumstances, the Tribunal found that the separate entries were only a "make-believe" apportionment for the purpose of sales tax and that what was sold was only a finished product. It is this finding of the Tribunal which was affirmed by this Court. It could be seen that the case turned upon the non-production of the order books and the plea of the assessee that there were two transactions remained unsubstantiated. That is not the position here.

11. To a similar effect is the unreported decision of this Court in T.C. No. 179 of 1974 dated 24th April, 1967 (sic) (V. Srinivasan v. State of Madras by the Deputy Commercial Tax Officer, Kancheepuram). In that case, it was pointed out that whether there did exist a contract for the sale of paper and the printer undertook the work contract for the printing of something upon paper supplied by the customer, was a question of fact. In that case also, in the final bill given to the customer, the cost of paper was separately indicated as distinct from the charges for printing. It was from the separation of the two items of consideration that the court was asked to draw the inference that there was a separate contract for the

sale of paper. This contention was negated by this Court. The assessee in this case also did not produce the order form. Merely from the fact that

in the final bill charges are displayed separately, the court could not draw an inference that there were two contracts. It could be seen that the case

stands on the same footing as the decision of the Orissa High Court in *State of Orissa v. D. N. Joshi* [1971] 27 STC 100 and also of this Court in

P. M. Venkatachalam Pillai v. State of Madras [1969] 23 STC 72.

12. Reliance was also placed on a decision of the Kerala High Court in *Sales Tax Officer, Special Circle II, Palghat v. I. V. Somasundaran* [1974]

33 STC 68. That was a case where the printer printed letter heads, invitation cards, judgments of courts and ration cards. In the case of printing of

judgments of courts and ration cards, the court took the view that they were only works contracts. But in the case of printing of letter heads and

invitation cards, the view taken was that they were in the nature of sale of goods. It is difficult for us to find out why two sets of transactions were

differentiated. It is clear, on a perusal of the said decision, that the question turned on the particular facts in respect of each of the items of work

undertaken.

13. If we may say so the test to be applied is very succinctly brought out in *State of Orissa v. Ramanath Panda* [1971] 27 STC 98 . That was also

a case of a printer supplying printed materials. The claim was that they were works contracts. The contention was not accepted by the sales tax

authorities and the Tribunal. On the facts, it was found that the argument for supply of printed materials was one and individuals and that the

contract was one of sale. However, in the course of the judgment, the tests formulated are as follows :

The agreement between the parties may take various shapes. If the purchaser supplies papers, clearly the seller does nothing except printing on

those papers. In such a case, there is no sale. The work of the seller is one of labour. There may also be another type of cases where the

purchaser enters into an agreement that he would separately pay for the papers and the seller would merely print on those paper. Such a case

would be analogous to the first type of cases where the purchaser purchases the papers from outside and supplies the same to the printer. Another

type of case would be where the purchaser does not enter into any separate

agreement but merely asks the printer to supply printed materials. The obligation to purchase the papers and to print thereon remains with the seller. In such a case, the contract remains indivisible and what is agreed to be sold is the printed material.

14. The present case falls within the second category, viz., where the purchaser enters into separate agreement for the purchase of paper and asks the printer to print on the paper so supplied.

15. The result is, the Tribunal is right in holding that there were no taxable sales in the present case. The revision is dismissed with costs. Counsel's fee Rs. 250.

16. Petition dismissed.