SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

K.A. Ramachar Vs. the State of Madras

K.A. Ramachar Vs. the State of Madras

SooperKanoon Citation : sooperkanoon.com/815448

Court : Chennai

Decided On : Aug-09-1972

Reported in : [1973]31STC598(Mad)

Judge : Ramanujam and ;V. Ramaswami, JJ.

Appeal No. : Tax Case No. 161 of 1967 (Revision No. 86)

Appellant : K.A. Ramachar

Respondent : The State of Madras

Advocate for Def. : First Assistant Government Pleader

Advocate for Pet/Ap. : C. Venkatraman, Adv.

Judgement :

Ramanujam, J.

1. In this tax case, the turnover disputed by the assessee is a sum of Rs. 1,63,843.93. This turnover represents the cost of fabrication, supply and erection of trusses, purlins, etc., made by the assessee in the premises of customers. According to the assessee, the property in the goods fabricated and erected in the customers' places passed by accretion to immovable property and that there has been no outright sale of the goods as fabricated to the customers. The said amount represented 16 transactions of various types. But, it can be taken

generally that in all these 16 cases, the assessee undertook to fabricate, supply and erect iron trusses, purlins, etc., at the premises of the customers. The facts, as found by the Tribunal, are that in most of the cases, the various parts of the trusses were fabricated in the assessee's factory, then transported to the workspots, assembled there and erected in accordance with the specification and requirement of the customers.

2. According to the assessee, these transactions were not outright transactions of sale, but were only works contracts and that a lump sum amount has been fixed as the value of the contract. The question is whether in the fabrication, supply and erection of the iron trusses, purlins, etc., in the customers' premises, any contract of sale of trusses as such is involved.

3. The Tribunal, relying on the decision of the Kerala High Court in Harrisons & Crosfield Ltd. v. State of Kerala [1962] 13 S.T.C. 964, which also treated the supply of steel trusses for a factory building at a specified price as a contract of sale of trusses held that the contracts entered into by the assessee were not works contracts but were sales of fabricated materials to the various customers. The question is whether the view taken by the Tribunal is correct or not.

4. We have perused some of the correspondence between the assessee and its customers. The correspondence shows that the assessee was asked to fabricate, supply and erect the trusses of specified dimensions made of particular sizes of the angles or flats. The assessee had, in accordance with the specifications given by the various customers, manufactured the various parts of the trusses in its factory and transported the same to the premises of the customers and had the trusses assembled at that spot and erected. The invoice drawn by the assessee against the customer is for the lump sum amount including the cost of erection. The invoice does not fix any separate amount for the actual cost of the trusses as manufactured. It is also to be noted that the trusses, as manufactured by the assessee, as per the requirement of the particular customer might not be required by any other customer or sold in the open market. The question is whether the amounts received by the assessee in respect of each of the transactions can be taken to be the sale price of the trusses or whether it is a payment received

towards a works contract.

5. Such a question came up before the Supreme Court in State of Rajasthan v. Man Industrial Corporation Ltd. [1969] 24 S.T.C. 349. In that case, pursuant to a notification of the executive engineer, the assessee submitted its tender for fabricating and fixing certain windows in accordance with the designs, specifications, drawings and instructions. The rate quoted by the assessee was based on the current price of the mild steel billets and the price was to be revised if there was a change in the control price of billets supplied to the respondent. The tender was accepted and the assessee carried out the contract for a consolidated sum of Rs. 23,480. The question was whether the said sum represented the sale price of the windows fabricated, supplied and erected by the assessee, or whether it is the amount realised towards a works contract. The Supreme Court held that as the contract undertaken by the assessee was to prepare the window-leaves according to the specifications and to fix them to the building and as there were no two contracts, one for sale and another for service, the property in the goods passed from the assessee to the customer only after fixing of the window-leaves to the building as specified in the contract and that there was no sale of the windows, as such, by the assessee to the customer. According to the Supreme Court, the contract in question was only for execution of a work not involving any sale of goods.

6. In Muthia Achary & Sons v. State of Madras [1970] 25 S.T.C. 350, this court considered a case where the assessee undertook to make doors, windows, ventilators, etc., of best Indian teak and to fix the same in the customer's premises for a lump sum amount. The question arose whether such a contract involved a works contract or a sale of the doors, windows, ventilators, etc. After considering the relevant terms of the contract in question in that case, the court held that the contract was an indivisible and composite and that the oneness thereof was maintained throughout and, therefore, it was not possible to separate the same into two; one a contract of sale and another a contract of work, labour and materials.

7. The same view was taken in Deputy Commissioner (C. T.) v. Indian Refrigeration Industries P. Ltd. [1971] 27 S.T.C. 427. There, the assessee entered into a lump sum contract to fabricate and install a humidifying plant and other accessories with air-ducts embedded in the building of the customer. Such installation had to be done along with the construction of the building with the assessee rendering technical assistance to the architects and other construction contractors during the course of the erection of the building. The claim of the assessee that the turnover relating to the contract was exempt from sales tax as it related to work and labour and no element of sale was involved, was rejected by the departmental authorities. The court, however, held that the installation of the plant and the components which are to be supplied therefor as accessories under a composite contract entered with a customer necessarily involve the embedding of such a plant and its components in the structure, that, therefore, it cannot be said that the plant and the parts would be viewed de hors the totality of the contract, which could be said to have been executed only after the machinery and plant were embedded in the structure as a whole, that the property in the plant and the component parts has passed to the customer only after the completion of the contract by the machinery and the plant having been embedded in the structure and that there was no intention on the part of the assessee to sell the machinery and the plant as such to the customer.

8. In view of the decisions cited above, it is not possible for us to uphold the view of the Tribunal that the disputed transactions represent sales of trusses, etc. The contract is one and entirety and it is not possible to dissect it into two, one relating to the sale of trusses and the other relating to the erection of the same in the customers' premises. The property in the trusses passed to the customer only when it has been erected in the customer's premises and there is no question of passing of property in the trusses at any anterior point of time, so that it could be said that there was an anterior sale of the trusses before the work of erection was completed.

9. Though the Tribunal took the disputed turnover in relation to these transactions as Rs. 1,66,693.93, the learned counsel for the assessee concedes that two items covering a turnover of Rs. 2,850 can be treated as a sale of goods and that he

may not be able to attack the findings of the Tribunal in that regard. In view of that concession, we have taken the disputed turnover as Rs. 1,60,843.93.

10. Following the decisions referred to above, this tax case has to be allowed and it is allowed in part. The assessee will get the costs from the revenue. Counsel's fee Rs. 150.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com