

BOMBAY HIGH COURT

Commissioner of Sales Tax

Vs

Arun Electrics

(V Desai and Y Tambe ,JJ.)

27.04.1963

JUDGMENT

Desai, J.

1. The respondents are dealers carrying on business in electric goods as electrical contractors and hold a registration certificate under the Bombay Sales Tax Act, 1959. In the course of their business they undertake contracts for electrical fittings and charge their customers consolidated rates for the materials consumed and the labour charges involved in carrying out the contracts. On the 13th July, 1960, they made an application to the Deputy Commissioner of Sales Tax, Bombay City Division, under section 52(c) of the Bombay Sales Tax Act, 1959, to determine whether the supply of materials consumed in carrying out the contracts of electric fittings undertaken by them would be treated as sales within the meaning of the Bombay Sales Tax Act, 1959, and whether they would be liable to pay any sales tax on them. To indicate the nature of their transactions with their customers they annexed along with their application a copy of the bill issued by them to one of their customers. The material contents of the said bill were as follows :-

1. Supplying and fixing the materials of light points complete with 1/18th CTS wire, brass clips, tapes and all approved accessories	2 Pts. Rs. 32-00
2. Supplying and fixing 9" brass Swan type wall brackets with holders	1 pc. Rs. 1-75
3. Supplying, fixing and wiring 40 kw. 4 ft. tubes complete with Resmi choke, imported starters and Elore holders etc.	5 pc. Rs. 132-50

Total Rs. 166-25	-----

2. At the hearing of the said application the respondent contended before the Deputy Commissioner of Sales Tax that the transaction evidenced by the bill was purely a works contract which was one and indivisible and did not involve any sale of goods. It was also contended on their behalf that the materials supplied in the execution of the contract were affixed to the building and thus became a part of the immovable property at the time when the property in the said material passed on to the customer. They urged that the contracts entered into by them were similar to the contracts of building constructions, which the Supreme Court had held, were contracts of work not involving sale of goods. The Deputy Commissioner of Sales Tax did not accept these contentions which were put forward on behalf of the respondents. According to him, although there was a single invoice given by the respondents to their customers, the contract evidenced by the said invoice clearly consisted of distinct and severable contracts - one for the supply of goods and the other for the supply of work and labour; and so far as that part of the composite contract which consisted of the supply of goods was concerned it constituted a sale within the definition in the Bombay Sales Tax Act, 1959. He relied on the observations of the Supreme Court in the case of *State of Madras v. Gannon Dunkerley & Co^l*. to the effect that it was possible that parties might enter into distinct and separate contracts one for the transfer of materials for money consideration and the other for the payment of remuneration for the service and for the work done and where such was the position, there were really two contracts although there might have been a single instrument embodying them, and took the view that the present case fell in the category of such contracts and therefore involved a sale of goods so far as the supply of material was concerned. As to the other argument advanced before him, that the property in the goods did not pass as movables, but only after they had been fixed to the building and had become a part thereof, he held that it could not be said that the goods mentioned in the invoice were permanently fastened to the building so as to become a part and parcel of the immovable property, namely, the building. Nor had the applicants been able to establish that such was the case in the execution of the said contracts. According to the Deputy Commissioner, therefore, having regard to the terms of the contract between the parties and the manner in which the work was charged for as evidenced by the invoice submitted by the respondents, the transaction in question could not be regarded as purely a works contract in which no sale or supply of goods as chattels was involved. He accordingly determined under clause (c) of sub-section (1) of section 52 of the Bombay Sales Tax Act, 1959, that the transaction as evidenced by the bill supplied by the respondent was a sale within the meaning of section 2(28) of the Bombay Sales Tax Act, 1959, in so far as the supply of materials contained in the said bill was concerned.

3. Against the said decision of the Deputy Commissioner of Sales Tax, the respondents appealed to the Sales Tax Tribunal. The Tribunal disagreed with the view taken by the Deputy

Commissioner and held that the contract evidenced by the bill was wholly a works contract and did not involve a contract for the supply of material. The Tribunal took the view that the bill in question evidenced a single contract and there was therefore hardly any justification to treat it as consisting of two distinct and severable contracts : one for the supply of material and the other for work and labour. It also expressed its opinion that by the contract in question the parties did not intend that the goods should be supplied as on sale of chattel, but the property in the material supplied by the respondents to their customers only passed after the said material had been affixed to the building of the customer and it did not, therefore, pass as movable property. It, accordingly, allowed the appeal and held that there was no sale involved in the transaction and the respondents were not liable to tax in respect thereof.

4. Now, whether a given contract is a contract of sale or a works contract must depend upon the terms of the contract and the intention of the parties. A transaction in order to be a sale must have all the necessary characteristics of a sale. As observed by the Supreme Court in *State of Madras v. Gannon Dunkerley & Co²*. in order to constitute a sale, it is necessary that there should be an agreement between the parties for the purpose of transferring the title to goods which presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction the property must actually pass in the goods. Unless all these elements are present, there can be no sale. A works contract, on the other hand, is a contract where parties to the contract have contracted for the supply of work and labour by one party to the contract to the other. Where the transaction purely consists of the supply of goods for money consideration, it is clearly a sale of goods. Where, on the other hand, the contract is one purely for the supply of work and labour and no material is required to be supplied by the party to the contract, who has to supply work and labour, it is purely a works contract. Where the contract between the parties consists of the supply of material and also supply of work and labour, the difficulty often arises as to the true nature of the contract. It may either be a contract for the sale of goods or else it may be a contract for work or it may be a composite contract consisting of two separate and distinct parts - one for the supply or sale of goods and the other for work and labour. Taking a few simple illustrations : If A contracts to buy a coat made for him by B for a certain price, there is a contract for the sale of a coat between A and B, although the coat before it is delivered by B to A for the price, is required to be made by B out of the cloth and other material procured by B himself. It may be, on the other hand, a contract for the work, as for instance, A takes his manuscript to printer B and asks him to print and deliver a certain number of copies of the manuscript to him for a price with the paper and ink supplied by B; in such a case what is contracted for is the work and labour though in the execution of the contract material may have to be supplied. It may also consist of two separate and divisible parts one for the supply of material and the other for the supply of work and labour, as for instance, when A goes to a shop and gets a coat prepared for him and pays for the cloth and the other material required for the

coat and also for the stitching charges. In this case, so far as the supply of cloth is concerned for the making of the coat, it is a sale of goods; and so far as the stitching charges paid are concerned, they are paid for work and labour. Whether a contract, which involves both supply of material and supply of work and labour, falls in any of the three categories mentioned must depend upon the facts of each case and the intention of the parties. In order to determine whether in a contract of this nature there is involved a contract for the sale of goods must depend, in our opinion, upon whether the parties to the contract have intended to sell the goods under the agreement between them and whether any property in chattels is to pass from the one to the other as chattels. The mere circumstance that a certain property in movables has ultimately passed from one party to the other in the execution of the contract is not sufficient to make the contracts consist of a sale of goods. The property must pass under the agreement and the agreement must be for the sale of the very articles in which eventually the property passes. Thus, for instance, in a contract for the stitching of a coat the dealer has also to supply the trimmings and the buttons etc. and ultimately when the coat is delivered by the dealer, the buttons and the trimmings also have passed on to the owner of the coat. There is however no sale of goods involved in so far the trimmings and the buttons are concerned. For although the property in the said articles has passed to the owner of the coat, it has not passed in pursuance of an agreement for the supply of the trimmings and the buttons as such. Similarly, in a contract for the construction of a building where the contractor supplies also the material for the construction, although on the execution of the contract property in the material may eventually pass on to the owner of the building, it does not pass as on the sale of the said material as such. It may, however, be that even in contracts of this type, the parties may be able to contract expressly that the contract may consist in part of supply of material and also in part of supply of work and labour, but in the absence of an express contract to that effect, normally there will be no sale of goods involved in such contract. In order, therefore, to find out what is the position with regard to a given contract what has got to be considered is what the contract is and what the parties to the contract have intended.

5. Considering the present contract before us as evidenced by bill No. 12, the said contract is for the supply and fixing of certain materials. The question to be considered is whether the parties to the contract have intended for the supply of the material involved in the invoice as chattels or they have intended the contract to be a works contract, the supply of material being only incidental to the execution of the work. Mr. Mehta for the respondents has urged that although the respondent is required to supply certain material the contract undertaken by him is purely a works contract. He had undertaken the installation job of installing electric fittings. He holds a license for doing such jobs and he has been approached by the owner of the house for the purpose of executing these jobs at his house. The material contained in the invoice is useless to the owner of the house as chattels. Nor has he intended to purchase them as chattels. He has intended that the materials specified should be utilized in the execution of the work which he has

entrusted to the respondent and which the respondent has undertaken. According to Mr. Mehta, therefore, this is a case where the agreement between the parties relates to the execution of a certain work as distinguished from a contract for the sale or supply of goods. Mr. Mehta further argues that although eventually the property in the materials specified in the invoice will pass from the respondent to the customer, it will not pass as property in movables. It is only when the job is executed and the items specified in the invoice have been embedded and fixed to the house of the customer that the property in them will pass on to the customer. At the moment when the property in goods will pass, the goods will be no longer movables or chattel, but will have become attached or permanently fixed to the house of the customer and a part thereof. The case, therefore, is one where the property in the goods supplied will go as an accretion, or, at any rate, not as movables, which is essential for the transaction to be a sale of goods. In support of his submission that the work undertaken by the respondent being installation of electrical equipment does not involve any sale of goods, Mr. Mehta has referred to us a passage from Irving's Commonwealth Sales Tax Law and Practice at page 77 where the learned author has stated at para. 145 : "It has been officially stated that the installation (but not assembly) of electrical equipment or ventilation or refrigerating system as fixtures in building, does not constitute manufacture." The learned author has further observed in para. 146 : "A construction of a unit of machinery by process of assembly and working its component parts constitutes the manufacture of the complete machine. Such an operation differs essentially from activities in, for example, installing an electric lighting system or a ventilation or refrigerating system as a fixture in a building. In such a case, the complete installation is not a commercial identifiable unit which, as goods, is severable from the reality. On the same principle the operations of plumber in fitting articles to a building to suit the particular requirement of that building (for example, the bending and turning of pipes to contour of sills) are not operations which result in the manufacture of goods". Now, these statements of the learned author are in connection with the explanation of the word "manufacture" as defined in the Commonwealth Sales Tax Acts, and according to these statements, the operations of installation of electrical equipment do not constitute manufacture of goods as so defined in those Acts. We are, however, not concerned with the question whether the installation of an electrical equipment constitutes manufacture of goods. It is not disputed nor can it be disputed that the job of installation of electrical equipment does involve work and labour. What we have to consider in the present case is whether in a case where a person who installs the electrical equipment also supplies electric goods, which are installed, the contract undertaken by him in so far as it relates to the supply of electric goods constitutes a sale of goods within the meaning of the Sale of Goods Act. No assistance is given in determining the said question by the passages referred to by Mr. Mehta. We do not, therefore, think that the passages referred to by him help him in support of his submission that there can be no sale of goods involved in the contract undertaken by a contractor for the installation of electrical equipment.

6. Now, the question which we have to decide is whether the contract in the present case is purely a works contract which does not involve any sale of goods under the Sale of Goods Act or whether it is a combination of two separate contracts - one for the sale or supply of goods for money consideration and the other for remuneration for work and labour. The circumstance that there is a single consolidated bill presented by the contractor to the employer for the entire work done is not determinative of the fact that it is a single indivisible contract, as observed by the Supreme Court in Gannon Dunkerley's case ([1958] 9 S.T.C. 353). But the point for determination, as observed by them in *Carl Still G.m.b.H. v. State of Bihar*³ is "whether on its true construction, the contract in question is a combination of two distinct agreements, one to sell materials and the other to supply labour and services or whether it is only one agreement entire and indivisible for execution of the work". Mr. Mehta for the respondent has argued that it is the latter, while Mr. Banaji for the Commissioner of Sales Tax has argued that it is the former. Mr. Mehta's argument is that in the present case what the customer has asked for and what the respondent has undertaken to do for him (customer) is a job work, namely, the job of installing in the house of the customer certain electrical equipment. What the customer has agreed to pay and what the respondent has agreed to charge is the remuneration for the completed job although in the execution of the said job certain specific materials of the kind approved by the customer is required to be supplied and used. The agreement between the parties is not for the sale and purchase of the said material as chattel, but the agreement in its true nature is for the doing of work. The supply of material by the contractor is only incidental to the contract undertaken by him and though at the end when the contract is completely executed, the material supplied may pass on to the customer, it does not pass on as on sale of the material. There is, he says, no agreement in the present case for the passing of the property in the material as such in which the property eventually passes on the execution of the contract. According to Mr. Mehta, therefore, this is a contract for work. He submits that his case is similar to the cases in *Tripp v. Armitage*⁴ *Clark v. Bulmer*⁵ and *Seath v. Moore*⁶

7. In *Tripp v. Armitage*⁷ a builder had entered into an agreement with certain trustees to build a hotel. Under the said agreement the articles which were to be used for the structure had to be approved by the trustees. A question arose as to whether title to certain wooden sash-frames which had been approved on behalf of the trustees, but had not yet been affixed to the building, had passed on to the trustees on the trustees having approved of the same. The question was answered in the negative and it was held that a contract was not a contract for the sale and purchase of goods as movable chattles; it was a contract to make up materials, and to fix them; and until they were fixed, by the nature of the contract, the property would not pass. It was observed that there was no contract at all with respect to these particular materials and the contract was in true nature to build a house. It was for the purposes of that contract, which was for the building of the house, that the contractor had to make, amongst other things, wooden

frames for the house, and fix them in the house subject to the approbation of a surveyor, but it was never intended by the contract that the articles to be so fixed should become the property of the defendants until they were fixed to the freehold. The agreement in that case was for the building of a house and not for the purchase of any material. The material that was to be approved was not for the purchase of the material as such, but with a view that it should be used in the execution of the contract. The property in the material, no doubt, passed at the end of the contract from the builder to the owner of the house, but the property passed not in pursuance of an agreement for the sale of the specific property as chattels.

8. In *Clark v. Bulmer* ([1843] 11 M. & W. 243)(Supra), the plaintiff had 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 constructed at the plaintiff's manufactory and sent in parts to the defendant's colliery where they were fixed piecemeal and were made into an engine. The plaintiff brought a suit for the recovery of a sum of pounds 3,000 as price for the main engine and other goods sold and delivered. An objection was taken to the nature of the suit on the contention that there was no contract of sale and therefore action brought by the plaintiff was misconceived and the proper action to be brought should have been for the work and labour and machinery used in the course of their work and not for price of goods sold and delivered. The contention was upheld and it was held that 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 cannot be treated as an engine sold and delivered. Nor could the different parts of it, which were used in the construction and which from time to time were fixed to the freehold and, therefore, became 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 the parts to the soil, and so convert them into a fixed engine on the land itself, as to pump the water out of a mine. The basis of the decision, as it appears to us was, that there was not contemplated in the contract between the parties a sale of the engine as a chattel accompanied by the further part of fixing the same on the premises of the factory. The subject of the contract was not the sale of the engine either as a whole or in its component parts but the subject of the contract was the making of a construction by the plaintiff for the defendant on the latter's land which, no doubt, included as an integral part thereof the fixing of the engine on to the land of the defendant so as to achieve certain required results.

9. In *Seath v. Moore* ([1886] 11 App. Cas. 350)(Supra), a firm of Engineers had entered into five agreements with a certain ship-builders to supply engines, boilers and machinery required for vessels to be built by them. Before the completion of the contracts, the firm of Engineers became

bankrupt, and a dispute arose as regards the title to the machinery and articles which were in possession of the insolvents at the time of the bankruptcy but which had been made for the purposes of being fitted to the ships of the ship-builders. It was held that there had been no sale of the machinery and parts as such. The basis of the decision, it appears, was that a contract between the parties was for the execution of the engineering job, and the engines, boilers and machinery which were to be supplied by them in the execution of the job were not intended to be transferred to the ship-builders as on sale of chattel, but only as on being fixed to the ships in execution of the engineering contract undertaken by the Engineers.

10. Now, in all these cases, which have been referred by Mr. Mehta, the conclusion that the contract was a works contract and did not involve a sale of goods, although goods were required to be supplied in the execution of the contract, was on the basis that the contract was not intended to result in a sale of chattels. The work and labour was bestowed in such a manner that the result would not be anything which could properly be said to be the subject of sale.

11. In *Tripp v. Armitage* ((1839) 4 M. & W. 687)(Supra), the contract was for the building of a house and although the said contract required in its execution the supply of material, there was no agreement involved in the contract between the parties for the sale of the material as such. The contract did not end in the sale of any material as chattels, because although the material used in the construction of the house ultimately passed to the owner of the house, it did not pass as chattels, but as parts of the house.

12. In *Clark v. Bulmer* ((1843) 4 M. & W. 243),(Supra) again the subject of the contract was not the sale of the engine, but was the execution of an engineering job which would provide the defendant with a completed engineering arrangement enabling the defendant to pump out the water out of the mine. No doubt, in providing this arrangement, an engine was required to be supplied; but the supply of engine was not as on sale of chattel, but after it had been fixed on the land of the defendant as a part of the engineering arrangement for the pumping out of the water. It will therefore be seen that the real question that has to be considered is whether in a given contract which consists both of work and labour and supply of material, there is, so far as the supply of material is concerned, an agreement for the supply of material as such. That some material has passed in the execution of a contract is not sufficient to hold that there has been a sale of the said material. What is necessary to be seen is whether there is an agreement between the parties for the sale of the very material in which the property has eventually passed.

13. Now, in the case before us what has happened is that the customer, who was in need of certain electrical goods and wanted them to be properly fixed in his house, went to the respondent and asked them to supply the said goods and also do the fixing of the said goods in the house for a consolidated payment. The job executed by the respondent consisted of bringing

to the house of the customer the goods ordered out by him and fixing them wherever the customer wanted them to be fixed. What has happened at the end of the contract is that the customer has got the goods ordered by him and he has in addition thereto got also the work done of fixing the goods at the appropriate places as desired by him. There can be no doubt whatsoever that a customer if he had so desired could have purchased the goods from one person and thereafter could have entrusted the work of fixing them to some other person and could have obtained the same results as he has done in the present case. If he had followed the latter procedure there could be no doubt whatsoever that there had been a purchase of electrical goods by him which were afterwards fixed by him in his house by employing a person who was competent to do the work. Does it make any difference if, instead of following this procedure, he has obtained the goods from the same person to whom he has also entrusted the work of fixing them ? It appears that it would not, because at the end of the contract the property has eventually passed in the very goods which under the contract had been agreed to be purchased. The contract, in our opinion, was intended to result in the sale of the electrical goods, which were required by the customer for his house, although there was, in addition to the said sale, further work also required to be done by the supplier of the goods in fixing the same in the house of the customer. It is not a case where we can say that by reason of the work and labour bestowed or the manner in which the work was done, the result is anything which cannot be the subject of the sale. We cannot say, having regard to the items specified in the bill and the manner in which the work and labour was required to be supplied in connection with fixing of the same, that the supply of the materials involved in the contract was not intended by the parties to be as on sale of chattels. In the first item, the customer required for his purpose the materials which would give him two light points and the material consisted of a certain amount of wire, brass clips and tapes and other accessories. There was no doubt, an arrangement of the same material required to be made so as to obtain the two light points, but in the said arrangement the identity of the material was in no way altered and it was not possible to say that the work when executed had ended in something entirely different from the material used. In the second item, 9 inches brass Swan type wall brackets with holders were required by the customers. The additional work which was required to be done by the respondent in connection with this item was merely fixing the wall brackets with holders wherever the customer wanted them to be fixed. The work involved in fixing of these wall brackets could hardly be sufficient to regard the supply of the brackets with holders as being only incidental to the execution of the contract work and not intended to be purchased as chattels by the customers. The third item was in connection with five pieces of fluorescent tubes with the necessary accessories like Resmi choke, imported starters and holders etc. This item again consisted essentially of the supply of chattels as chattels. The additional work that was required to be done in fixing the same would hardly be sufficient to convert the contract into a contract of work where the supply of material could be regarded as merely

incidental. In our opinion, therefore, having regard to the contract, which is before us, and having regard to the work and labour involved in it and the manner in which the work was required to be carried out, there can be no doubt whatsoever that the contract in question was clearly capable of being regarded as a composite contract consisting in part and perhaps in a major part, of the supply of goods for money consideration and in part for remuneration for work and labour. In our opinion, the contract under consideration did end, so far as the supply part of it is concerned, into a sale of chattels and the Deputy Commissioner of Sales Tax was therefore right in taking the view that it consisted of a composite and divisible contract, in part involving a sale of goods.

14. Mr. Mehta has then argued that although we may take the view that there is involved in the present case a transfer of property from the respondent to the customer, having regard to the fact that the said passing of property only takes place at the end of the contract when the goods in which the property passes are no longer movables having been fixed to the walls or the ceilings of the petitioner's house, we cannot say that there is involved a sale of goods. We are afraid we cannot accept this contention. The mere circumstance that the electrical goods brought by the customer to his house have been affixed by him either to the wall or to the ceiling does not thereby make the electrical goods cease to be chattels and become part of the house. The light points or the brackets or the fluorescent tubes, which are the items in the present contract, though they may, in order to make them serviceable, have to be attached to the walls or the ceiling of the house, do not by reason of being so attached lose their character as chattels. A person who has purchased an electrical fan has, in order to use it, got to get it fixed to the ceiling and have it connected to the electrical supply of the house. The mere circumstance, however, that the ceiling fan is so fixed does not make it cease to be a chattel only because it is temporarily fixed to the ceiling of the house. Whether they are electric points or brackets or fluorescent tubes, the customer could easily get them removed from one room to another or to an adjacent building or to another building some distance away. The mere circumstance that the electrical goods, while in use, are to be fixed to the house is not sufficient to make them lose their character as movable property although while so fixed to any one of the place they will not be capable of moving. In our opinion, therefore, in the present case before us the transaction of the respondent with its customer of the nature evidenced by bill No. 12 is not a purely 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 supply of work and labour, and so far as that part of the contract which consists of supply of goods for consideration is concerned, it is a sale as held by the Deputy Commissioner of Sales Tax.

15. In the view that we are taking, the answer to the question which has been referred to us by the Tribunal on the present reference is that the transaction represented by bill No. 12 dated 3rd May, 1960, produced by the opponents amounts to a sale and is taxable under the provisions of the

Sales Tax Act, 1959, in so far as it relates to the supply of goods mentioned therein. The respondent shall pay the costs of the petition.

16. Reference answered accordingly.

Cases Referred.

1([1958] 9 S.T.C. 353)

2([1958] 9 S.T.C. 353)

3([1961] 12 S.T.C. 449)

4([1839] 4 M. & W. 687)

5([1843] 11 M. & W. 243)

6([1886] 11 App. Cas. 350)

7([1839] 4 M. & W. 687)

