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**(1964) 11 GUJ CK 0023**  
**In the Gujarat High Court**  
**Case No : Sales Tax Reference No. 37 of 1963**

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| A.A. Jariwala and Brothers | Vs | APPELLANT  |
| The State of Gujarat       |    | RESPONDENT |

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**Date of Decision :** 19-11-1964

**Acts Referred:**

Bombay Sales Tax Act, 1953 — Section 2(6)

**Citation :** AIR 1965 Guj 253

**Hon'ble Judges :** J.M. Shelat, C.J;P.N. Bhagwati, J

**Bench :** Division Bench

**Advocate :** J.M. Thakore, General and M.G. Doshit, Additional Government Pleader, S.L. Mody, for the Appellant; S.R. Mody, Government Agent, for the Respondent

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## Judgement

Shelat, C.J.

(1) The question arising in this reference is whether the contract between the applicants and their customers, Messrs Pacific Traders, amounts to a works contract or whether it was a composite contract involving sale by the applicants to their customers of embroidery materials and of doing embroidery work. The reference arises out of an application made by thee applicants to the Deputy Commissioner under S.27 of the Bombay Sales Tax Act, 1953 in respect of a bill No.94 dated 6th February 1953.

(2) Sixty-six sari pieces were sent to the applicants by Messrs. Pacific Traders of Bombay for getting embroidery work done on them. Prior to the despatch of these saris, Messrs. Pacific Traders had given specific instructions to the applicants as to the designs and the type of work of embroidery which they required on these saris. On the arrival of the saris at Surat, the applicants paid the requisite octroi duty and delivered the sari pieces to embroidery workers who were to be paid piece rates according to the work done by them. The jari materials were supplied by the applicants to these workers and after the embroidery work was completed, the saris were returned to Messrs. Pacific

Traders. The cost of the jari materials used in the embroidery work came to about thirty per cent of the total charges charged by the applicants. The applicants thereafter sent one consolidated bill to Pacific Traders for the entire work done by them also showing the rates per sari. In their application to the Deputy Commissioner dated 17th February 1958, the applicants stated that they were engaged in carrying out embroidery work and that in the course of that business, they used to give specific instructions with regard to the designs they wished to be exhibited on the saris. The agreement used to be oral and the charges payable to them also used to be determined orally. They also stated that the remuneration payable to them under such contracts would be supported by bills issued by them to their customers which bills they used to record in their books of account. The modus operandi adopted by the applicants, as stated by them in their application, was as follows:

"In the execution of the said contracts for the job work, after receiving the saris we deliver them to several workers who are (well) experts in the work of embroidery and they are instructed by us to carryout the customers. These artisans are carrying out the job works in their own houses as we are not having any factory of our own. These artisans are not known to the customers who are giving their work for the purpose of embroidery. If they know nay artisans they are free to give such work direct to them. These artisans who are receiving the work from us are supplied the necessary materials for the job they are given. They are concerned with the bare wages for the work done. After such saris having been receive form the artisans the customers is advised and delivered the saris duly embroidered and our bill is also sent to him. In our bill we quote only the rate for the embroidery work settled to karigars. Since we to receive the work from the customers for the embroidery, we, in the execution of the said works contract, becomes karigars to the said customer. The customer is free to give us the materials for the worked given but generally due to usage and custom and mostly the trust we possess of them in us that we are not charging anything higher in the materials used in the job work than the market price, we assume the category of the agent to the customer in the matter of the use of the articles. We, therefore, in the said job work only get benefits in the nature of commission, which includes correspondence charges, travelling, upkeep of the office, contract with artisans and interest involved in the nature of investment in the materials purchased for and on behalf of the customers which are used in the job work. These materials are sometimes purchased after the work is received".

To the application, the applicant annexed a letter recived from Messrs Pacific Traders dated 29th January 1858,the municipal octroi receipt dated 30th January 1958, the receipt of charges paid to the Angada who brought the goods from Bombay, the details the cost of work involved in the supply of e3 work, and lastly, their bill dated 6th February 1953, bearing on the basis of which the said application was made. The details of the cost of the work involved in embroidering these sixty-six saris were produced before the Deputy Commissioner, presumably to enable him to appreciate the type of work

executed by the applicants, but they were not intended to represent the actual bill sent to the customers. The actual bill sent to the customers was a consolidated bill No. 94 dated 6th February 1953 which was one bill for a total amount of Rs. 258/- and which consisted different charges per sari according to the three designs required by the customer.

On these materials, the Deputy Commissioner, by his order dated 30th January 1962, held that the intention of the parties in entering into the contract was to transfer for a price the property in the jari materials in which the customer had previously no property and that therefore, the contract was a contract of sale of jari materials.

"When the customers handed over the applicant the sarees of embroidery work he must have known that the applicant would undoubtedly charge him for the jari goods to be used therein. This is therefore, obviously a case involving the sale of jari goods. It cannot be denied that the use of jari goods in embroidery work is as important as the employment of labour involved therein, so as to enhance marketability of the embroidered sari which became altogether a different article than a plain sari. To borrow the observations of Bombay High Court in the case of M/S Royal Gold Embroidery S.T. Reference No, 6 of 11958 D/ [- 9-7-1959 (Bom) the question as to the relative importance of the value of the materials supplied by the applicant and the value of the work done by him has to be viewed in its proper context to ascertain whether the contract was for sale and for performance of service or a contract entirely for service. In the instant case as the value of materials supplied in the course of embroidery works is quite applicable, the supply of such materials would constitute a sale and the estimated price for the sale would be liable to sales-tax".

Aggrieved by this order, the applicant filed an appeal before the Sales Tax Tribunal. The Tribunal rejected the applicant's contention that the contract was a purely service contract and also rejected another contention of the applicants that they were the agents of the customers in the matter of the supply of the jari materials. The Tribunal observed that if the applicants were the agents of the customers Messrs. Pacific Traders, then they would have been liable to render an account of the materials supplied to the workmen and used in the work and that since no account was in fact rendered by the applicants to their customers, there was no question of the applicants being the agents of Messrs. Pacific Traders. They also held that the supply of the materials to the workmen was made by the applicants as principal to principal and before these jari materials were affixed to the saris, they had already, become the property of the customer and therefore, there was no question of the transfer of ownership in the materials on the theory of accretion. The conclusion reached by the Tribunal for the supply of the materials for a price and secondly, to get embroidery work done by workmen, and that the property in the materials passed to the customer by this order, the applicants applied for a reference to the High Court and the question that is referred to us for our opinion is:

"Whether on the facts and in the circumstances of the case the agreements with M/s Pacific Traders was works contract or it was a composite agreement, one for the sale of jari materials and another for doing work?"

(3) The contention of Mr. Mody was that the contract between the parties was one and indivisible, that the intention of the parties was not that the applicants should sell jari materials to the customer and the property in the jari materials necessary to execute the embroidery work passed to the customer as accretion. Mr. Mody argued that it was only when these materials were stitched to the saris that property in those materials passed to the customer. The work to be executed by the applicants was one and integral, namely to execute embroidery worked on the sari cloth supplied by the customer, and to use during that work such embroidery materials as were necessary for the execution of the work. He contended that this was clear from the fact that the workmen engaged by the applicants were to be supplied by the applicants embroidery materials on an estimate of the quantum of such materials necessary for each design and that the workmen were to return to the applicants such surplus of materials as remained unutilised. Besides, there was no ascertainment by the parties of the price of the jari materials at any time. There was no delivery of the goods to the customer and finally, it was not as if property in these materials passed to the customer before they were affixed to the sari pieces. We therefore, urged that there was no sale of the jari materials to the customer and the work was one and the indivisible, the applicant agreeing to use these materials as part of the contract to execute the work. He urged that the essence of the contract therefore was work and labour and not sale of the jari material and therefore, was no justification to split up the contract into one for work and labour and the other for the sale of materials and to call it a composite contract. The learned Advocate General, on the other hand, urged that the true test of ascertaining whether the contract was a contract one, was one of intention of the parties. He argued that such an intention could be seen from the fact as to how the applicants dealt with the materials they were said to have sold. He emphasized before the Deputy Commissioner a representative sale and the break-up of charges thereof. That break-up showed the value according to the applicants of the various item, labour charges, cost of the jari materials necessary for every design ordered by the customer and finally, the commission which the applicants on the work as a whole expected to earn. The break-up thus showed clearly that the parties were well aware how many jari materials would be necessary for the embroidery work on such of the three designs required by the customer and though the bill was a composite bill consisting of the cost of labour, the cost of the jari materials, the other expenses that the applicants would have to incur in executing the work and provides for the commission they were to earn in each case, that bill, he urged, showed that the contract was not one and indivisible but a compromise one consisting (1) of the contract of work and labour, and (2) the contract of sale of the jari materials, and therefore the Deputy Commissioner and the Tribunal were right in their view that the applicants would be chargeable

to sales tax on the sales of these materials.

(4) The distinction between a contract for work and labour and a contract of sale is often a fine one, but the distinction is clear and ascertainable. Whereas a contract of a sale is one of which the primary object is the transfer of property in and the delivery of possession of a chattel as a chattel to the buyer, the primary and essential object of a contract of work undertaken by the payee of the price is not the transfer of a work and labour bestowed result in any thing that can properly become a subject of sale and neither the ownership of the materials nor the value of the skill and labour as compared with the value of the materials would be conclusive, although such matters can be taken into consideration while determining whether the contract is in substance one for work and labour or one for the sale of a chattel. In every case, therefore, the Court has to address itself the question as to what is the main object and essence of the contract. The clear case of a contract of work and labour is to be found in *Robinson v. Graves* (1935) 1 K B 579, where the question was whether, when a person goes to an artist expects commission, that person and the artist are making a bargain for the manufacture of future goods to be delivered when those goods come into existence in circumstances which make it a sale of goods. It was there held that in such a case, the contract was for work and labour and not for the sale of goods, as the substance of the contract was that skill and labour should be exercised upon the production of the portrait and it was only ancillary to that contract that there would pass from the artist to his customer some materials, namely paint and canvass, in addition to the skill and labour involved in the production of the portrait. As Greer L.J. put it, what you have to look is the substance of the contract. If the substance of the contract is that skill and labour have to be exercised for the production of the article and that it is only ancillary to that that there will pass from the artist to his client some materials over and above the skill involved in the making of the portrait, that would not make any difference because the substance of the contract is the skill and experience of the artist in producing the picture. The materials, such as, paint and canvass, would, in such a case, be merely ancillary to the actual technical skill of producing the work of art and therefore the contract would be one of work and labour. The distinction between the two contracts would be the distinction in the cause of action between the two, and in one case the action would be for money payable by the defendant to the plaintiff for work done and materials provided by the plaintiff for the defendant at his request, and in the other, it would be for the remuneration for work and labour and materials. A more complex case than the case of an artist would be one of a building contract where the line of demarcation would not be as clear as in the case just referred to. Such a case arose in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, The Supreme Court there laid down the test which would determine a sale, and observed that to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring titles to goods, which presupposes capacity to contract that it must be supported by money

consideration and that as a result of the transaction property must actually pass in the goods. Unless all these elements were present there could be no sale. Thus, if merely title to the goods passed but as a result of any contract between the parties express or implied, there would be no sale. So also if the consideration for the transfer was not money but other valuable consideration, it might then be exchange or barter but not a sale. And if under the contract of sale title to the goods had not passed, then there would be a mere agreement to sell and not a completed sale. There must be therefore an agreement between the parties for the sale of the very goods in which eventually property passes. The Supreme Court also held that in the case of a building contract, the property in materials used did not pass to the other party to the contract as movable property. It would so pass if that was the agreement between the parties. But if there was no such agreement and the contract was only to construct a building, then the materials used therein would become the property of the other party to the contract only on the theory of accretion. To constitute a sale, therefore, it is necessary that there should be an agreement between the parties for the purpose of transferring title in the goods supported by money consideration and the property in such goods actually passing to the customer. In other words, the test laid down in this case was that there must be an agreement to sell the materials as such in the case of a building contract, the contract is one and indivisible, that is its nature, and there is no sale of goods and therefore, the theory that such a contract can be broken up into its component parts and as regards one of them there is a sale, would break down on the ground, firstly, that there is no agreement to sell the materials and secondly, that property in such materials does not pass as movables. As observed at page 386 of the report, the second ground would not be available in the case of a contract where the thing produced is a movable article, because the materials incorporated into it could pass as movables and therefore in such a case the conclusion that no taxable sale will result from the disintegration of the contract can be rested only on the ground that there was no agreement to sell the materials as such. Though a building contract, as held in this case, is one and indivisible not involving a contract of sale of building materials, there might be contracts which might consist of two agreements, one for the State to charge tax on the sale of the materials. Whenever, therefore, a question arises as to whether a particular works contract can be charged to sales tax, the authorities have to determine whether the agreement in question, on a true construction of it, as a combination of an agreement to sell and an agreement to which and if a conclusion can be properly reached that it is of such a character, it would be open to the revenue to proceed against that part of it which consists of a contract of sale of goods, and impose tax thereupon. But in order to hold that a particular contract is a composite one, one involving an agreement of work and labour and the other of sale of materials, there must be clear evidence of agreement of sale between the parties. This is illustrated by the decision of the High Court of Madras in *Sundaram Motors (Private) Ltd., 37 Mount Road, Madras Vs. The State of Madras*, . The assessee there was a private limited company carrying business in

selling and distributing motor vehicles. It also dealt in motor parts and accessories and maintained a workshop where re-conditioning or repairs of motor vehicles were undertaken. The turnover in the business of the company, therefore, related to the sales department where goods were sold and also to the works department where the vehicles were required or reconditioned. In this latter case, the turnover represented not only the labour charges as such, but also the cost of spare parts or materials supplied or used in effecting the repairs. There was no controversy with regard to the turnover in the sales department. For the assessment year 1949-50, which was taken in that case as typical one, the Deputy Commercial Tax Officer assessed the turnover of the company in the total amount of Rs. 42,13,684/- out of which he allocated a sum of Rs. 2,63,462/- as turnover in respect of work contracts referable to repairs of motor vehicles in the workshop. Out of the latter amount he held that a sum of Rs. 2,16,548/- should be treated as turnover in respect of works contracts, and levied a tax on seventy per cent thereof as representing the sales of materials to the customers while executing the works, repairs, etc. The company questioned the assessment adopted by the authorities on the workshop transactions and the High Court accepting their contention, held that in the circumstances of the case, charges for the fabricated materials should be treated as charges in respect of the works contract and not independent sales of those materials. The learned Judges observed that the state had no power to tax a works contract as such, though there would be no impediment in levying tax on the sale of goods properly so called and therefore, if a work contract included sale of goods, the levy of tax on such sale would be proper. If, on the other hand, the contract was only a works contract with no element of sale of goods, it would be taxable. They further observed that it could not be held as a general proposition that in every case of a work contract there was necessarily implied a sale of the component parts which go to make up the repairs. That question would depend on the facts of each case. To constitute a sale of goods, in addition to a transfer of movable property two more elements at least would be necessary (1) there should be an agreement between the party to sell and purchase, and (2) that agreement should be with reference to the particular goods. In the case of repair of a motor car, if a motor part is put in the car while reconditioning and repairing it, the title to that motor accessory passes when the repairs delivers the car to its owner, but to constitute a sale of that part it is necessary to have an agreement between the parties for the sale of that accessory. Therefore, sale of materials a distinct from a pure works contract would depend upon the agreement between the parties and on proof of an intention to sell the materials as such. If the essential intention of the parties is to have the car repairs, the manufacture of a particular chattel can only incidental to the repair and not for one the sale of it. The case nearest to the one before us is to be found in *Appasamy and Sons v. State of Madras* (1959) 10 ST 170 (Mad) where the following decision in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, the Madras High Court held that the charges collected by the assessee for carrying out embroidery work on the materials supplied to him by his customers could not be assessed to sales

tax inasmuch as such contract s did not include the sale of any goods of the assessee to the customers. Another decision which might be usefully referred to is *United Bleachers Ltd. Vs. The State of Madras*, . This case related to a contract of bleaching grey cloth which also involved packing of the goods after the bleaching was done, and the question which arose was whether in such a case there could be said to be an implied sale of the packing materials, *Rajagopalan and Ramachandra Iyer JJ.*, again emphasized that in such a case in order that there could be a levy of sales tax, there should be a sale and that mere passing of title in the goods, which was not as a result of any contract between the parties to sell either express or implied, could not amount to a sale, whether in regard to packing materials utilised in the performance of a contract between the parties there was a sale, deed on the agreement between the parties. Where the main contract was one of sale of goods as packed, such an agreement to sell the packing materials could having regard to the nature of the contract, be readily implied; but where the main contract was merely one of services, the fact that in the performance of such service packing the materials were used and charged for, would not lead to a necessary inference that a sale of the materials was intended. They also emphasized that in such a case, the onus would be on the taxing authority to prove that there was an agreement to sell packing materials and a sale by the passing of property therein. On the facts of that case, the learned Judge held that the contract before them was one for service, namely, bleaching dyeing etc, But as part of the service, the goods bleached or the dyed articles had to be packed and delivered. They observed however that from that, it would not necessarily follow that there could be no sale of packing materials, whenever such materials were used in connection with the performance of a contract of service. It may be that there might be a distinct contract of sale with regard to packing materials. To question whether there were in a particular case two distinct contracts, one for service and another for sale of the packing materials would depend on the evidence. Where, however, there are no such distinct contracts, i.e., where the contract is one and indivisible, and the essential portion of that contract is one for service or labour, the question whether the use of the packing materials also charged for in rendering the service would amount to a sale or not, would depend on the intention of the parties. Packing itself might be part of the service stipulated, and the fact that certain materials had to be utilized in rendering that service, might not always mean that there was a sale of packing materials and it might be that packing was incidental to services. The learned Judges there came to the conclusion that the principal contract between the parties was one for service. The packing materials were necessary as an incident to that service and therefore, although property in the packing materials might have passed to the customer and the price therefore had also been included for charging for service, there being no agreement to purchase the packing materials which could be implied in the case, there would be no sale of packing materials. A similar case of packing materials is also to be found in *Guntur Tobaccos Ltd., Guntur Vs. Government of Andhra (now Andhra Pradesh)*, , We here on the footing that the contract of work of redrying tobacco, its storage



for the requisite period and packing such redried tobacco was one and interval with procedure of redrying, it was held that an agreement of sale of packing materials could not be implied. Though the test suggested there might not appear to be a determinative test, for that would equally apply even to a pure works contract, the decision really turns on the footing that the contract was a service contract was one and indivisible and the supply of packing materials was ancillary to the contract of work and service.

(5) Thus, the principles that emerge from these decisions are (1) that the questions whether a contract in question is for work and labour or is a composite one, depends upon the intention of the parties and whether there is an agreement, express or implied, of sale of materials used in producing the article in question, and (2) that mere passing of property in the materials used is not enough unless the passing of such property takes place as a result of an agreement for sale. The learned Advocate General, however, relied upon the unreported judgment of the High Court of Bombay in Sales Tax Reference No. 6 of 1959, decided by Shah and S.T. Desai JJ., D/9-7-1959 (Bom) . That decision, however, does not make any difference to the two principles stated above. The facts in that case no doubt were somewhat similar to the facts before us. Messrs. Royal Gold Embroidery carried on business of embroidering cloth with gold jari. Their customers Messrs. Hasmukhlal & Brothers, who were themselves dealers in embroidered saris, supplied to the assessee, Royal Gold Embroidery, plain silk saris which the assessee embroidered with gold jari purchased by him on his own account. The embroidered saris were then returned to the customers against payment of a consolidated sum which the assessee called the labour charges. These charges included the cost of the jari and the charges for the service rendered. The sales tax authorities sought to include the consolidated charge paid by the customer to the assessee in his turnover. The assessee contended that the contract under which the embroidery work was done was purely a service contract and not a contract of sale. The collector of sales Tax, however, held that the charges paid to the assessee for the work done by him were liable to be included in his turnover. The Sales Tax Tribunal held that ascertained or estimated price of the gold thread supplied by the assessee was liable to be included in the turnover and the charge attributable to the services rendered was not liable to be so included. The learned Judge did not decide the reference as there were sufficient materials to answer the question referred to them and called for a supplemental statement of the case from the Tribunal. But, though they did not finally decide the question referred to them. They observed that the question whether the contract was one of sale or a composite contract for the sale of goods and a contract for the performance of service could not be decided on the application of any one single test. The value of the particular material supplied by the customer on which the embroidery work was done in its relation to the materials supplied by the assessee for performing the service was, though not conclusive an important test. Similarly, the question as to the relative importance of the materials supplied by the assessee and the value of the work

done by him had also to viewed in its proper context to ascertain whether the contract was purely for sale or a composite contract for sale or for performance of service or a contract entirely for service. They however emphasized that though these would be important indications, the real test was one of the parties and a conclusion as to such intention could be only be reached from all the facts and circumstances of the case. The other decisions referred to by the learned Advocate General was also an unreported decision of the High Court of Bombay in Special Civil Application No. 296 of 1957, D/- 16-1-1958 (Bom), Gajadhar Hiralal Ginning and Pressing Factory, Akola v. Sales Tax Officer, by Chainani J., as he then was, and Badkas J. In the case, the Sales Tax Officer started assessment proceedings against the petitioner was a dealer within the meaning of the Central Provinces and Berar Sales Tax Act and that the business of the petitioner was to supply hessian and hoops to customers while executing the contract of pressing bales. The stand taken by the Department was that the turnover of the petitioner in respect of the supply of hessian and hoops was includible in the turnover of his business. On behalf of the petitioner, it was however contended that his business was that of pressing cotton bales so that whenever the petitioner undertook from a customer the work of pressing cotton bales, the business was only of pressing the bales and he was not carrying on the business of supply or selling goods to the customers. In other words, the contract that the petitioner would enter was one of work and labour and not a contract for the supply of goods, namely, hessian and hoops, and therefore, whenever hessian and hoops were used for the purpose of pressing cotton bales, it was only an incidental part of the main contract, namely, the contract of pressing the bales. The Department, on the other hand, contended that the contract was a composite one and that whenever a customer went to the petitioner with an offer that his cotton should be pressed into bales, the petitioner not only had the cotton pressed but he had also to cover the cotton bales with hessian and hoops and that in a transaction of such a character the contract was a composite one which included not only a contract of service and labour but also one of supply of hessian and hoops and that the supply of hessian and hoops was a separable incident of the contract of pressing bales, and therefore could not be considered as an integral part of the transaction of pressing the bales. The learned Judges, on the facts before them, accepted the contention of the Department, but at the same time they were at pains to emphasize that though in such cases contracts may be composite contracts, each case had to be considered on its own facts and the nature of the contract between the parties. They further observed that it was the nature of the transaction which would determine whether the contract in question was a contract of supply of labour or a contract for supply of goods. As already pointed out, the case was decided on the footing that the supply of hessian and hoops was not an integral part of the transaction of pressing the bales and was separable from the contract of service. But, the principle laid down there, which would be determinative of the question whether a contract is composite or not, was not any the different from the two principles formulated above. This decision has recently been followed by the High Court of Babulal Onkarmal and Co. Vs.

The State of Bombay, We agree, with great respect, with the learned Judges there that every contract of service need not always be one and indivisible and that the question whether it is so or not depends upon the facts and circumstances of each case.

(6) The question, therefore, is whether the contract of work of embroidering saris in the present case is a purely work and service contract or whether it is a composite contract. As already stated, the burden of proof that it is such a composite contract is upon the revenue. On the facts of the present case, there can be no doubt that the customer entered into the contract to have the work of embroidery done by or through the applicants. Since the customer supplied only the takas and not the embroidery materials, the contract being one to superimpose on the Sari pieces embroidery work with jari materials, both the parties must be presumed to know beforehand that when the saris would be returned duly embroidered, there would be incorporated in them not only the work of embroidery but also in addition the materials, that is to say, jari materials, thread, etc., and that on the return of the saris to the customer, the property in the jari and other materials would pass to the customer. But, is this enough to constitute a separate implied contract of sale? That question, as we have already stated, depends largely on the question as to what was in substance the contract between the parties. As already stated, mere passing of property in the jari materials would not be enough unless the property passes as a result of a contract of sale. In essence, however, the contract was that the applicants should get the embroidery work done on the sari pieces, and for that work they were to charge the customer a consolidated charge for each sari depending upon the designs the customer wanted and the quantity of jari needed for each such design. It is true that in fixing the charge, the applicants would naturally consider, as prudent businessmen, the quantity of jari materials that would have to be utilised. But the same consideration would also be in the mind of a painter or a sculptor when he makes a portrait or a statue, in one case the paint and canvass and in the other marble. But in neither of the two latter cases can a question arise that there was a sale of canvass or marble. The same would be the case where a solicitor prepares a document of conveyance and gives it to the client. The contract there would be purely one of service and would not be a contract of sale of paper and ink though the property in both of which would pass on the delivery of the document to the client. In our view, the contract in the present case was essentially one of service and work. The contract was one and indivisible and was not separable into two contracts, one for service and the other for the sale of jari materials. It is true, as was pointed out to us by the learned Advocate General, that before the Deputy Commissioner the applicants produced a break-up of his bill, but that as we have already pointed out, was to explain the various ingredients of the bill. As appearing from the application by the applicants before the Deputy Commissioner, the bill given to the customer was in fact a consolidated one and it is also clear from the application that that was the bill which was entered into their books of account. The bill shows that

the charge was for a lump-sum of Rs.5/- or Rs. 4-8-0 per sari, depending upon the design that the customer wanted the applicants to execute. That being the position, the mere fact that the applicants produced together with the consolidated bill a break-up of that bill would not make any significant difference. Taken as a whole, the contract in question in our view was essentially one of work and labour and the supply of the jari materials is the execution of the embroidery work was merely ancillary. In that view, our answer to the question is that the agreement was a contract of work and not a composite one which included a sale of the jari materials. The respondent will pay to the applicants the costs of this reference.

(7) Reference answered.