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Court : Andhra Pradesh

Decided On : Dec-31-1970

Reported in : [1973]30STC69(AP)

Judge : Gopal Rao Ekbote and ;Ramachandra Raju, JJ.

Appeal No. : T.R.C. Nos. 14, 15 and 16 of 1967

Appellant : Pothula Subba Rao

Respondent : The State of A.P.

Advocate for Def. : Third Government Pleader

Advocate for Pet/Ap. : W.V.V. Sundara Rao, Adv.

Disposition : Petition dismissed

Judgement :

Ramachandra Raju, J.

1. In these three tax revision cases, the petitioner is the same and they relate to assessments made against him under the provisions of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as 'the Act') for the years 1960-61, 1961-62 and 1962-63. As the facts are identical and common questions are involved in the three cases, they can be disposed of by a common judgment.

2. The petitioner was constructing bodies for buses and lorries on the chassis supplied by the customers as per their requirements. With regard to those transactions of building bodies, the turnovers of the petitioner for the years 1960-61, 1961-62 and 1962-63 respectively were Rs. 97,153.00, Rs. 1,02,950.00 and Rs. 1,06,796.00. Treating the transactions as sales with regard to those turnovers, he was assessed to sales tax. He was assessed to sales tax not at the rate of 2 per cent, as was applicable to sales of general goods as provided under the charging Section 5 of the Act at the relevant time, but at the rate of 7 per cent, as provided under item 7 of Schedule II of the Act, presumably on the basis that the bus and lorry bodies would come under component parts of motor vehicles. The case of the petitioner is that the transactions which he entered into for building bus and lorry bodies on the chassis supplied by the customers do not amount to sales and they are works contracts only and therefore they are not exigible to sales tax. The further contention of the petitioner is that even assuming that the transactions amount to sales, they are liable to tax only at 2 per cent, as provided in the charging Section 5 of the Act as the bus and lorry bodies would come under general goods only and they cannot be said to be component parts of motor vehicles. All the Tribunals provided under the Act, namely, the Deputy Commercial Tax Officer, the primary assessing authority, on appeal the Assistant Commissioner of Commercial Taxes and on further appeal the Sales Tax Appellate Tribunal concurrently found against the petitioner on both the points.

3. Sri W. V. V. Sundara Rao, the learned counsel for the petitioner, has urged before us the same two points on behalf of his client.

4. As found by the lower Tribunals, the transactions entered into by the petitioner with his customers were like this: The contracts were to construct bus or lorry bodies on the chassis supplied by the customers with the materials of the petitioner. For building the bodies, the petitioner was charging some consolidated amounts without showing separately the charges towards materials used and for labour. This is all the material that is available with regard to the contracts. With regard to it, in its order, the Sales Tax Appellate Tribunal has observed thus :

We may add that we have perused the contract agreement forms and bills passed by the appellant. These do not however seem to be very instructive. All the contracts are on identical printed forms and many of them are incomplete, not having been even signed by the customers. The printed forms also make mention of 'conditions of construction as per specifications overleaf, but in no case did we find any specifications overleaf.

5. The question we have to determine first is, whether there is any sale of goods in a transaction like the one mentioned above so that the provisions of the Act may be extended thereto. The State Legislature has no competence to tax 'turnovers' which are not sales but relate only to 'works contracts'. The expression 'sale of goods' is not to be construed in its popular sense but it must be interpreted in its legal sense and should be given the same meaning which it has in the Sale of Goods Act, its essential ingredients being an agreement to sell movables for a price and the property passing therein pursuant to that agreement. In the case of contracts for building bus and lorry bodies, it may not be possible to say that there is a sale of bodies in the popular sense of the term 'sale'. But as mentioned above, it has to be construed from the point of view of its legal sense rather than from its popular sense. The definition of the term 'sale' as defined in Section 2(n) of the Act, to the extent material for our purpose, is as follows :

'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration, and includes any transfer of materials for money consideration in the execution of a works contract provided that the contract for the transfer of such materials can be separated from the contract for the services and the work done, although the two contracts are embodied in a single document....

6. It is nobody's case that in the transactions we are considering, there was a contract for supply of materials separately apart from the contract for the services and the work done. Therefore, we can forget about this aspect of the definition of sale for the purpose of our present case. It is enough to remember that the term 'sale' means every transfer of property in goods by one person to another in the

course of trade or business for price.

7. The term 'works contract' is defined in Section 2(t) of the Act as meaning 'any agreement for carrying out for cash, or for deferred payment, or for other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property.'

8. Therefore, the, point for consideration is whether the transactions in question involve transfer of property in goods or they involve only fitting out, improvement or repair to any movable property. The building of bus and lorry bodies with the materials of the contractor would involve the use of the materials of the contractor and the skill and labour put in the construction of the bodies and ultimately what will be delivered to the customer is the body fitted to the chassis. What the customer gets for the price paid by him is the body itself fitted to the chassis. If that is so, the question for consideration is whether it is a sale of goods, namely, sale of bus or lorry bodies or it is only a fitting to the chassis without involving any transfer of property. In both the cases, the materials used in constructing the body would become the property of the customer. If the transfer of the materials involved is only ancillary to the contract for use of skill and labour, the performance of such a contract will not become a sale because of such transfer. In such cases, the materials become the property of the customer as an addition or an accretion to the chattel belonging to him. There the real bargain would be for work and labour and the materials supplied by the contractor for executing the work are merely ancillary. For instance, a contract to print a book where the contractor is to find the materials including the paper for printing it when the customer supplies only manuscript of the book. It cannot be said that it is a contract for making a thing to be sold when completed, but a contract to do work and labour, furnishing the materials. For the converse, take the case of a tailor or a shoe-maker who uses his own materials. The claim of a tailor or a shoe-maker is for the price of goods when delivered, and not for the work or labour bestowed by him in the fabrication of them. With regard to the examples given above, the difference is very clear between the two categories of contracts. But there will be several other categories of contracts where the difference will be very thin. But still the

difference exists. With regard to the category of cases like the present, the rule appears to be whether the work and labour is of the essence of the contract or whether it is the materials that are used. As regards contracts for building motor bodies, it is not possible to say that the work and labour is of the essence of the contract and the. materials used are only ancillary. Also it may not always be possible on the basis of this criterion alone to decide whether a particular contract involves sale of goods or it is only a works contract.

9. As mentioned in several decided cases, each contract has to be looked at on its own terms to decide the question having regard not merely to the particular terms expressed in the various parts of the agreement but the contract read as a whole. In the present case, the agreements are for the construction of bus or lorry bodies to be fitted on the chassis supplied by the customers and the price paid is so much per body. The bills were made on the basis of the bodies supplied. Without supplying the bodies loosely, the bodies might have been supplied after fitting the same to the chassis supplied by the customers. That by itself cannot make much difference. Even if the contracts involve also fitting of the bodies to the chassis, the contracts are essentially to supply bodies. It may also be true that they were not made ready beforehand and supplied as soon as the contracts were placed and they were made and supplied only after the agreements were entered into and according to the specifications mentioned in each of the agreements. Whether they were prepared beforehand and supplied or they were prepared subsequent to the orders placed and supplied, the supply was essentially of finished goods, namely, the motor bodies, The transactions involve essentially transfer of ownership in the bodies built and fitted and, therefore, they are sale of goods and they cannot be said to be merely works contracts where the essence of the bargain involves skill and labour and the material used is only ancillary. We are therefore of opinion that the transactions of building motor bodies of the nature before us are 'sales' within the meaning of the Act and they are not mere 'works contracts'. We are supported in this view not only by the decisions of several High Courts but also of the Supreme Court. We will now refer to the same.

10. In the decision Patnaik and Company v. State of Orissa [1965] 16 S.T.C. 364 (S.C.), the Supreme Court was considering an agreement entered into between

the Government of Orissa and Patnaik and Company for construction of bus bodies on the chassis supplied by the State Government. The terms of the agreement would indicate that the bodies were to be built on the chassis supplied and they were not to be independently constructed. The Supreme Court by a majority judgment held that the contract was a contract for the sale of goods. The same view was expressed by the Supreme Court in McKenzies Ltd. v. State of Maharashtra [1965] 16 S.T.C. 518 (S.C.). In that case, the appellant entered into a contract with the Government of India for the construction of several bodies on the chassis supplied by the Government. The price agreed upon was a lump sum per body. The Supreme Court in confirming the decision of the Bombay High Court held that the contract entered into by the appellant with the Government of India was a contract for sale of goods and not a contract for work and labour and the appellant was therefore liable to sales tax. In the judgment of the Allahabad High' Court in Commissioner of Sales Tax, U.P. v. Haji Abdul Majid and Sons [1963] 14 S.T.C. 435, we find the following observations :

On the facts of the present case it is clear that the materials which were used for building the body on the chassis were owned by the assessee. It is also clear that the body built by the assessee by bestowing its work and labour ends in a product which can become a proper subject of sale and when the work is complete the customer or purchaser takes delivery of possession of the bus body fixed to his chassis. In the circumstances the conclusion is inescapable that there takes place a transfer of the property in the bus body built by the assessee and it would be difficult to hold that the transaction so made is not a contract of sale of the bus body, but is a contract for work and labour.

* * *If under a contract an article is to be prepared from the assessee's materials and it is to be fitted to something belonging to the purchaser it is immaterial if the assessee takes the article to the purchaser's premises and fixes it on the thing, or the purchaser takes the thing to the assessee's premises and the assessee fixes it on it and delivers the whole thing to the customer. If a customer takes the thing to the assessee's premises and asks him to fix the article, it makes no difference whether the assessee prepares the article first and then fixes it to the thing or starts preparing the article on the thing itself so that when the whole work is

finished the result is the same 35 if the article has beer, prepared separately and then Axed OR the thing. Since it makes no difference whether an article is a ready-made article or is prepared according to the customer's specification, it should also make no difference whether the assessee prepares it separately from the thing and then fixes it on it or does the preparation and the fixation simultaneously in one operation.

In the instant case what the customer wanted was the construction of bodies on the chassis of his buses. The assessee could have prepared the bodies first and then fixed them on to the chassis or could have started the construction of the bodies by putting one plank after another on the chassis themselves. All the materials were to be supplied by the assessee. The element of sale predominated over the element of contract of work.

11. The Allahabad High Court in a subsequent decision, Bajoria Halwasiya Service Station v. State of Uttar Pradesh [1970] 26 S.T.C. 108, reiterated the same view. The Punjab High Court also came to the same conclusion in the decision Jiwan Singh and Sons v. State of Punjab [1963] 14 S.T.C. 957. That court held that a contract by a firm for fitting and building motor bodies with its own materials on the chassis supplied by the customer is a contract for sale of goods and not a contract for work and labour and the amount charged therefor is liable to sales tax. In the decision Simpson & Co. Limited v. State of Madras [1969] 23 S.T.C. 374, the Madras High Court held that in the case of contracts for construction of bus bodies on the chassis supplied to the contractor the predominant intention was one of purchase of completed bus bodies as chattels, but taken delivery thereof after their fixation and mounting on the chassis supplied by them and, therefore, the transactions are liable to sales tax. It is only the Mysore High Court which struck a different note in the decision Shankar Vittal Motor Co. Ltd. v. State of Mysore [1964] 15 S.T.C. 771. The Mysore High Court held that 'one of the tests to find whether a given case is 'sale of goods' or 'works contract' is to see whether the work done by a person is work done on his own chattel, or on the chattel of someone else. If it is on his own chattel and that chattel is later sold, then it is 'sale of goods', but if the work is done on customer's chattel then it is 'works contract'.'

12. In this connection Sri W.V.V. Sundara Rao has brought to our notice a decision of the Supreme Court in State of Rajasthan v. Man Industrial Corporation Ltd. [1969] 24 S.T.C. 349 (S.C.). In that case, the facts are : Pursuant to an invitation of the Executive Engineer, the respondent submitted its tender for fabricating and fixing certain windows in accordance with specifications, designs, drawings and instructions. The work was to be completed within six months from the date of its acceptance and the windows were to be fixed to the building. The rate' quoted by the respondent was based on the current price of mild steel billets and the price was to be revised if there was a change in the controlled price of billets supplied to the respondent. The tender was accepted and the respondent carried out the contract. The question was whether the sum of Rs. 23,480 received under the contract could be included in the taxable turnover for the purpose of sales tax. The Supreme Court held that 'the contract undertaken by the respondent was to prepare the window-leaves according to the specifications and to fix them to the building. There were not two contracts-one of sale and another of service. Fixing the windows to the building was also not incidental or subsidiary to the sale, but was an essential term of the contract. The window-leaves did not pass under the terms of the contract as window-leaves.' Only on the fixing of the windows as stipulated could the contract be fully executed and the property in the windows passed on the completion of the work and not before. The contract was for execution of work not involving sale of goods.' In this judgment, the Supreme Court also referred to its decision in Patnaik and Co. v. State of Orissa [1965] 16 S.T.C. 364 (S.C.), delivered with regard to the case of contracts for building motor bodies and held that the facts are different in both the cases. Therefore, it cannot be said that the Supreme Court has taken a different view of the matter in this case so far as contracts for building motor bodies are concerned.

13. In the end, we have no hesitation in coming to the conclusion that the contracts for building motor bodies in question are 'contracts of sales' and not 'works contracts'. Therefore, the transactions are liable to sales tax.

14. Then remains the question whether the transactions are taxable only at the rate of 2 per cent, applicable to sales of general goods or at the rate of 7 per cent, applicable to sales of motor vehicles and their parts. At the relevant time in item 7

of Schedule II of the Act the description of the goods with regard to which sales tax is payable at the rate of 7 per cent, on the turnover is as follows:

Motor vehicles including motor cars, motor taxi cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries. Chassis of motor vehicles, component parts of motor vehicles, articles (including rubber and other tyres and tubes and batteries) adopted for use as parts and accessories of motor vehicles not being such articles as are ordinarily also used for other purposes than as parts and accessories of motor vehicles.

15. A reading of the above shows that in the description of goods given under item 7, bodies of motor vehicles are not mentioned specifically. They can come under item 7 only if they can be treated as component parts of motor vehicles or articles adopted for use as parts and accessories of motor vehicles. To our mind the body of a motor vehicle clearly would be a part of it. A chassis of a motor vehicle cannot by itself be said to be a vehicle. Vehicle is a means of conveyance or transmission. Therefore, without something being built on the chassis it cannot become a vehicle. Therefore, the chassis plus the body would form a vehicle. In the Chambers's Dictionary, the meaning of the word 'component' is given as forming one of the elements or parts; one of the parts or elements of which anything is made up, or into which it may be resolved. In the same dictionary, the meaning of the word 'part' is given as something less than the whole; a portion ; that which along with others makes up, has made up, or may at some time make up, a whole; a constituent; a member or organ. Having regard to the meaning that can be given to the words 'component' and 'part', it appears clear that the body of a motor vehicle is certainly a part or a component of the motor vehicle. Though the bodies of motor vehicles do not find a place specifically in the description of goods given under item 7 of Schedule II of the Act, none the less they would come under that item as parts or components of motor vehicles. A similar view was taken by the Allahabad High Court in Commissioner of Sales Tax, U.P. v. Pritam Singh [1968] 22 S.T.C. 414. The Allahabad High Court held that the body mounted on the chassis of a motor vehicle is an integral part of the motor vehicle and, therefore, truck bodies manufactured and sold by an assessee must be considered as component parts of motor vehicles. But the Madras High Court in

Simpson and Co. Limited v. State of Madras [1969] 23 S.T.C. 374, took a different view. In that case, the learned Judges without any discussion on the point merely said that 'bus bodies cannot, in our opinion, be regarded as component parts of motor vehicles or even as accessories thereto'. We do not think we can agree with the view taken by the Madras High Court.

16. Then it was argued by Sri W.V.V. Sundara Rao that subsequently, the Legislature made an amendment to include in motor vehicles bodies built on chassis of motor vehicles belonging to others and, therefore, it is clear that it was not the intention of the Legislature prior to the amendment to include the bodies in motor vehicles for the purpose of charging the higher rate of sales tax and when the Legislature wanted them also to be charged at the higher rate then only they brought the amendment. We do not think we can agree with such a contention. It may be to be more specific without leaving any room for doubt, the Legislature might have brought in the description of those goods specifically motor bodies also. This amendment was brought about by the Amendment Act No. 5 of 1968. We do not get much light from the objects and reasons of the Amendment Act regarding the purpose of the amendment in question except therein it was stated generally that it became necessary for the purpose of removal of some doubts. It is quite possible the Legislature had in mind some doubts expressed as to whether bodies built on chassis of motor vehicles belonging to others would come under parts or components of motor vehicles. Therefore, the amendment might have been made only to clarify the position. In the decision Kikabhoy Chandabhoy v. Commissioner of Income-tax, Bombay A.I.R. 1950 Bom. 6, it was held that it is not necessary to hold that in every case where the Legislature amends the law it does so because, but for the amendment the effect would have been something different. The Legislature may add or delete the words in order to clarify the position. We respectfully agree with that view expressed by the Bombay High Court. As we have already held above, bodies of motor vehicles would certainly come under parts or components of motor vehicles. If that is so, the transactions in question will attract sales tax at the rate of 7 per cent.

17. Thus, on both the points, the petitioner fails. No other point has been argued before us. Accordingly the three tax revision cases are dismissed with costs.

Advocate's fee Rs. 100 in each.

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