

Mckenzie's Limited

v.

State of Maharashtra

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. P.B. GAJENDRAGADKAR HON'BLE MR.
JUSTICE M. HIDAYATULLAH HON'BLE MR. JUSTICE J.C. SHAH
HON'BLE MR. JUSTICE S.M. SIKRI HON'BLE MR. JUSTICE R.S.
BACHAWAT

Civil Appeal No. 287 of 1964 | 19-01-1965

SIKRI, J.

1. This is an appeal by special leave directed against the judgment of the Bombay High Court in a reference made to it under section 34 of the Bombay Sales Tax Act, 1953. One of the questions referred to the High Court was "whether the transaction referred to in bill dated 29th June, 1955, is liable to sales tax under the Bombay Sales Tax Act, 1953."

2. The appellant, M/s. McKenzies Limited (hereinafter referred to as the appellant), who are engaged in the business of body-building on motor chassis, entered into a contract for the construction of 218 bodies with the Government of India. The price agreed upon was Rs. 1, 730 per body. In pursuance of this contract, the appellant presented a bill for five bodies supplied by them on June 29, 1956, for Rs. 8, 650. Under section 27 of the Bombay Sales Tax Act, 1953, the appellant applied to the Collector for the determination of the following three questions :

"(1) Whether they are dealers within the meaning of that word given in section 2(6) in relation to their activities as a body-building contractor ?

(2) Whether body-building contracts constitute sales ?

(3) If so, whether the receipts from body-building contracts are liable to sales tax under the provisions of the Act of 1953 ?"

3. The Additional Collector, Sales Tax, answered all these questions in the affirmative. The appellant appealed to the Sales Tax Tribunal against the decision of the Additional Collector. With regard to the second question, the Tribunal held that no answer ought to have been given as it was of a general nature. The other two questions were answered against the appellant. At the instance of the appellant, the Tribunal referred the following questions to the High Court under section 34 of the Bombay Sales Tax Act :

"(1) Whether on the facts and in the circumstances of this case the applicants were dealers within the meaning of the Bombay Sales Tax Act, 1953, in respect of their activities as body-building contractors ? and

(2) Whether the transaction referred to in bill dated 29th June, 1955, is liable to sales tax under the Bombay Sales Tax Act, 1953 ?"

4. The Bombay High Court answered both the questions in the affirmative. The appellant having obtained special leave to appeal, the appeal is now before us.

5. This appeal was heard along with the appeals in *M/s. Patnaik & Co. v. The State of Orissa* (C.A. Nos. 179-181 of 1964 - Judgment delivered on January 19, 1965; since reported at page 364 supra), in which we have just delivered judgment. As we have stated in that case, the answer to the second question, which was the only question argued before us, depends upon the intention of the parties, to be gathered from the agreement. The High Court, on the construction of the agreement, has come to the conclusion that it was a contract of sale rather than a contract for work and labour.

6. The contract was entered into between the appellant and the Government of India for the construction and supply of 218 bodies and the total quantity was to be delivered by February 15, 1956. Under the agreement the pilot body had to be submitted for approval within 45 days from the receipt of A/T or chassis,

whichever was later, and delivery was to commence 45 days after approval of the pilot body. Delivery was to take place ex-works, Bombay, and as we have stated earlier, the price per unit was Rs. 1, 730. There were certain other conditions of contract. Clause 5 makes the schedule for deliveries as the essence of the contract. Under clause 7, the appellant had to insure the chassis against fire and theft. Clause 8 provides for a fortnightly progress report. Under clause 11, the appellant had to use his own steel for the entire quantity, but replacement quota certificates were to be issued by the Government. Under clause 12, the price was to be exclusive of sales tax which would be paid to the appellant if it was leviable. Clause 13 provides for the approval of canvas to be used, and clause 14 provides for the satisfaction of the inspecting authorities regarding the timber supposed to be used. Reading the contract as a whole, we are in agreement with the High Court of Bombay that it is a contract for the sale of goods and not a contract for work and labour. It will be noticed that the bodies are spoken as composite bodies or as units throughout the contract and property in the bodies passes to the Government on delivery, and when the property passes the bodies are goods. The fact that a progress report had to be given only ensured prompt delivery. There is no clause in the agreement which militates against the contract being a contract for the sale of goods.

7. The appeal accordingly fails and is dismissed with costs.

SHAH, J.

8. I am of the view that the contract between the Government of India and the appellants is a contract for work and not for sale. The important terms and conditions which persuade me to take that view are :-

(1) The contract is for construction of "G.S. composite bodies on chassis supplied by the Government delivered with canvas components".

(2) The appellants are under a duty to submit a fortnightly progress report of the work done.

(3) The appellants are obliged to submit a pilot body for approval within the time stipulated from the date of receipt of acceptance of tender or chassis whichever is later. Failure to do so involves cancellation of contract.

(4) The work of construction is subject to inspection as it progresses.

(5) The appellants are obliged to inform the inspecting authority the "names of the timbers" they propose to use, and to use "one species" of timber uniformly in the underframe, and "one species" in the floor etc. The appellants have also to use canvas of "approved quality acceptable to the Army authorities" and they are required to give notice of inspection of "stores". This implies that the inspecting authority has the power to reject construction work and demand replacement, if it is not in accordance with the terms of the contract.(6) Failure to complete the construction of the bodies in accordance with the acceptance of tender involves cancellation of contract at the appellants' "risk and expense". There is a further liability to pay liquidated damages for delay at 2% per month or part thereof.

9. In my view the appeal should be allowed.

Order

10. In accordance with the opinion of the majority, this appeal is dismissed with costs.

11. Appeal dismissed.