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**(2004) 11 GAU CK 0030**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 2118 of 1999**

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| HCL Info Systems Ltd. and Another | Vs | APPELLANT  |
| Commissioner of Taxes and Others  |    | RESPONDENT |

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**Date of Decision :** 24-11-2004

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Section 16, 2, 2(38), 44(3), 58(A)

**Citation :** (2005) 1 GLR 586 : (2005) 4 GLT 53 : (2004) 4 GLT 53 : (2006) 146 STC 661

**Hon'ble Judges :** P.G. Agarwal, J

**Bench :** Single Bench

**Advocate :** A.K. Saraf, K.K. Gupta, N. Hawelia and M.L. Gope, for the Appellant;  
Govt. Advocate, for the Respondent

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## Judgement

P.G. Agarwal, J.—Heard Dr. A.K. Saraf, learned senior counsel for the petitioner and the learned Govt. Advocate. The petitioner, HCL Info system Ltd, is a limited Company, engaged in sale of office automation products. The petitioner is also a registered dealer under the Assam General Sales Tax Act, 1993, for short the Act.

2. The broad facts leading to the present writ petition may be summarised as follows :

3. The petitioner-Company undertakes maintenance contract of the office automation supplied by it or other company, and on these maintenance services the Company did not pay any tax. The case of the Company is that the maintenance service contract entered into by it with the customers are purely labour and service contract and in course of the executing such contract, if necessary, certain parts are replaced and the worn out or defective parts become the property of the petitioner-Company and thereby there is no transfer in the goods from the petitioner-Company to the customers. The maintenance service undertaken by the petitioner is in respect of Fax Machine and Copier Machine, which is not included in the Schedule VI of the Act. The business premises of the petitioner-Company was inspected by the Inspector of Taxes, Unit-D, Guwahati,

on 9.11.1998 and certain Books of Accounts were seized. Subsequently, a show cause notice dated 31st December, 1998 was issued to the Manager of the Company to show cause as to why the Company should not be prosecuted under Sections 58(A), 59, 61, 16 of the Act, as the Company has suppressed the turnover and defaulted in payment of taxes.

4. The moot point for consideration in this case is, whether the maintenance service contract, wherein the Contractor while providing the repairing services, is also required to supply or replace any parts, whether consumable, or not, amounts to or included in the definition of the works contract; and whether in such cases, there is any transfer of property in goods from the supplier Company to the customers. It is not disputed that while providing this Annual Maintenance Contract, the petitioner-Company, in addition to the labour and services provided by them, is also required to replace any damage or worn out parts of the Fax Machine or Copier Machine which are under service contract with them. We do not find any force in the submission that when such worn out or damage parts are replaced by new parts and as the worn out or damage parts become the property of the petitioner-Company, it does not amount to transfer of property in goods. Merely taking back the damage parts of the machine is not sufficient to hold that there is no transfer of property in goods. Now a days, the often advertisements by consumer companies offering New Cars, T.V.s, Fridge etc. in exchange of old cars. TVs etc. Does it mean that such purchases do not attract tax liability and they are not sale ?

Dr. Saraf, learned senior counsel for the petitioner, however, submits that the main essence of the contract is providing the labour and service to see that the Fax/Copier Machine remain serviceable throughout the year and in order to keep the machine workable throughout the year, if some small parts are supplied or provided in between, it will not amount to sale of goods, as the costs of supplying parts is minimal and the main component is the labour and service provided by the Company. Learned counsel has placed reliance on the observations of the Apex Court in the case of M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], It related to printing of photographs, wherein the Apex Court held that the paper supplied for the purpose of printing of photographs etc. was not the dominant intention of the contract and supplying of such paper will not amount to sale to invite taxation. The Apex Court observed :

"Thus, it is clear that unless there is sale and purchase of goods, either in fact or deemed, and which sale is primarily intended and not incidental to the contract, the State cannot impose sales tax on a works contract simpliciter in the guise of the expanded definition found in Article 366(29-A)(b) read with Section 2(n) of the State Act. On facts as we have noticed that the work done by the photographer which as held by this Court in Kame case is only in the nature of a service contract not involving any sale of goods."

It may be observed here that in a later decision in the case of India Cement, the

Apex Court, had observed that the law laid down in Rainbow's case (supra) may not be the correct law. The Apex Court, however, did not set aside its earlier decision. The question that emerges is what is the essence of the contract in the present case, whether it is a simple maintenance contract for supplying labour and service ? As we know or as we come across, the annual maintenance contract are of two types - (i) Where the supplier provides labour and service and its expertise only; (ii) Where along with the labour and service the supplier undertakes to provide the necessary spare parts. In the second case the supply of spare parts is on the basis of costs to costs, i.e. the receiving company undertakes to pay separately for the spare parts, if required to be supplied by the supplier or in the alternative the customer may procure from open market. Secondly, the supplier company undertakes to include the costs of all spare parts, wherein the risk is with the supplier company, in a given case, during the whole year the supplier company may not have to spend anything on account of the spare parts or in a given case, he may have to spend substantial amount on such spare parts. In some cases the receiving Company is required to make available these spare parts required for the maintenance of the machine and in these cases the receiving Company may obtain these spare parts either from the supplier or from the open market. Thus, in the above scenario, we find that the supplying of spare parts or replacing of the worn out parts is not the essence of the service contract. The service contract merely provides for providing labour and expertise for maintenance of the machine to keep them workable. The ratio of law laid down in the Rainbow case (supra) is not applicable in the matter of annual maintenance contract and wherever spare parts or other parts are supplied, it will amount to transfer of property in the goods form the supplier to the receiver/customer.

Section 2(38) of the Act defines the work contract :

"works contract means and includes any agreement for carrying out.....

(i) the construction, fitting out, improvement or repair of any building, road, bridge, dam or other immovable property; or

(ii) the installation, fabrication, assembling, commissioning or repair of any plant or machinery, whether or not affixed to any building or other immovable property; or

(iii) the overhauling or repairing or dismantling of

(a) any motor vehicle,

(b) any sea-going vessel,

(c) any other vessel propelled by mechanical means,

(d) any aircraft, or

(e) any equipment or necessary part of any of the aforesaid items; or

(iv) the fitting out or fabrication, assembling altering, or reassembling, blending, furnishing, improving, processing or otherwise treating or adapting any goods; and

(v) the supply of goods and provision of know how, designs, labour-supervision inspection, training or other services in connection with any of the operations mentioned in Sub-clauses (i) to (iv) above."

The alternate submission of the learned counsel for the petitioner is that all types of works contract have not been made eligible to tax under the Act. The types of works contract which are made taxable are provided in Schedule-VI of the Act. On perusal of the items mentioned therein at Sl. Nos. 1 to 35, we find that they do not include the maintenance of service contract of the Fax/Copier machines. Schedule-VI was amended by the Assam Act-VI of 1997 with effect from 1.5.1997, whereby Entry No. 36 was added. Entry 36 reads as follows :-

"Other works contract not covered by Sl. Nos. 1 to 35."

In view of the above, we have no hesitation whatsoever to hold that the works contract relating to maintenance of service contract in respect of Fax and Copier machine, has been made taxable with effect from 1.5.1997 only. The petitioner-Company is, therefore, not liable to tax on such contract prior to 1.5.1997. Accordingly, the notice in respect of assessment years 1993-94, 1994-95, 1995-96 and 1996-97 are illegal and without jurisdiction.

The next submission of the learned counsel for the petitioner is regarding the seizure of Books of Accounts. It is submitted that in view of the specific provisions of Sub-clause (3) of Section 44 of the Act, the respondent authorities were duty bound to return their Books of Accounts after 120 days as the Commissioner has not passed any order authorising detention beyond 120 days.

In view of what has been stated above, we hold that the petitioner-Company is liable to pay taxes on the goods supplied in the execution of works contract regarding annual maintenance of the Fax and Copier Machine with effect from 1.5.1997, the date on which Entry No. 36, Schedule-VI, came into force. The notices for the earlier periods, therefore, stand quashed. The respondent authorities will be at liberty to take necessary action under the law in respect of the works contract with effect from 1.5.1997 only. So far the retention of the Books of Accounts are concerned, we direct the respondent authorities to return the same to the petitioner forthwith. The writ petition stands disposed of accordingly.