

State of Madras

v.

Richardson and Cruddas Limited

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE S. M. SIKRI HON'BLE
JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 599 Of 1966 | 05-05-1967

SHAH, J.

1. The respondents carry on business as "engineers and contractors" and as dealers in iron and steel goods and refrigerating and cooling units etc. For the assessment year 1957-58 the assessing authority, Madras, included in the taxable turnover of the respondents for assessment to Central sales tax the following two items received by the respondents which they contended were not liable to be included :

(i) Rs. 3, 26, 075.20 under a contract for the fabrication, supply and erection of steel structures with a co-operative society which was setting up a sugar factory in the State of Mysore; and

(ii) Rs. 43, 349.05 for the fabrication and installation of "bottle coolers" under orders from customers at different places.

The assessing authority rejected the claim of the respondents. In the view of the assessing authority under the terms of the contract with the co-operative society the respondents manufactured certain articles according to specifications and despatched them to Mysore State and thereafter the articles were installed by the employees of the respondents at the site of the factory of the society, and on that account the transaction was one primarily for sale of steel structures to the society, and the respondents had in addition thereto contracted to instal or erect the structures. The assessing authority in dealing with the second item held that the respondents had sold bottle cooling units to their customers and the

contracts for sale of the units were not converted into works contracts merely because the respondents installed the units in the premises of the purchasers.

In appeal the Appellate Assistant Commissioner of Commercial Taxes held that the first item was one for execution of work, and was not assessable to sales tax. He agreed with the assessing authority that the turnover from the supply and installation of bottle cooling units was liable to sales tax. The Sales Tax Appellate Tribunal, Tribunal, Madras, held that the turnover from both the items was taxable. The respondents moved the High Court of Madras in revision and submitted that since the two items were received as consideration under works contracts, no sales tax was payable thereon. The High Court upheld the plea raised by the respondents. With special leave, the State of Madras has appealed to this Court.

The turnover from the two items may be considered separately.

Under section 8 of the Central Sales Tax Act, every dealer is liable to pay tax on his turnover, in respect of sales in the course of inter-State trade or commerce, and at the rates prescribed by the Act. Turnover under the Act means the aggregate of the sale price received or receivable by the dealer in respect of sales of goods in the course of inter-State trade or commerce and "sale price" by section 2(h) means - omitting parts not material - "the amount payable to a dealer as consideration for the sale of any goods." Under the Act, turnover from sale of goods alone is chargeable to tax. To make the consideration received under the agreement between the respondents and the society it had to be established that the respondents had sold specific goods. It had therefore to be established that the consideration was received under a contract to sell specific goods for a price, and property in the goods contracted to be sold passed to the society, when the goods were delivered in pursuance of the contract. If the contract was for completing the stipulated work and for that purpose to use materials belonging to the respondents in the performance or execution of the contract as accessory to "work and labour", the contract must be regarded as a works contract, and not a contract for sale, even if the property in the goods ultimately passes as a result of the contract. The primary question therefore is whether there was a bargain between the respondents and the co-operative society under which the former under-took to manufacture certain goods and deliver them for a price, or was it a contract to fabricate and erect certain steel

structures on the premises of the society ? In Halsbury's Laws of England, Volume 34, page 6, in paragraph 3, it is observed:

"A contract of sale of goods must be distinguished from a contract for work and labour. The distinction is often a fine one. A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where the main object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour. The test is whether or not the work and labour bestowed end in anything that can properly become the subject of sale; neither the ownership of the materials, nor the value of the skill and labour as compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining, in the circumstances of a particular case, whether the contract is in substance one for work and labour or one for the sale of a chattel."

In *Clark v. Bulmer* ((1843) 11 M. & W. 243), the plaintiff entered into a contract with the defendant "to build an engine of 100 horse-power for the sum of Pounds 2, 500, to be completed and fixed by the middle or end of December". Different parts of the engine were built at the plaintiff's manufactory and were sent to the colliery of the defendant where the engine was erected. The plaintiff sued for the recovery of a sum of Pounds 3, 000 as price for "a main engine and other goods sold and delivered". The defendant contended that the contract was for an engine to be completed and fixed, and the action should have been for compensation for work and labour and materials used in the course of that work, and not for price of goods sold and delivered. Parke, B., observed (page 250) : "The engine was not contracted for to be delivered, or delivered as an engine, in its complete state, and afterwards affixed to the freehold; there was no sale of it, as an entire chattel, and delivery in that character; and therefore it could not be treated as an engine sold and delivered. Nor could the different parts of it which were used in the construction, and from time to time fixed to the freehold, and therefore become part of it, be deemed goods sold and delivered, for there was no contract for the sale of them as movable goods; the contract was in effect that the plaintiff was to select materials, make them into parts of an engine, carry them to a particular place, and put them together, and fix parts to the soil, and so convert them into a fixed engine on the land itself, so as to pump water out of a mine."

There is no formal contract in the present case for fabrication and erection of the steel structures required by the society. The agreement between the parties has to be ascertained from the correspondence between them. The correspondence may be briefly referred to. By letter dated December 4, 1956, the co-operative society informed the respondents that they had placed an order for a sugar plant and machinery for manufacture of sugar and they had to design the factory. The society then wrote :

"If you are interested, we request you to kindly let us know your quotations for

(a) designing and detailing,

(b) fabrication and erection,

including cost of steel. As soon as we receive the copies of the drawings, we will send a copy of the drawing to you. Meanwhile, we request you to send your quotation and the time required for designing, detailing, fabrication and erection."

On January 17, 1957, the respondents wrote to the society that they had gone through the requirements of the society but were not in a position to give a complete design until after the order was placed with them, and the "offer was worked out only on a tonnage basis, further details to be furnished at a later date". Then the latter set out the quotation as follows : "1. Fabrication, supply and erection at site of all steelwork in columns, trusses, purlins, bracing, side claddings, supports, crane girders etc. including supply of all rivets, bolts and nuts, and painted one shop coat of red oxide before despatch.

Price per ton of steelwork ... Rs. 1, 160

(Rupees one thousand one hundred and sixty only).

2. Erection only of A.C. roofing and side cladding sheets with A.C. accessories including supply of all G.I. bolts, nuts, washers, the A.C. materials being delivered by you to us free at site of work ... Rs. 25

(Rupees twenty-five only).

Our prices for gutters, downpipes, louvres etc., will be submitted later, if required."

The letter then proceeded to set out certain conditions relating to structural steel, rivets, bolts and nuts and imported steel. Condition No. 4 related to delivery and read as follows :

"Our rates quoted for the fabrication and supply of all steelwork will be for delivery F.O.R. our works siding, Madras.

All freight, unloading and cartage charges from Madras to site will be your responsibility and at your cost.

All A.C. materials to be delivered to us at site, free of cost."

By condition No. 8 the method of payment was specified. It was stated that the respondents would "require payment" to be made in respect of the structural steelwork on the weight calculated according to B.S. weights from the nett. lengths and sizes of sections as shown in the material lists, without deductions for holes, notches and skew cuts. Condition No. 9 set out the terms of payment. Condition No. 10 set out the time schedule for completion.

3. By letter dated February 26, 1957, the society intimated that they had decided to place the order with the respondents for items 1 and 2 of the quotation on the "lines discussed" with the respondents' representative, and requested the

respondents to proceed with the preparation of works, drawings etc., in anticipation of their entering into an agreement in due course. By letter dated July 19, 1957, the respondents informed the society about "the delivery programme for the factory steelwork erection" in the priority fixed by the society. Under several heads, viz., godown, boiling house, mill house, boiler house, power-house and filter station, cladding steelwork and A.C. roofing etc., various dates for despatch of materials, commencement of erection and completion of the steelworks were set out. By subsequent letters dated July 22, 1957, and August 1, 1957, the schedule about the commencement and completion of the works was changed. By letter dated January 6, 1958, the society informed the respondents about the programme of construction of building column foundations and machinery foundations, erection of factory buildings and machinery and the respondents were asked to co-ordinate their work with the other two contractors who were in charge of building column foundations and machinery foundations and erection of machinery. The High Court on a consideration of the correspondence between the parties recorded their conclusions as follows :

"To sum up, therefore, the following features are conclusive and decisive to hold that the contract in question is a work contract for work and labour :

- (a) the stipulation for a consolidated lump payment of Rs. 1, 160 per ton for fabrication, supply and erection at site of all steelwork etc.;
- (b) no provision for the passing of the property in the goods to the factory before the actual completion of the erection work;
- (c) no provision under the contract for dissecting the value of the goods supplied and the value of the remuneration for the work and labour bestowed in the execution of the work;
- (d) the petitioner (the respondents) not being a dealer carrying on business in the steel and component parts required for the erection work and that the component parts had to be specially fabricated so as to be suitable for particular erection work;

(e) the predominant idea underlying the contract being the bestowing of special skill and labour by the experienced engineers and mechanics of the petitioner (the respondents) company."

4. We have carefully gone through the correspondence between the parties and after considering the arguments advanced by counsel for the State, we hold that the High Court was right in the conclusions they reached about the essential features of the contract between the parties.

5. Counsel for the State invited our attention to the bills submitted by the respondents from time to time between October 31, 1957 and June 30, 1959. In these bills charge was made under the head "fabrication and supply of steelwork" at the rate of Rs. 1, 100 per ton. Counsel said that this disclosed that the original contract between the respondents and the society was modified, and it was stipulated to sell to the society certain steel parts required by the society and the price was to be paid at Rs. 1, 100 per ton; the balance of Rs. 60 was to be paid as remuneration for the work of erecting the steel parts supplied. It is true that the quotation submitted by the respondents was Rs. 1, 160 per ton and the bills submitted by the respondents from time to time were drawn at the rate of Rs. 1, 100 per ton. But there is no warrant for assuming from the preparation of the bills at the rate of Rs. 1, 100 per ton that there were two contracts - one for supply of fabricated steel parts at the rate of Rs. 1, 100 per ton and another for remunerating the respondents for the work of erection of the steel parts at the rate of Rs. 60 per ton. We may now turn to the second item relating to the turnover from the supply of fabrication and installation of "bottle cooling equipment" at the premises of the respondents' customers. A customer desiring to obtain a bottle cooling equipment had to place an order. The respondents then fabricated the component parts according to the requirements and specifications of the customer. They then despatched the component parts to the site and installed the same on a suitable base and foundation at the premises of the customer. The installation of bottle cooling unit in the premises of the customer was not merely auxiliary or incidental to the supply of the unit. In respect of the bottle cooling equipment also there are no formal written contracts. The terms of the contract have to be gathered from the correspondence. Sample correspondence with a customer may be briefly set out. By letter dated November 15, 1957, addressed to K. V. Ananda Rao, Proprietor, Janata Hotel,

the respondents sent their quotation for "one six hole double row combination bottle cooler complete as per their standard specification with vitrolite glass panelling for the three sides, the fourth side being fitted with eternite sheet panelling with marble top, one circular sleeve fitted with hand driven churner for making ice cream, with 2 Nos. G.I. ice can with suitable cover plate for making ice, four circular sleeves for storage of soft beverages in the drink side with Frigidaire ADI-33 model air-cooled condensing unit, driven by 1/2 HP, 220/230 volts, 50 cycles, single phase A.C. motor, 4 Nos. full and 2 Nos. half six brass tinned inner vessels (delivered F.O.R. Hubli and installed at their address) at Rs. 4, 619. The work order dated December 13, 1957, which recorded the work done at the site at which the bottle cooling equipment was installed, set out the various steps taken :Unpacked crates, checked up cooler, marble, vitrolite and found all intact. Placed the cooler on the plinth area, given measurements for the condensing unit, placed the unit in position, given pipe connections etc. evacuated system, allowed gas pressure, tested joints for leaks etc. and shut down the cooler and left the machine idle for want of motive power to continue the performance.

6. After obtaining power connection, restarted the cooler, mixed up calcium chloride, tested joints for leaks etc., charged F 12 gas and oil to system; throttled suction line, opened up valves fully, adjusted THV OS valve etc., checked up performance of the cooler, loaded the cooler, adjusted MX6 AC valve, checked up a few cycles of operation and left the machine in working order."

7. An inclusive price was charged by the respondents for the work of fabrication of the bottle cooling equipment required in the premises of the customer and for installation of the equipment. Under the terms of the contract, the respondents undertook to instal a bottle cooling equipment, that is, to fabricate different parts of the unit according to the special requirements of the customer, and to instal the unit in the premises of the customer. Each bottle cooling equipment required special fabrication and had to be installed at the place selected by the customer and found suitable for installation of the unit. The contract being one for supplying for an inclusive price a specifically designed fabricated unit to be assembled and installed by specially trained technicians in the premises of the customer, it was not a contract for sale of a unit or different parts of the unit as specific goods, but a works contract.

8. The appeal therefore fails and is dismissed with costs. Appeal dismissed.