
(1965) 10 GUJ CK 0008
In the Gujarat High Court
Case No : Sales Tax Reference No. 3 of 1965

Sarvodaya Motor Works

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 08-10-1965

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 2(6), 27

Citation : (1966) 17 STC 261

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

Bench : Division Bench

Advocate : J.R. Nanavati, for the Appellant; A.D. Desai, Assistant Government Pleader and M.G. Doshit, Additional Government Pleader, for the Respondent

Judgement

Shelat, C.J.—The question which arises in this reference is whether the contract sought to be assessed by the revenue was a contract of sale of goods or for work and labour.

2. The applicants carry on business as builders of bodies of trucks and of repairing cars and other vehicles. On 7th August, 1962, they entered into a contract with Messrs Patel Maraman Bhaya and Mohanlal & Co. of Keshod, whereby they undertook to construct the body of a truck belonging to the said firm. The contract set out the various specification "for building the body of the truck on W.B. (i.e., wheel base)". These specifications inter alia provided the size of the body, its length, width and height, and the materials of which the floor thereof was to be made, the manner in which nuts and bolts had to be affixed as also the central pillar, which was to be a folding one, the number of hooks to be affixed and for a cabin with two full size doors for the driver. The contract then states that a lump sum of Rs. 3,021 was to be paid for the work. The contract also contained the following term which the parties added in ink to the printed terms, namely, "The body is to be prepared and delivered on or before 25th August, 1962." It also provided that over and above the said sum of Rs. 3,021, it was the customer who had to pay for the "chanda" (mirror) and charges for

painting, presumably such things as "public carrier" etc. On 31st August, 1962, the assessee prepared two bills, one for the amount of Rs. 1,900 in respect of the materials used for building the body and another for Rs. 1,245, being labour charges.

3. On 26th October, 1963, the applicants applied to the Deputy Commissioner for determining whether the proceeds under the aforesaid two bills were liable to sales tax. The contention of the applicants was that the contract was a contract of work and labour and not a contract of sale of goods. It was alternatively contended that the contract was a composite contract consisting of two distinct agreements, one for the sale of the materials used in the construction of the body and the other for the work done and, therefore, the amount of Rs. 1,245, being the proceeds for work and labour done, would not be includible in the total turnover of the applicants and would not be taxable. By his order dated 30th November, 1963, the Deputy Commissioner held that the contract was one for sale of the body of the truck and that the entire proceeds under the said two bills were liable to tax. Dissatisfied with this order, the applicants filed an appeal before the Sales Tax Tribunal. Before the Tribunal, reliance was placed upon a judgment of this Court in *Kailash Engineering Co. v. The State of Gujarat* ([1964] 15 S.T.C. 574), but the Tribunal distinguished that case and held that the contract was one of sale of the body and the sale proceeds, therefore, were amenable to sales tax. It is the correctness of this conclusion of the Tribunal which is challenged in this reference.

4. The questions that are referred to us in this reference are :-

(1) Whether on the facts and in the circumstances of the case the applicants' contract with the customer was one and indivisible contract for the sale of a manufactured body for a price or whether it was purely a works contract ? and

(2) Whether on the facts and in the circumstances of the case there was composite agreement between the parties consisting of two distinct and separate contracts, one for the supply of materials and the other for doing the work, and whether the tax should be levied on the price of the materials only.

5. Mr. Nanavati who appears for the applicants placed two contentions before us, (1) that on a true interpretation of the contract embodied in the specifications dated 7th August, 1962, the contract was one for work and labour and not for the sale of the body of the truck, and (2) in the alternative, that it was composite contract, one for materials sold and the other for work and labour and, therefore, the amount received for work and labour was in any event not taxable. Mr. Nanavati argued that the Tribunal was in error in interpreting the contract as one of sale of the body of the truck, for the agreement however stated that the entire body was to be delivered and that on the delivery of the truck, the price was to be paid. The contract, therefore, was for the construction and not for the sale of the body. Mr. Nanavati went further and argued that no sooner a plank, nut or a part was affixed, the property in that material would pass to the customer. If

such material was destroyed before the body was completed, the customer would ordinarily have to bear the loss, but that consequence was saved in the instant case because the customer was to pay a lump sum for the entire work and the applicants therefore could not demand the price or part of the price before the work was finished and the body was completed and delivered. On the other hand, the learned Assistant Government Pleader contended that the contract was clearly a contract of sale of the body, that the contract indicated clearly that it was upon the completion of the body and its delivery that the customer would be liable to pay the aforesaid amount of Rs. 3,021, and that it was only when delivery of the completed body was made that the property in it would pass to the customer.

6. In order to appreciate these contentions, it is necessary to bear in mind the difference between a contract for work and labour as distinct from a contract of sale of goods. As stated in Halsbury's Laws of England, Third Edition, Volume 34, page 6, the distinction between the two is often a fine one. A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel to the buyer. Where the main object of the work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour. The test is whether or not the work and labour bestowed 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 sale of a chattel. The question, therefore, which the Court has to address itself in every such case is, what was the intention of the parties when they entered into the contract; was the object of the contract to transfer property in and delivery of possession of the chattel as a chattel to the buyer? If that is so, undoubtedly, the contract would be one of sale. This test was applied by this Court in *Kailash Engineering Co. v. The State of Gujarat* ([1964] 15 S.T.C. 574), where the assessee entered into a contract with the railway administration for the performance of the work of building, erecting and furnishing of third class timber coach bodies on broad gauge underframes to be supplied by the railway administration. Under the contract, the assessee was entirely responsible for the timely procurement of all materials required for the construction of coaches, and the materials and the plant brought by the assessee upon the land occupied by the assessee in connection with the works and intended to be used for the execution thereof was, immediately they were brought upon the land, to be deemed to be the property of the railways. The question there was whether the contract was a contract for the sale of goods or a contract for work and labour. After examining the terms of the tender filed by the assessee and the contract entered into with the President of India, K. T. Desai, C.J., who spoke for the Bench, held that the tests laid down in the aforesaid passage of Halsbury's Laws of England for the purpose of regarding the contract as a contract of work and

labour, were satisfied in that case, observing that the contract was for carrying out the whole work which had been undertaken by the applicants as contractors and the main object of the contract was one for work and labour. He observed that it was not possible to view the contract as a contract whose main object was transfer of property in and delivery of possession of a chattel as a chattel to the railway. The learned Chief Justice negatived the contention advanced on behalf of the revenue that what was intended by the parties under the contract was the sale of railway bogies as bogies and stated that what the contractors undertook under the contract was to build and erect the coaches on the underframes supplied by the Government and to furnish the same. He came to the conclusion that reading the contract as a whole, it was not possible to hold that there was a contract for the supply of any chattel as a chattel under the terms of the agreement between the parties.

7. The question is, can that be said in the present case ? In *Patnaik & Company v. The State of Orissa* ([1965] 16 S.T.C. 364), a case somewhat similar to the one before us, the agreement between the assesseees and the State of Orissa named the assesseees as body-builders. The State accepted the quotations offered by the assesseees and decided to place orders for the construction of four bus bodies on the chassis supplied by the State. The contract provided that the body-builders would be responsible for the safe custody of the chassis from the date of the receipt of the chassis from the Government till the delivery to him. The completed bus bodies covered by the contract were to be delivered to the Governor on or before 28th May, 1957, for two and 20th June, 1957, for the remaining two buses. It also provided that the passenger bus bodies were to be constructed on the chassis in the most substantial and workmanlike manner, both as regards materials and otherwise in every respect in strict accordance with the specification mentioned in Schedule B to the contract. It further provided that the time allowed for carrying out the work as entered in the contract should be strictly observed by the body-builders and should be reckoned from the date of supply of chassis to them, the time stipulated for the completion of the work being the essence of the contract. It also provided that the works under or in course of execution were at all times to be open to inspection by the Controller or officers authorised by him in that behalf and that such officers would have the right to stop by a written order any work which in the opinion of the Controller was deemed to have been executed with unsound, imperfect, unskilful or bad workmanship or with materials or inferior quality. Under clause 7 of the contract, the body-builders were to be paid fifty per cent. of the cost of body-building at the time of delivery and the rest one month thereafter. The Supreme Court, after considering the terms of the contract, held that the contract was one of sale of goods. At page 376 of the report, the Supreme Court observed :

"Suppose a fire were to be take place on the premises of the appellant and before delivery the bus bodies were destroyed or spoilt. On whom would the loss fall ? There can only be one answer to this question, and that is that the loss

would fall on the appellant. Clause 1 of the agreement provides for insurance of the chassis but there is no provision regarding insurance of bus bodies. Therefore, it follows that till delivery is made, the bus bodies remain the property of the appellant. It could, if it chose to do so, replace parts or whole of the body at any time before deliver. It seem to us that this is an important indication of the indication of the parties. If the property passes at delivery, what does that pass in ? Is it movable property or immovable property ? It will not be denied that the property passes in movable property. Then was this the very goods contracted for ? Here again the answer is plainly in the affirmative."

8. It is clear that the conclusion that the contract in question was one of sale of goods was arrived at on to the footing that the intention of the parties, when they entered into the contract, was that the assesseees were to sell the bodies of the buses after completing them and that was indicated from the fact that property in those goods was not to pass to the State until they were completed and delivered. Similar, in *McKenzie's Ltd. v. The State of Maharashtra* ([1965] 16 S.T.C. 518), where also the facts were somewhat analogous to the facts before us, the Supreme Court came to the same conclusion, namely, that the contract was one of sale of goods. The appellants, Messrs McKenzie's Ltd. were engaged in the business of body-building on motor chassis. They entered into a contract for the construction of 218 bodies with the Government of India. The price agreed upon was Rs. 1,730 per body. In pursuance of the contract, the appellants presented a bill for five bodies supplied by them on 29th June, 1956, for Rs. 8,650. u/s 27 of the Bombay Sales Tax Act, 1953, they applied to the collector for determination of the question whether they were dealers as defined by section 2(6) in relation to their activity as body-building contractors and whether the body-building contracts constituted sales. The Supreme Court observed that the contract in question was entered into for the construction and supply of 218 bodies and the total quantity was to be delivered on 15th February, 1956. Under the agreement, a pilot body had to be submitted within forty-five days from the receipt of A/T or chassis, whichever was later, and delivery was to commence forty-five days after approval of the pilot body. Delivery was to take place ex-workers, Bombay, and the price per unit as aforesaid was Rs. 1,730. The Supreme Court held that reading the contract as a whole, it was a contract for sale of goods and not a contract for work and labour. They observed that the bodies were spoken of as composite bodies or as units throughout the contract and property in the bodies passed to the Government on delivery, and when the property passed the bodies were goods. The two test laid down in coming to this conclusion were (1) that the bodies which the appellants were to construct were composite bodies or units, and (2) that the property in those bodies passed to the Government on delivery thereof.

9. Do these considerations apply in the present case and can it be said that under the contract what was agreed to by the applicants was to sell the body of the truck as goods ? It will be seen that as in the case of *Messrs McKenzie's Ltd.* ([1965] 16 S.T.C. 518), the applicants have been carrying on the business as

body-builders on motor chassis to be supplied by customers. As in that case, the chassis belonged to and was to be supplied by the customers and the body of the truck was to be attached and built thereupon. The agreement no doubt contained what are called specifications but those specifications were intended to ensure that the applicants constructed the body in accordance with them and in accordance with the requirements of the customer. Therefore, it is not possible to read in those specifications what Mr. Nanavati wanted us to do, namely, that they constituted sale of materials to be embedded in the body and that the contract was therefore a works contract or, in the alternative, a composite contract of sale of materials and of work and labour. At the top of the contract it has been clearly stated that what follows therein were the specifications for building the body of the truck, that is to say, in what manner and with what materials the body was to be constructed. What are called specifications in the contract, therefore, are not an indication that the contract was a contract for work and labour or a composite contract for the sale of materials and for work and labour. The term in the contract which is significant is the last one which, as we have already stated, was added by the parties to the printed terms, namely, that the body was to be prepared and delivered to the customer by 25th August, 1962. In our view, the Tribunal has rightly emphasized this condition. Besides this term, the contract also provides for the payment of a lump sum of Rs. 3,021 as consideration for the supply of the body. The contract thus makes it clear (1) that the work to be done was the making of the body as a unit though various things and gadgets had to be attached and fixed to the body, and (2) that the sum of Rs. 3,021 was to be paid to the applicants on their completing the body and delivering the same on or before 25th August, 1962. These features of the contract indicate that property in the body was to pass to the customer on the body being completed and delivered to the customer by the date specified in the contract. The present case, in our view, is on all fours with the case of Messrs McKenizes, Ltd. ([1965] 16 S.T.C. 518), and the decision of the Supreme Court must apply to the present case. The fact that the body was to be affixed on the chassis belonging to the customer, to the fact that delivery was to be given ex-works of the applicants, make no difference at all. In our opinion, it is not possible, as canvassed by Mr. Nanavati, to say that the contract was a contract of work and labour, much less, it is possible to agree with his alternative contention that the contract was a composite one, partly for sale of materials and partly for work and labour done. In our view, the contract was one and indivisible and it was that the assessee was to build a body on the chassis belonging to the customer in accordance with the specifications contained in the contract and when the body was completed the applicants were to deliver the same to the customer against the lump sum of Rs. 3,021. Therefore, it was when the body was so delivered that the property in it would pass to the customer. It is not possible to agree with Mr. Nanavati that the property in the materials used by the applicants would pass to the customer as the applicants went on using them while building the body, plank, and nail, as he contended. As already stated, the present case is on all fours with the case of McKenizes, Ltd. ([1965] 16 S.T.C. 518) and it is not possible to distinguish that

case from the case before us. The decision, on the other hand, in *Kailash Engineering Co. v. The State of Gujarat* ([1964] 15 S.T.C. 574) cannot apply to the present case as the contract was different from the present contract. It is true that the applicants made out two bills, one for Rs. 1,900 for the materials used by them in the construction of the body, and another for Rs. 1,245 for work and labour done. But the fact that the applicants made out two bills and split up their claim against the customer would make no difference because under the contract what was payable to them was the lump sum of Rs. 3,021. The assessee's splitting up of that amount in two bills would be hardly relevant because by dividing that amount or making out two bills they would not be able to change the nature of the contract.

10. Mr. Nanavati drew out attention, however, to a decision of the High Court of Mysore in *Shankar Vittal Motor Co. Ltd. v. The State of Mysore* ([1964] 15 S.T.C. 771) and relied upon that decision as an authority for construing a contract, such as the one before us, as a contract not for sale of goods but for work and labour. In that case, the assessee, a bus transport operator, owned an automobile workshop wherein he constructed bodies of buses, lorries and vans over the chassis supplied by customers for a fixed and stated amount in one lump sum. The assessee used his own materials, skill and labour to construct the bodies and the parties, after constructing, took delivery of the vehicles and paid the agreed amount. The assessee did not sell ready-made bodies but built the bodies piece by piece and part by part on the chassis supplied by the customers. The High Court held that the transaction did not amount to sale of goods but was a contract for work and labour and therefore the turnover relating to the transaction was not liable to sales tax. After reciting to the passage referred to by us from Halsbury's Laws of England and certain passages from Benjamin on Sale (Eights Edition, Part II, Chapter I, at page 161), the learned Judges in paragraph 17 of the judgment observed :-

"We have earlier seen that the chassis supplied by the customers continued to be the property of the customers, the assessee being mere bailees. We have also seen that the assessee did not sell ready-made bodies. What the assessee did was "to fix up the body on the chassis, plank by plank, screw by screw, nut by nut etc., directly on the chassis". The moment a plank was fixed to the chassis, that plank became the property of the owner of the chassis by accession. So is the case with the nuts and bolts or for that matter any other part that may have gone into the building of the body."

11. With very great respect, the fact that a chassis was supplied by the customer, coupled with the fact that it continued to be the property of the customer all throughout, would not be a conclusive factor to interpret the contract as being one for work and labour. The fact that the assessee did not sell ready-made bodies but constructed those bodies, either separately or upon the chassis belonging to the customer also would not be conclusive one way or the other and would not necessarily mean that the contract was for work and

labour and not a contract of sale of goods. The true test, as the Mysore High Court has in an earlier decision indicated in the *State of Mysore v. A. C. Made Gowda* ([1961] Mys. L.J. 218) quoted by the learned Judges at page 779 of the report in *Shankar Vittal Motor Co.'s case* ([1964] 15 S.T.C. 771), is that if the work and labour is of the essence of the contract it would be a contract of work, but if on the contrary the substance of the contract is the production of something to be sold to the customer, it would be a contract for sale of goods. At page 780 of the report, the learned Judges however have relied upon another decision of their High Court in *Thammiah v. State of Mysore* ([1962] Mys. L.J. 551) as having laid down the proposition that one of the tests to find out whether a given case was sale of goods or works contract was to see whether the work done by a person was work done on his own chattel, or on the Chattel of someone else. If it was of his own chattel and that chattel was later sold, then it was sale of goods, but if the work was done on customer's chattel then it was works contract. With very great respect, the proposition laid down here would be contrary to the decision of the Supreme Court in *Patnaik & Company's case* ([1965] 16 S.T.C. 364) and also in the case of *McKenzies Ltd.* ([1965] 16 S.T.C. 518) for in both the cases the chassis belonged to the customers and yet, considering the terms of the contract, the Supreme Court came to the conclusion that the contract was a contract of sale of goods notwithstanding the chassis being of the ownership of the customers. It is possible, however, to say that the contract before the Mysore High Court was one of work and labour, for the terms in that contract were entirely different from the terms of the contract before us or the contracts in the two cases before the Supreme Court. The contract in the Mysore case amongst other things provided that the contractors agreed and legally bound themselves "to perform the work as desired in the annexed Schedule and at rates specified therein." It appears from the facts stated in the decision that unlike the present case, the assesseees were to be paid not in lump sum but according to the rates. But it seems that an estimate of cost was given by the assessee and therefore the contract also provided that the body building charges were to be in the neighborhood of about Rs. 7,000 per each body. The contract before the High Court of Mysore therefore was in no way analogous to the contract before us and therefore Mr. Nanavati cannot find assistance in that decision. As already stated, the contract before us is similar to the one in the two decisions of the Supreme Court and as already observed, it is not possible to distinguish the case of *McKenzies Ltd.* ([1965] 16 S.T.C. 518) from the present case.

12. The result, therefore, is that we must answer the questions against the applicants. Our answer to question No. 1 is that the contract was one and indivisible contract and that was for the sale of the body, that is to say, it was a contract for the sale of goods and was not a contract of work and labour. In view of our answer to the first question, it does not become necessary to answer the second question, for in the view we take of the first question, the second question cannot arise. The applicants will pay to the State the costs of this

reference.

13. Reference answered accordingly.