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Court : Karnataka

Decided On : Jul-17-1967

Reported in : (1967)2MysLJ393; [1968]21STC193(Kar)

Judge : A.R. Somnath Iyer and ;M. Sadanandaswamy, JJ.

Acts : Mysore Sales Tax Act - Sections 21(1) and 21(2)

Appeal No. : Sales Tax Revision Petition Nos. 7 and 8 of 1967

Appellant : Eastern Engineering Works

Respondent : The State of Mysore

Advocate for Def. : Shantharaju, Adv. for E.S. Venkataramiah, High Court Special Government Pleader

Advocate for Pet/Ap. : T.V. Nathamuni Iyengar, Adv.

Judgement :

Somnath Iyer, J.

1. The source of these two revision petitions is the exercise of revisional power by the Deputy Commissioner of Commercial Taxes under section 21(2) of the Mysore Sales Tax Act in respect of an assessment made by the Commercial Tax Officer for the years 1960-61 and 1961-62.

2. The petitioner before us is a dealer called the Eastern Engineering Works. There was a contract between the petitioner and other concerns for the installation of electrical fittings, which, according to the finding of the Deputy Commissioner, 'involved supplying and fixing of electrical goods'. The further finding of the Deputy Commissioner was that the dealer charged the customers 'consolidated rates for the materials consumed and the labour charges involved in carrying out such contracts.' The Commercial Tax Officer accepted the plea of the petitioner that there was no sale of the goods used or consumed in the execution of the contracts, and his finding was that the contracts were works contracts. But the Deputy Commissioner thought that the contracts consisted of distinct and severable contracts - one for the supply of goods and the other a works contract. The Deputy Commissioner stated in the course of his order the nature of the investigation which he made under section 21(1) thus :-

'Considering the nature of the contracts executed by the assesses concern and after examining the books of accounts and other documents produced, a notice was issued proposing to treat the supply of electrical goods consumed in carrying out such contracts as first sales made by the assesses concern in so far as they relate to inter-State purchases.'

3. On the basis of his conclusion that the contract could be separated into two portions, one relating to the work executed and the other involving the sale of goods consumed in the execution of the works, the Deputy Commissioner altered the assessment and directed the Commercial Tax Officer to issue demand notices accordingly.

4. The Sales Tax Appellate Tribunal concurred in this view taken by the Deputy Commissioner observing that supplies of materials made in execution of the contract undertaken were 'in fact sales made to the other party or parties.' So, the petitioner's appeals were dismissed.

5. Mr. Nathamuni Iyengar contends that since on the finding of the Deputy Commissioner the contract between the petitioner and his constituent was for the execution of the work which had been undertaken by the petitioner for the payment of a consolidated sum of money for the work done and for the goods

supplied and consumed during such execution, there was no power in the Deputy Commissioner to separate the contract into distinct contracts which were not actually entered into between the parties.

6. It is now clear from a trilogy of decisions of the Supreme Court that in a case where there is a contract for the execution of a work which involves the supply of materials which are consumed in the execution of the work, and the contract is for the payment of a consolidated sum of money for such work, a finding that there was a contract for the sale of the materials supplied as accessories can be supported only if there was a contract for the sale of specific goods for a price, and the property in the goods contracted to be sold passed to the other party when the goods were delivered in pursuance of the contract. This is the view expressed in Carl Still G.m.b.H. v. State of Bihar ([1961] 12 S.T.C. 449), Arun Electrics v. Commissioner of Sales Tax ([1966] 17 S.T.C. 576) and State of Madras v. Richardson & Cruddas Ltd. ([1967] 19 S.T.C. (Short Notes) 19) Neither the Deputy Commissioner nor the Sales Tax Appellate Tribunal recorded a finding that there was a contract for the sale of specific goods for a price or that the property in those goods passed when they were delivered in pursuance of the contract. What in fact they did was to reconstruct a contract on the basis of the contracts which the parties had made, in the belief that a contract of sale can be so reconstructed if there was in the contract for the execution of a work, a stipulation for the supply of goods to be used during such execution. This they could not.

7. Mr. Shantharaju made the submission that even if the contract between the parties contained a stipulation for the payment of a consolidated sum of money by the one party to the other, that stipulation did not preclude the identification of a contract of sale if one existed.

8. So stated, the proposition may be unexceptionable if there are two separate contracts and one of them was for the sale of goods for a specific price. But in the absence of a finding that there was one, the orders made by the Deputy Commissioner and the Sales Tax Appellate Tribunal cannot be sustained and we set them aside.

9. The petitioner will get his costs in these two revision petitions. Advocate's fee Rs. 100, one set.

10. The amounts deposited by the petitioner in these two revision petitions will be refunded.

11. Petitions allowed.