

The State of Mysore Vs. S.R. Bhide

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Court : Karnataka

Decided On : Sep-10-1968

Reported in : (1968)2MysLJ557; [1969]24STC446(Kar)

Judge : A.R. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Appeal No. : S.T.R.P. No. 53 of 1967

Appellant : The State of Mysore

Respondent : S.R. Bhide

Advocate for Def. : K. Srinivasan, Adv.

Advocate for Pet/Ap. : Shantaraju for E.S. Venkataramaiah, Special Government Pleader

Judgement :

Somnath Iyer, J.

1. The respondent Bhide entered into a contract with the Southern Railway under which he agreed to collect and train out stone ballasts in certain zone of that railway administration comprising the Ranibennur, Yalavagi and Annigere and Hubli permanent way sections. When he collected the ballasts and trained them out on the permanent way sections he was paid a sum of Rs. 1,64,995 by the railway administration. This sum of money was assessed to sales tax by the

Commercial Tax Officer on the hypothesis that there was a sale by the respondent to the railway administration of stone ballasts of the value of Rs. 1,62,470, and other materials in respect of another contract of the value of Rs. 2,525. There were two contracts which were entered into between the respondent and the railway administration. The one related to the construction of buildings and other connected works, and the other to the collection and training out of stone ballasts. The aggregate sum of money paid by the railway administration to the respondent was Rs. 3,45,914. From this sum of money a sum of Rs. 1,53,147 which represented the amount paid to the respondent for the building construction and a sum Of Rs. 27,772 for the training out operations, amounting in the aggregate to a sum of Rs. 1,80,919 was deducted, and the balance amounting to Rs. 1,64,995 was the sum deduced as the price paid for the materials supplied.

2. From this order of assessment the respondent appealed unsuccessfully to the Deputy Commissioner, but his further appeal to the Sales Tax Appellate Tribunal succeeded. The Tribunal took the view that it was impermissible for the Commercial Tax Officer to make a bifurcation of the contract by separating from an individual contract that part of it, which in the opinion of the Commercial Tax Officer could be identified as a contract relating to a sale. In the opinion of the Sales Tax Appellate Tribunal no part of the amount received by the respondent could be regarded as a taxable turnover, and so, the order of assessment made in that regard by the Commercial Tax Officer was set aside.

3. In this revision petition presented by the State Government against the order made by the Appellate Tribunal Mr. Shantaraju contends that the Sales Tax Appellate Tribunal overlooked the obvious fact that there was a sale of stone ballasts by the respondent to the railway administration.

4. We are not concerned in this case with the contract relating to the construction of buildings, and so, the discussion in this judgment will be confined only to the question whether any part of the money received by the respondent from the railway administration towards the collection and training out of ballasts could be regarded as taxable turnover.

5. The contract with which we are concerned was a contract for collection and 'training out' of stone ballasts. Under the contract between the railway administration and the respondent it was the duty of the respondent to prepare stone ballasts from boulders for collecting which he had to carry on quarrying operation. That was the process by which stone ballasts could be brought into existence by the respondent and it was that work which was entrusted to him by the railway administration. The other work which the respondent had to do for the railway administration was what is described as 'training out'. This training out operation which the respondent agreed to do consisted of the spreading of the stone ballasts collected by him, on either side of the railway track along a particular stretch or stretches.

6. The Commercial Tax Officer misunderstood the scope of this training out operation and thought that the expression 'training out' occurring in the contract referred to no more than the transportation of the ballasts to a particular destination where the respondent agreed to deliver those ballasts to the railway administration. Although the Commercial Tax Officer did not say so in so many words, that is how we think we should understand the basis of his order.

7. But it is clear that the Commercial Tax Officer did not properly understand the meaning of the words 'training out'. That expression has a technical meaning, and, as explained by the Shorter Oxford Dictionary, that expression refers to an act which brings the stone ballasts collected by the respondent to the proper or designed form. The word 'train' has many meanings and the one which is apposite to the case before us is the meaning given on page 2227 of that dictionary in the third column which reads : 'To treat so as to bring the proper or desired form.' The Concise Oxford Dictionary also gives the same meaning to that word and that is the meaning which we should give to it in the context in which it occurs. According to that dictionary, a thing is trained out when it is brought to or is arranged in an orderly way or condition.

8. So understood, the act to be performed by the respondent was to make the ballasts out of the boulders through proper quarrying operations and after bringing them into existence in that way to spread them along the railway track on both

sides of it along a particular stretch. It is this work which was entrusted to him by the railway administration for which it agreed to pay him a consolidated remuneration. That remuneration could not be claimed by the respondent before he did the training out operation, and that operation which formed part of the work which he undertook to do, consisted of the arrangement of the ballasts collected by him in the desired form on both sides of the railway line.

9. Although one part of the assessment order of the Commercial Tax Officer makes it appear that he was of the opinion that the training out operation was no more than a mere act of transportation, the arithmetic made by him demonstrates that he had no doubt in his mind the act of training out was a piece of work which the respondent agreed to do for the railway administration. That, that is so, is clear from the fact that a sum of Re. 27,772 was deducted from the aggregate sum of money received by the respondent from the railway administration, as the amount paid to him towards the training out work. So, even the Commercial Tax Officer, it becomes clear, had no doubt in his mind that the contract in so far as it related to the training out operation was a works contract, and that the amount which was attributable to that part of the contract was a deductible item.

10. But it is undisputed that the contract did not provide for the payment of a separate sum of money towards the training out of the ballasts collected by the respondent which he undertook to collect under the contract; nor did the contract specify any particular sum of money which he could claim for the work done by him such as the work which was involved in the quarrying operation or the collection of ballasts. A consolidated remuneration was fixed by the contract as the amount to be paid to the respondent for the entire work which he undertook to do, and that work consisted of the manufacture of ballasts and their arrangement in a particular form on either side of the railway track.

11. If that was the contract entered into between the respondent and the railway administration, it was impossible for the Commercial Tax Officer to identify any particular portion of the remuneration which the railway administration agreed to pay to the respondent as the price of stone ballasts.

12. Moreover it is clear from the terms of the contract and its nature that it was not the intention of the parties that there should be a sale of the stone ballasts to the railway administration by the respondent.

13. This is a case to which the enunciation made by this court in C.R.P. No. 442 of 1961 clearly applies in the same manner in which the elucidation made in S.T.R.P. No. 12 of 1966 does. What was explained by this court in S.T.R.P. No. 12 of 1966 was that an indivisible contract such as the one with which we are concerned in this case in which there is no stipulation for the payment of a price as such, for the materials consumed, cannot be bifurcated into two parts to make an attribution of some part of the consolidated remuneration payable to a contracting party towards the cost of materials employed for the work undertaken by him.

14. That being so, the decision of the Sales Tax Appellate Tribunal is open to no criticism, and we dismiss this revision petition with costs. Advocate's fee Rs. 100.

15. Petition dismissed.

[The judgment of the Mysore High Court in K. R. Shivaswamy v. State of Mysore, S.T.R.P. No. 12 of 1966, delivered on 7th December, 1966, by a Division Bench consisting of A. NARAYANA Pai and AHMED ALI KHAN, JJ., is printed below :-]

K.R. SHIVASWAMY v. STATE OF MYSORE.

Narayana Pai, J.

1. The petitioner is a P.W.D. contractor and the assessment out of which this revision petition arises relates to amounts received by him under a contract with the Government for road repair works. The assessing authority divided the amounts received by him into two parts. One part he related directly to labour charges, and the other he considered to be the cost of granite metal or jelly sold or supplied by the petitioner to the Government. The latter he subjected to sales tax. His opinion was confirmed upon appeal by the first appellate authority and also later by the Sales Tax Appellate Tribunal. In this revision petition, the assessee challenges the correctness of the said view.

2. The contracts, extracts from which have been given in the judgment of the Appellate Tribunal, leave no room for doubt that the contracts were contracts to carry out road repair works. There is nothing in the contracts themselves nor in the certification by the engineering staff of the Government regarding the completion of works to suggest that the contract was anything but a contract of work and labour. The only circumstance on the basis of which the Sales Tax Appellate Tribunal confirmed the opinion of the lower authorities is that in the list of estimates preceding the execution of the contracts, there were such items as 'collecting, conveying, breaking and stacking 1 1/2' granite metal', and 'collecting, conveying, and stacking sand'. Because these items were stated separately or apart from items such as spreading metal, consolidation of the gravel, which could be clearly recognised as items of labour, the Tribunal thought that the estimates may be regarded as constituting a combination of two agreements, one for the supply of work and labour and the other for supply of material. There is no other reason stated by the Tribunal in support of its conclusion nor is any other legal basis in support thereof suggested.

3. We have no doubt in our mind that the view taken by the Tribunal is erroneous in law.

4. Once it is possible to come to the conclusion that there has been a single contract between the two parties for carrying out certain works, then, it is not possible to split that contract into two or more contracts one or some involving supply of labour and the other or others involving supply or sale of material. The impossibility of doing so consists in the fact that the contract is a matter of agreement between the two parties and once they enter into a contract with a particular intention of entering into only one contract, it is not open to the courts to split that contract into more contracts than one.

5. There is another reason which makes it impossible to support the view that the contract in this case involved to any extent a sale liable to sales tax. Although in its original condition granite metal may be movable property, there is nothing in the material placed before the authorities to show that the title to the metal which originally vested in the contractor passed to the Government, the other party to the

contract, at any time before the same was actually spread on the road and consolidated and therefore converted into immovable property by imbedding the same in the earth.

6. The order of the Sales Tax Appellate Tribunal as well as the orders of the two appellate authorities are hereby set aside. As the only amount in respect of which sales tax has been imposed is the amount estimated to be the value of granite metal, this order will result in the setting aside of the entire assessment.

7. The assessee will have his costs in this revision petition. Advocate's fee Rs. 100.

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