

(1976) 08 MAD CK 0010

In the Madras High Court

Case No : T.C. No"s. 436 and 437 of 1971 (Revision No"s. 304 and 305 of 1971)

The State of Tamil Nadu

APPELLANT

Vs

Anandam Viswanathan

RESPONDENT

Date of Decision : 05-08-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1977) 39 STC 226

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : K.S. Bakthavathsalam, the Additional Government Pleader, for the Appellant; T.V. Balakrishnan, for C.V. Mahalingam, S. Mathurbutheswaran and K.J. Rebello, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—These, tax revision cases arise out of the order of the Sales Tax Appellate Tribunal, Main Bench, Madras-1, dated 11th March,

1971, in respect of two assessment years 1966-67 and 1968-69 and the controversy is very narrow. The assessee in these cases entered into

contracts with the Universities and the other educational institutions in the country for printing question papers for the said educational institutions.

The assessee in the demand notes prepared gave the charges for printing, blocks, packing charges, handling charges, delivery charges, postage,

value of paper and value of packing materials separately in the relevant assessment years. The dispute related as to whether the taxable turnover

should include the printing charges and block-making charges or not. As far as the assessment year 1966-67 is concerned, the printing charges

amounted to Rs. 99,675.00 and block-making charges amounted to Rs. 2,923.95

totalling Rs. 1,02,598.95. As far as the assessment year 1968-

69 is concerned, the printing charges amounted to Rs. 1,33,137.00 and block-making charges amounted to Rs. 5,361.75 totalling Rs.

1,38,498.75. The question to be considered is whether these two amounts were includible in the assessable turnover in the respective years in

question. The case of the respondent was that the contract entered into between her and the respective educational institutions was a contract of

work and labour and in the performance of that contract, incidentally she had to sell paper to them and, therefore, except to the extent of the cost

of paper, in respect of the other amounts received by her she was not liable to pay any sales tax. On the other hand, the case of the Government

was that the contract was for the sale of printed materials by the respondent to the respective educational institutions and, therefore, the entire

amount will have to be taken into account as turnover liable to tax. We may point out in this context that till the year 1963 the respondent herself

was doing the printing and during that period the Tribunal has been holding that only the cost of the paper was liable to be included in the taxable

turnover. With effect from 3rd November, 1963, the printing work was done by a firm of which the assessee's sons and daughters were partners,

but the contract continued to be entered into between the respondent and the respective educational institutions. According to the Government, this

made a difference and, therefore, the earlier order of the Tribunal cannot govern the assessment for the respective years referred to above. The

Tribunal held that there was no need to change the view it had already adopted in view of the fact that the printing work was done by a firm

consisting of the sons and daughters of the respondent and even after the change it is only the value of the paper that was liable to be included in

the taxable turnover. It is the correctness of this conclusion of the Tribunal that is challenged in the form of the two revision cases preferred to this

court u/s 38 of Tamil Nadu Act No. 1 of 1959.

2. We are clearly of the opinion that the contract entered into between the respondent and the Universities and the other educational institutions

was a composite contract in the sense it was a contract for work and labour as well as a contract for the sale of the paper, since there was an

express agreement for the sale of the paper by the respondent to the

Universities and other educational institutions in question. The learned Additional Government Pleader drew our attention to the decisions holding that the sales of printed bills or printed account books or printed books have been held to be sales attracting liability to sales tax because all of them happen to be sales of printed materials and exactly on the same pattern, the present case involves sale of printed materials, viz., printed question papers and, therefore, the entire consideration received by the respondent from the respective Universities and educational institutions should be treated as taxable turnover. We are unable to accept this argument in view of a singular and peculiar feature present and involved in the contract relating to printing of question papers of the educational institutions. It is not in dispute that the printing of the question papers of the educational institutions is extremely and highly of a confidential nature and, therefore, it cannot be entrusted to any press as one likes and such a contract will be entered into by the Universities and the other educational institutions only with a person in whom they have got the highest confidence so that the printer will not divulge the questions to be printed by her or by him and will preserve the confidential nature of the entire transaction. In the case of the printing of the other materials, just like letter-heads or bills or account books or even printing works like a novel, story or poem or a drama, the technical excellence and the professional efficiency of the printer, among other things, may enter into calculation for entrusting the job to a particular printer. But, as far as the printing of question papers of Universities and other educational institutions is concerned, matters like the technical excellence and the professional efficiency of the printer are not so material, but what motivates the contract is the capacity of the printer to keep the confidence and maintain the confidential nature of the work entrusted to the printer. Consequently, in view of this peculiar feature which will be present in the printing of matters which are confidential in nature and which will not be present in other cases, the contract in the present cases without doing any violence to logic or reasoning, can be held as a contract of labour only and not a contract for the sale of any goods such as printed materials. In the course of execution of this contract and for the purpose of completing the work, the parties may enter into the contract for the sale of the paper and, in this context, it will be a composite contract

which can be split up into contract for sale of paper and contract for work and labour. As has been pointed out by the Supreme Court in

Government of Andhra Pradesh Vs. Guntur Tobaccos Ltd., :

The fact that in the execution of a contract for work some materials are used and 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. A contract for work in the execution of

which goods are used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in

the execution of the works for a price ; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the

work ; or it may be a contract for work and use or supply of materials though not accessory to the execution of the contract is voluntary or

gratuitous. In the last class there is no sale because though property passes it does not pass for a price. Whether a contract is of the first or the

second class must depend upon the circumstances ; if it is of the first, it is a composite contract for work and sale of goods ; where it is of the

second category, it is a contract for execution of work not involving sale of goods.

3. In view of the demand notes prepared by the respondent in these cases showing the cost of the paper separately, the contract in the present

cases must be deemed to fall in the first category referred to by the Supreme Court and, therefore, except for the material supplied on the basis of

such a contract, in other respects it will continue to be a contract for work and labour and, therefore, there is no question of any liability to sales tax

in respect thereof.

4. Certainly, this reasoning of ours will cover the printing charges. Then there remains the charges for the block-making. Admittedly, the blocks are

destroyed after the question papers have been printed. Therefore, with regard to these blocks there is no question of the sale of the blocks

because there is no question of passing of the property in the blocks from the respondent to the various Universities and other educational

institutions. Therefore, the block-making charges also cannot be included in the taxable turnover.

5. Mr. T.V. Balakrishnan, the learned counsel for the respondent, brought to our attention the decision of the Kerala High Court in P.T. Varghese

v. State of Kerala [1976] 37 S.T.C. 171, in support of his contention that the contract relating to printing of question papers should be treated on

a special footing and should not be treated as a contract for the sale of printed material. Though the conclusion arrived at by the Kerala High Court

is the same as we have done in the present case, still we would rest our conclusion on the ground given by us.

6. The learned Additional Government Pleader drew our attention to the following passage occurring in the judgment of the Supreme Court in T.V.

Sundram Iyengar and Sons Vs. The State of Madras, :

The question with which we are concerned, as would appear from the resume of facts given above, is whether the construction of the bus bodies

and the supply of the same by the assesseees to their customers was in pursuance of a contract of sale as distinguished from a contract for work and

labour. The distinction between the two contracts is often a fine one. A contract of sale is a contract whose main object is the transfer of the

property in and the delivery of the possession of, a chattel as a chattel to the buyer. Where the main object of work undertaken by the payee of the

price is not the transfer of a chattel qua chattel, the contract is one for work and labour. The test is whether or not the work and labour bestowed

end in anything that can properly become the subject of sale ; neither the ownership of the materials, nor the value of the skill and labour as

compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining, in the circumstances

of a particular case, whether the contract is in substance one for work and labour or one for the sale of a chattel (see Halsbury's Laws of England,

Vol. 34, p. 6, Third Edition).

7. We are unable to hold that this passage, in any way, assists the stand of the department in the present case. As a matter of fact, this statement,

far from supporting the case of the Government, will support the case of the respondent in the present case. As the Supreme Court has pointed

out, the contract for sale is a contract whose main object is the transfer of the property in and the delivery of possession of, a chattel as a chattel to

the buyer. The contract entered into by the Universities and other educational institutions with the printer or any other person for printing question

papers and supplying the same to the Universities and institutions cannot be said

to be a contract whose main object is the transfer of the property in the question papers from the printer to the Universities and institutions. Therefore, the observations of the Supreme Court certainly cannot be of any assistance to the department's contention in the present case.

8. Under these circumstances, the tax revision cases fail and they are dismissed. There will be no order as to costs.