**(1996) 08 RAJ CK 0049**

**In the Rajasthan High Court**

**Case No :** Civil Special Appeal No. 160 of 1984

Ganpat Ram and Co. — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

**Date of Decision :** 14-08-1996

**Acts Referred:**
Rajasthan Sales Tax Act, 1994 — Section 10(2)

**Citation :** (1996) 3 RLW 52 : (1997) 1 WLC 32 : (1996) 2 WLN 613

**Hon'ble Judges :** B.R. Arora, J;A.S. Godara, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

B.R. Arora, J.—This appeal is directed against the judgment dated 17.4.84 passed by the learned Single Judge, by which the learned Single Judge, relying upon the Division Bench judgment of this Court rendered in Sunder Das Jindal & Co. v. State of Rajasthan and Ors. D.B. Sales Tax Reference No. 14 of 1973 decided on 16.1.84 dismissed the writ petition filed by the petitioner-appellant.

2. The appellant-petitioner is a partnership firm and ''A'' Class Contractor registered with the Rajasthan Canal Project. The petitioner-appellant entered into a contract with the State Government through the Executive Engineer, 17th Division, Rajasthan Canal Project, Bikaner, for manufacture and supply of twenty-five lacs of tiles of 3 cm x 15 cm x 6 cm and fifty-one lacs of bricks of the size 22 cm x 1 cm x 7 cm by mixing heavy clay/soil with the local soil of kiln No. 766 of RMC and, also, of carriage of coal from Bikaner-Lalgarh/Project Stores at Lalgarh to the kiln situated near RD 766 of the Rajasthan Canal, transportation of heavy clay/soil from Khajuwala to kiln site near RD 766 of RMC. The petitioner completed the contract in the year 1979 and delivered the material to the State Government. A notice u/s 10(2) of the Rajasthan Sales Tax Act (for short ''the Act'') was issued to the petitioner by the Assistant Commercial Taxes Officer, B-I, Bikaner on 29.4.82 calling upon him to file the Return. The appellant-petitioner filed the return under protect challenging the jurisdiction of the Assistant Sales

Tax Officer, B-I, Bikaner to assess the petitioner for sales tax for these transactions of manufacture and supply of bricks to the Rajasthan Canal Project and, also, submitted before it a copy of the decision of the Deputy Commissioner of Sales Tax (Appeals), Bikaner showing that these transactions are not exisible to sales- tax and further requested the assessing authority to drop the proceedings and not to proceed further in the matter. The Assessing Authority, however, refused to drop the proceedings without considering the reply filed by the petitioner. The petitioner-appellant, being aggrieved with the action of the Assistant Commercial Taxes Officer, B-1, Bikaner and the proceedings initiated against him for the assessment of the tax relating to the transaction of manufacture and supply of bricks, filed the writ petition and prayed that the respondent No. 4, i.e., the Assistant Commercial Taxes Officer. B-1, Bikaner may be restrained to assess the petitioner for its sales tax liability in respect of the agreement with the Rajasthan Canal Project and the notice dated 24.1.83 (Annexure P. 15) issued by the Commercial Taxes Officer, Bikaner may be quashed and set-aside.

3. The writ petition was opposed by the Commercial Taxes Department. The case of the State and the Department in reply is that the contract entered into between the petitioner and the Rajasthan Canal Project was a contract for sale and exigible to tax. The learned Single Judge relying upon the judgment of the Division Bench of this Court rendered in M/s. Sunder Das Jindal & Company''s case, dismissed the writ petition filed by the petitioner. It is against this judgment dated 17.4.84 that the appellant has preferred this appeal.

4. It is contended by the learned Counsel for the appellant-petitioner that (i) the terms and conditions of the agreement, in the case of the appellant, are entirely different from the terms and conditions in M/s. Sunder Das Jindal & Co. ''s case and, therefore, the ratio of the judgment given In Jindal''s case is not applicable to the present case; (ii) the transaction in the present case is purely a ''contract for work'' and not a ''contract for sale'' and the learned Single Judge was, therefore, not justified in dismissing the writ petition filed by the petitioner-appellant.

5. Learned Counsel for the respondents, on the other hand, supported the judgment passed by the learned Single Judge and submitted that the terms and conditions of the agreement in the case of the appellant are the same as they were in the case of M/s. Sunder Das Jindal & Co. and, therefore, the learned Single Judge was justified in dismissing the writ petition filed by the petitioner-appellant on the basis of the judgment in M/s. Sunder Das Jindal & Company''s case.

6. We have considered the submissions made by the learned Counsel for the parties.

7. The controversy involved in the present case, which requires adjudication, is: whether the contract in question is a contract for sale'' of bricks and the tiles or it

 

is a contract for performance of work and services or labour'' to which the supply of bricks and the tiles is incidental ? The answer to this question depends upon the construction of the contract in the light of the surrounding circumstances, the object of the transaction and the intention of the parties while entering into the contract. The intention of the parties in entering into the contract can be ascertained taking into consideration the transaction as a whole in its true perspective. If the passing of the property is ancillary to the performance of the work then it will not render the transaction to a transaction of ''sale''. Even in a contract purely for the work or services, the property may pass to the other party. But, however, the transfer of property for a price, in which the transferee has no previous right, will render the transaction as a transaction for sale. In a contract for work, the property produced or manufactured is not the property of the contractor though the whole materials may be used by him. In a contract for work though the property passes but it does not pass for a price and as such the transaction does not amount to ''sale'' while a contract for sale is a contract, the main object of which is to transfer a property in, and delivery of the possession of a chattel as a chattel to the buyer. In a contract for sale, the property manufactured or produced is the property of the manufacturer till he transfers the same for a price under a contract. Mere transfer in such a matter is not sufficient to constitute ''sale'' but the property must pass for a price.

8. ''Sale'' has been defined u/s 2(o) of the Rajasthan Sales Tax Act,. ''Sale'' according to Section 2(o) of the Act, means every transfer of property by one person to another for cash or deferred payment or other valuable consideration other than by way of mortgage, hypothecation, charge or pledge. To constitute a ''sale'' under the Act, there must be (i) transfer of title and possession in the property which is the sole property of the transferor; (ii) the transfer should be supported by money consideration; and (iii) the transferee has no previous title in that property.

9. The distinction between the ''contract for work and labour'' and the ''contract for sale'' has been pointed-out in Halsbury''s Law of England, Fourth Edition, Volume 41 (para 603 at page 557) in the following words:

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 the main object of which is the transfer of the property in, and the delivery of the possession of, a chattel as such to the buyer. Where the main object of work undertaken by the payee of the price is not the transfer of a chattel as such, the contract is one for work and labour. The test is whether or not the work and the 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.

 

10. Benjamin, in his book "Treatise on the Law of Sale of Personal Property with Reference to the French Code and Civil Law" at page 190, laid down the following proposition to differentiate between a ''contract for sale'' and a ''contract for work'':

A contract whereby a chattel is to be made and affixed by the workman to land or to another chattel before the property therein is to, pass, is not a contract of sale, but a contract for work, labour and materials, for the contract does not contemplate the delivery of a chattel as such.

(2) When a chattel is to be made and ultimately delivery by a workman to his employer, the question whether the contract is one of sale or of a bailment for work to be done depends upon whether previously to the completion of the chattel the property in its materials was vested in the workman or in his employer.

(3) Accordingly,

(i) where the employer delivers to a workman either all or the principal materials of a chattel on which the workman agrees to do work, there is a bailment by the employer; and a contract for work and labour, or for work, labour and material (as the case may be), by the workman.

Materials added by the workman, on being affixed to or blended with the employer''s materials, thereupon vest in the employer by accession, and not under any contract of sale.

(ii) Where the workman supplies either all or the principal materials, the contract is a contract of sale of the completed chattel, and any materials supplied by the employer when added to the workman''s materials vest in the workman by accession, xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx.

11. Benjamin, in "Sales of Goods" (Third Edition) has stated that "where an article is to be manufactured and all the materials are supplied by the person for whom the work is to be done, it is obvious that there can be no sale unless there is a specific transfer of material followed by a re-purchase of the product."

12. In Robinson v. Graves 1935 (1) KB 579 it has been held that "if the employer supplies the principal material, the contract must be one for work and labour; but it should be observed that converse does not hold, for even in the case where all the materials are supplied by the workman, the contract is not necessarily a sale."

13. It is sometimes difficult to decide whether a particular contract is a "Contract for sale" or it is a "contract for performance of the work and service", to which supply of material is incidental. The test, by which the transaction should be judged in deciding: whether a particular contract is a ''work contract'' or a ''contract for sale'', has been emphasised in various decisions of the Supreme

 

Court, some of which have been relied-upon by the learned Counsel for the parties. It is not necessary to embellish this judgment with the several authorities because the tests indicated in these judgments are not exhaustive and do not lay down any rigid or inflexible rule applicable alike to all the transactions. They only afford some guidelines in determining the question, but the determination of the question depends upon the main object of the parties gathered from the terms and conditions of the contract, the circumstances of the transaction, the customs of the trade and the intention of the parties at the time of entering into the contract.

14. In a contract for sale, the main object of the parties is the transfer of the property for a price and delivery of the possession of the chattel as a chattel to the buyer; while in the work contract, there is no transfer of a chattel qua a chattel. For judging the nature of the transaction the Court has to find- out what was the object of the transaction, the intention of the parties while entering into the transaction and the attending circumstances. The ultimate decision of the case turns upon the construction of the terms and conditions of the transaction in the light of the attending circumstances.

15. The appellant entered into a contract for manufacture and supply of the bricks and the tiles by mixing heavy soil with the local soil at kiln No. 766 RD of RMC. The terms and conditions of the contract, which are relevant to resolve the present controversy, are: (i) royalty was to be paid by the Department; (ii) water in moulding area was to be supplied free of cost by the department; (iii) the fresh stack coal from Bikaner-Lalgarh Store Site was to be supplied free of cost at the site; (iv) the payment of carriage of coal and clay Was to be made immediately twice in a month; (v) if the consumption of the coal is 15% more then the Department was to supply coal @ Rs. 175/- per metric tonne including all the taxes and charges, the recovery of which was to be made from the running bills; and (vi) the mixing charges of heavy soil with the local soil was to be paid at the rate of Rs. 8/- per hundred tiles and Rs. 7/- per hundred bricks.

16. The terms and conditions of the contract, therefore, clearly indicate that all the materials, which were used for the manufacture of the tiles and the bricks were supplied by the Government including local soil, heavy soil from Khajuwala, free supply of water and even the coal, which is required for baking the tiles and the bricks, was supplied free of cost. The raw materials used in the manufacture of the bricks and the tiles as well as the baked-tiles and the bricks vested in the Government. There is therefore no question of sale of the bricks and the tiles by the petitioner to the Government. The transaction of manufacture and supply of bricks is a single transaction and both the elements are inseparable and at no stage of line the contractor became the owner of the bricks or the tiles so as to transfer the same to the Government and as such no sale of the bricks or the tiles was involved in the present case. Even from the earlier stage, i.e., since excavation of the local soil, mixing the heavy soil supplied by the department with the local soil, the use of water required in moulding and the coal required

 

for baking the tiles and the bricks, were supplied by the government free of cost and during the whole process it remained the property of the Government and even the bricks and the tiles manufactured by the appellant were, also, remained the property of the Government. The transaction involved in the present case for the manufacture and supply of the bricks and the tiles therefore, was surely a ''work contract'' and not a ''contract for sale.''

17. In: Sunder Das Jindal & Company v. State of Rajasthan and Ors. D.B. Sales Tax Reference No. 14 of 1973-decided on 16.1.84 the Terms and Conditions of the Contract were different from those in the present case. In that case the royalty was payable by the contractor, the cost of water, price of the coal etc. were, also, to be paid by the contractor and the carriage of coal and heavy soil were, also, the responsibility of the contractor and any loss caused due to rains or natural calmities was to be borne by the contractor and only the land was to be provided by the Government. All the cost of the raw-material was to be paid by the contractor, the raw-material as well as the manufactured bricks and the tiles always remained the property of the contractor and, therefore, the transfer of the bricks and tiles were considered as the transfer for price which amounts to ''sale''. While in the present case the property through-out remained the property of the Government and even the raw- materials which were supplied free of cost by the Government, remained the property of the Government. The ownership either of the raw-material or of the manufactured goods never vested in the contractor. The terms and conditions of the contract in M/s. Sunder Das Jindal & Company''s case are different from those in the present case and, therefore, the ratio of Jindal''s case is not applicable to the present case. The learned Single Judge was, therefore, not justified in applying the ratio of the decision in M/s. Sunder Das Jindal & Company''s case to the present case."

18. In: Chandra Bhan Gosain v. State of Orissa 1963 (14) STC 766 and in Commissioner of Sales Tax, Gujarat v. Sabarmati Reti Udyog Sahkari Mandali Ltd. 1976 (38) STC 203 the assessee entered into the contracts for the manufacture and supply of the bricks. In both these cases the land was given free of charges to the contractors and all other materials required for manufacture of the bricks and tiles were to be arranged by the contractor. The manufactured bricks and the tiles, also, remained the property of the contractor through-out. The Supreme Court, in those circumstances, in both the cases, held that the transactions are the transactions for the sale of bricks. The terms of contract of these cases are different from the terms and conditions of the contract in the present case. In the present case, all the raw materials were supplied by the Government. The raw materials as well as the manufactured bricks and the tiles remained the property of the Government. At no stage of time the contractor became the owner of the bricks or the tiles. As such no sale is involved in this transaction. It is essentially a transaction "contract for work and labour" and not a ''contract for sale''. Though there was a transfer of the bricks and tiles to the Department but there was no sale because it was not the property of the contractor at any time and always remained the property of the Government/Department.

 

19. In this view of the matter, we are of the opinion that the learned Single Judge was not justified in applying the ratio and principle of M/s. Sunder Das Jindal & Company''s case in the present case and holding that the transaction is a ''sale''.

20. In the result, the appeal filed by the appellant- petitioner is allowed. The judgment dated 17.4.84 passed by the learned Single Judge is quashed and set-aside and the writ petition filed by the petitioner-appellant is allowed and it is held that the transaction involved in the present case is not a ''sale'' exigible to sales tax.

 