

State of Rajasthan

Vs

M/s. Man Industrial Corporation Ltd.

Civil Appeal No. 812 of 1966

(J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

04.02.1969

JUDGMENT

SHAH, J. -

1. The respondent carries on the business of fabricating "steel doors, windows, sashes and other goods". On April 20, 1957, the respondent submitted in pursuance of an invitation by the Executive Engineer, Ajmer Central Division, its tender for providing and fixing "S. H. Windows 'W' Type", "S. H. Windows 'W1' Type", "T. H. Windows" and "Composite Windows" of certain sizes "in accordance with the specifications designs, drawing and instructions". The tender was accepted and the respondent carried out the contract.

2. The Sales Tax Officer 'B' Circle, Jaipur City, included in the taxable turnover of the respondent Rs. 23,480/- received under the contract. He held that the contract with the Executive Engineer was one of sale of goods and the respondent had with a view to promote sales of goods manufactured by it "voluntarily offered to fit" the goods and had made no separate charge for that service. The Deputy Commissioner Excise and Taxation in appeal held that from the acceptance of the tender two contracts resulted : one for providing doors and windows and another for "fixing" those doors and windows in a specified building, and that the price of the goods supplied, but not the charge for service, was taxable. He accordingly remanded the case with a direction to assess tax on the price for sale of materials only. The Board of Revenue exercising revisional power confirmed the order passed by the Deputy Commissioner observing that the contract undertaken by the respondent was not a contract of service.

3. The following question was referred by the Board of Revenue to the High Court of Rajasthan :

"Whether on the proper interpretation of the contract between the applicant and the Executive Engineer, C.P.W.D., Ajmer, regarding the providing and fixing of the steel windows to the Accountant General's Office, Jaipur, and looking to the terms of the transaction of the type undertaken by the applicant the Board were justified in holding that the contract was divisible between two parts representing the sale of the windows and the labour charges in fixing the same and thus partly liable to sales-tax ?"

4. The High Court held that the contract between the respondent and the Executive Engineer was a building contract and the amount received by the respondent was not taxable.

5. The relevant terms of the tender which was accepted by the Executive Engineer were :

"Item Rate-tender for Works :

I/We hereby tender for the execution for the President of India of the work specified in the under-written memorandum within the time specified in such memorandum at the rates specified therein, and in accordance in all respects with the specifications, designs, drawing, and instructions in writing referred to in Rule 1 hereof and in Class II of the conditions of contract and with such materials as are provided for, by and in all other respects in accordance with such conditions so far as applicable."

6. This recital was followed by a memorandum setting out the "general description" of the building in respect of which the window-leaves were to be supplied, the estimated cost of the contract and the description and the number of items of work offered to be done. The items of work offered to be done were "providing and fixing" four different types of windows. The relevant conditions were -

"1. The work shall be executed as per the specifications attached.

2. The work is to be completed in 6 months from the date of award of works.

#3. X X X X##

4. The windows are to be fitted with rawl plugs in cut stoneworks.

5. Work will be executed either by plain glass or ground glass as may be decided by the Engineer in charge.

"Notes :-

#1. X X X##

2. We are offering windows which will be glazed with plain glass only. If at a later date it is desired to have windows glazed with ground glass, the difference in cost of glass will have to be paid by you.

#3. X X X4. X X X##

5. The quotation is based on the current prices of mild steel billets fixed by the Government. Should there be any change in the controlled price of billets supplied to us, proportionate revision in the cost of rolled sections used in the fabrication will be made in the quotation.

6. Sales tax or any other tax is applicable will be extra.

7. Work will be completed in 6 months from the date of order."

These were followed by specifications relating to the steel to be used in the fabrication, glazing, fittings and finish of the windows.

7. The respondent offered to execute and complete the "work" mentioned in the written memorandum according to the specifications and conditions. In the view of the High Court the contract was for work, in the execution of which some movable property passed : it was not a contract for sale of windows and for rendering service in connection with the fixing of

those windows.

8. Counsel for the State of Rajasthan contends that the respondent carried on the business of fabricating and selling window and door leaves and sashes, etc. and entered into a contract for "sale of windows", and to promote sale of its manufactured goods, undertook to fix the windows without demanding any charge for that service, and the High Court was in error in holding that the contract was one of service in the execution of which property in the materials supplied by the respondent passed. Counsel urged that the terms of the tender were not decisive and the court was entitled to ascertain the true effect of the contract as disclosed by the nature of the work, and the "invoice" for payment made out by the respondent. Counsel submitted that it is usual for manufacturers or dealers in specialized articles to arrange to "fix and service" the articles sold by them and on that account the contract does not acquire the character of a contract of service. He gave instances of sale of motor-tyres, luggage carriers, air-conditioning units, refrigerators and contended that in undertaking to instal or fix these units or instal articles the sellers do not enter into a works contract merely because they undertake to instal or for the articles sold so as to make them fit for immediate service. But whether a particular contract is one for sale of goods or is a contract for service depends upon the main object of the parties gathered from the terms of the contract, the circumstances of the transaction, and custom of the trade, and no universal rule applicable to all transactions may be evolved.

9. As observed in Halsbury's Laws of England, 3rd Edn., Vol. 34, Art. 3 at p. 6 :

"A contract of sale of goods must be distinguished from a contract for work and labour. 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 and 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."

What did the respondent agree to do when it offered its tender ? Did the respondent agree to sell the window-leaves as described in the tender or did it, as part of a works contract, agree to "fix" windows of certain specifications in the building intended to be used for the offices of the Accountant-General ? On a consideration of all the circumstances, we are of the view that the object of the respondent was to enter into works contract. That clearly appears from the terms of the tender and its acceptance. The windows were to be fabricated according to the specifications with glass - plain or ground - as decided by the Engineer in charge, and were to be "fixed" within six months from the date of its acceptance to the building with rawl plugs in cut-stone work. The rate quoted by the respondent was based on the current price of mild steel billets, and the price was to be revised in the light of cost revision of the controlled price of steel supplied to the respondent.

10. 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 to the Union of India under

the terms of the contract as window-leaves. Only on the fixing of the windows as stipulated, the contract could be fully executed and the property in the windows passed on the completion of the work and not before.

11. It was said by this Court in *The State of Madras v. Gannon Dunkerley Co. (Madras) Ltd.* (9 STC 353) that in a building contract which is one, entire and indivisible, there is no sale of goods. In the case of a building contract the property in materials used does not pass to the other party to the contract as movable property. In the absence of an agreement to the contrary, the materials in the construction of a building become the property of the other party to the contract only on the theory of accretion.

12. In *The Government of Andhra Pradesh v. Guntur Tobaccos Ltd.* (16 STC 240 (SC)) this Court pointed out (at p. 255) :

"A contract for work in the execution of which goods are used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials though not accessory to the execution of the contract is voluntary or gratuitous. In the last class there is no sale because though property passes it does not pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods."

The contract in question in this case is of the second variety.

13. Counsel relied upon *Patnaik and Company v. State of Orissa* (16 STS 364 (SC)) and *Mckenzie's Ltd. v. The State of Maharashtra*. (16 STC 518 (SC)) But in both these cases the Court held on a consideration of the terms of the contract and the circumstances that the assessee had agreed to and did supply "motor-bus bodies" and the contract being one for sale of chattels, they were liable to pay sales-tax.

14. Our attention was also invited to *Commissioner of Sales Tax, Maharashtra State, Bombay v. Arun Electrics* (16 STC 385). In that case a firm of electrical contractors undertook the job of installing electrical fittings in the houses of their customers, which involved the supply and fixing of goods, such as wire, brass clips, wall brackets and tube-lights with accessories. The assessee charged their customers consolidated rates for the materials consumed and labour involved, in carrying out the contracts. The Sales Tax Officer charged tax under the Bombay Sales Tax Act, 1959, on the value of materials supplied in carrying out the contracts. It was held by the High Court of Bombay that the transaction of the assessee with their customers was not a pure works contract, but a combination of two distinct and separate contracts, one for the supply or the sale of goods for consideration, and the other for the supply of work and labour, and only that part of the contract, which consisted of supply of goods for consideration, was liable to tax under the Sales Tax Act. That case was brought in appeal to this Court at the instance of the assessee. This Court in *Arun Electrics, Bombay v. Commissioner of Sales Tax, Maharashtra State* (17 STC 576) discharged the answer recorded by the High Court, holding that the conclusions recorded by the Deputy Commissioner and the Tribunal were based on no evidence, and the High Court could not record, on the facts found, an answer to the question referred. The Deputy Commissioner had proceeded only

upon the terms of the invoice in which a charge was made for supplying and "fixing" the materials and providing light points complete with 1/8 CTS wire, brass clips, tapes and all approved accessories. The conclusion of the departmental authorities was not based on any intention of the parties as disclosed by the evidence, but plainly on the terms of the invoice which was ambiguous.

15. In *The State of Madras v. Richardson Cruddas Ltd.* (21 STC 215) the assessee without a formal contract agreed to supply, fabricate and erect steel structures for a sugar factory. The assessee completed the contract. A bill was submitted by the assessee for charges for fabrication, supply and erection of steel structures at certain rates. The High Court of Madras on a consideration of the evidence held that there was a stipulation for a consolidated lump-sum payment of Rs. 1,160/- per ton for fabricating, supplying and erecting at site all steel work etc.; there was no stipulation for passing of property in the goods to the factory before actual completion of the erection work; there the contract did not contemplate dissecting the value of the goods supplied and the value of work and labour bestowed in the execution of the work; and the predominant idea underlying the contract was the bestowing of special skill and labour by the experienced engineers and mechanics of the assessee. This Court agreed with the High Court and held that the contract was a works contract and not a contract for sale.

16. Our attention was invited to a judgment of the Court of Appeal in *Love v. Norman Wright (Builders) Ltd.* ((1944) 1 KB 484) In that case the respondents contracted with the Secretary of State for War to do the work and supply the material mentioned in the schedules to the contract, including the supply of black-out curtains, curtain rails and battens and their erection at a number of police stations. It was held by the Court of Appeal that the respondents were liable to pay purchase tax. Reliance was placed upon the observations made by Godiard, L.J., at p. 482 :

"If one orders another to make and fix curtains at his house the contract is one of sale though work and labour are involved in the making and fixing, nor does it matter that ultimately the property was to pass to the War Office under the head contract. As between the plaintiff and the defendants the former passed the property in the goods to the defendants who passed it on to the War Office."

We do not think that these observations furnish a universal test that whenever there is a contract to "fix" certain articles made by a manufacturer the contract must be deemed one for sale and not of service. The test in each case is whether the object of the party sought to be taxed is that the chattel as chattel passes to the other party and the services rendered in connection with the installation are under a separate contract or are incidental to the execution of the contract of sale.

17. In the present case, the specifications of the windows were set out in the contract. The primary undertaking of the respondent was not merely to supply the windows but to "fix" the windows. This service is not rendered under a separate contract, nor is the service shown to be rendered customarily or normally as incidental to the sale by the person who supplies window-leaves. The "fixing" of windows in the manner stipulated required special technical skill. If the windows were not properly "fixed", the contract would not be complete, and the respondent could not claim the amount agreed to be paid to it. We agree with the High Court that it was only upon the "fixing" of the window-leaves and when the window-leaves had become a part of the building construction that the property in the goods passed under the terms of the contract.

18. The appeal fails and is dismissed with costs.

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