
(1977) 02 BOM CK 0004

In the Bombay High Court

Case No : S.T.R. No. 28 of 1975 & Sales Tax Reference No. 28 of 1975

Sentinel Rolling Shutters and Engineering Co. Pvt. Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 24-02-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61(1)

Citation : (1977) 6 CTR 541 : (1977) 39 STC 504

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax, AIR 1978 SC 1747 : (1978) 4 SCC 260 : (1979) 1 SCR 644 : (1978) 42 STC 409 : (1978) 10 UJ 766

Kania, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"). The question referred to us for our determination is as follows :

"Whether, having regard to the facts and circumstances of the case, the Tribunal was justified in law in coming to the conclusion that the contract in question essentially consisted of two contracts, one for supply of materials for money consideration and the other for service and labour done ?"

2. The relevant facts are as follows : By their application dated 16th September, 1972, made to the Commissioner of Sales Tax the applicants-assesses set out that they were dealers registered under the said Act and holding a registration certificate. In the said application the assessee stated that they were carrying on business as engineers, contractors, manufacturers and fabricators, and in the course of their business they entered into a contract with M/s. C. M. Shah & Co. Pvt. Ltd., Bombay (hereinafter referred to as "Shah & Company"), to fabricate, supply, erect and installed their "Sentinel" pull and push type and gear type rolling shutters made out of mild steel. The said shutters were to be installed at

the site, viz., Sidheshwar Sahakari Sakar Karkhana, Sholapur. The assessee also stated that they were required to depute their technicians to carry out the work of erecting, installing and fixing the said rolling shutters manufactured by them at their works at Bombay. The assessee further stated that for the purpose of executing the above work they had purchased various materials on which they had paid tax as required by the said Act. The assessee contended that the aforesaid contract entered into by them was an entire and indivisible contract of work and labour and not a contract for sale. The assessee, inter alia, submitted for the determination of the Commissioner the question as to whether the aforesaid contract amounted to a sale under the said Act. Along with this application the assessee sent to the Commissioner a copy of the aforesaid contract which shows that the contract was for fabrication, supply, erection and installation of the said pull and push type rolling shutters and also gear type rolling shutters. The price mentioned was a comprehensive price. The relevant typed terms in this contract are as follows :

"Delivery : 6/8 weeks ex works from the date of receipt of the final confirmation of the order.

Scaffolding materials and unskilled labour required at the time of erection are to be provided by purchasers at their own cost.

Terms of payment : 25 per cent. advance, 65 per cent. against delivery and remaining 10 per cent. after completion of erection and handing over of shutters to the satisfaction of your clients."

3. The relevant printed conditions, which appear on the contract, are as follows :

"2. Once the delivery of the goods is effected, rejection claims cannot be entertained.

3. The manufacturers shall always see that the goods are manufactured in accordance with the order and shall deliver the same in good condition but no claim for damage, breakage or complete loss can be entertained once the delivery has been effected.

4. All erection work shall be carried out at customer's own risk and no claim for incidental structural breakages, damages to the property of the customers or others shall be entertained. All masonry works required before and/or after erection shall be carried out by customers at own cost.

* * * 7. Time shall not be deemed to be essence of the contract; but efforts will be made by the manufacturers to effect deliveries as agreed to herein in time under normal circumstances.

* * * 10. All payments shall be on overall measurements only. Customers desiring to check the correctness of the overall measurements shall notify their intention in advance and shall get the measurements checked before installation. No dispute on this ground shall be entertained once the erection is completed."

4. It may be noticed at this stage that the rate charged under the contract was according to measurements of the said shutters. From the copy of the bill dated 19th August, 1972, sent by the assesseees to Shah & Company, it appears that at the foot of this bill the assesseees have put a rubber stamp showing that their registration certificate under the said Act was in force on the date on which "the sale of the goods specified in this bill/memorandum" was made. The Tribunal has taken on record a document describing in some detail the types of rolling shutters supplied by the assesseees to Shah & Company under the aforesaid contract. This description shows that these rolling shutters are generally manufactured out of 20"G or 18"G thickness of metal. This document contains a description of the types of rolling shutters, of the various parts which go into the making of these shutters and of the method of fixing the same. The Deputy Commissioner of Sales Tax (Adm.) I, Bombay City Division, Bombay, who determined the application of the assesseees, held that the contract between the assesseees and Shah & Company was divisible and further held that out of the total cost the erection charges would be 5 per cent. and the rest of the amount represented the sale price of the said shutters. The assesseees filed an appeal against this decision before the Tribunal by way of Appeal No. 14 of 1973. After considering the submissions of both the sides and the terms and conditions of the contract as well as other relevant circumstances, the Tribunal confirmed the finding of the Deputy Commissioner of Sales Tax that the contract between the assesseees and Shah & Company was a divisible contract. The Tribunal further found from the terms and conditions of the contract that 90 per cent. of the consideration, which was to be paid at the stage of delivery, represented the amount payable on the contract of sale and the balance of 10 per cent. represented the charges for work and was not liable to tax. The aforesaid question arises from this decision of the Tribunal.

5. The submission of Mr. Shah, the learned counsel for the assesseees, is that the contract between the assesseees and Shah & Company is an indivisible contract of work and labour, and hence no tax under the said Act can be levied on the transaction effected by this contract. It was urged by him that the work involved in the erection and installation of the said rolling shutters involved a great deal of skill and labour and the intention of the parties was not the sale and purchase of the said shutters as such but the installation thereof in the said factory premises at Sholapur. On the other hand, it is the submission of Mr. Phadkar, the learned counsel for the department, that the said contract is a divisible contract. Although embodied in one document, there are really two contracts entered into between the assesseees and Shah & Company; one of these contracts, which is, as it were, the main contract, is for the supply and sale of the said rolling shutters and there is a further contract for the installation of these shutters in the said factory premises at Sholapur.

6. In determining the aforesaid question, there are some principles which have to be borne in mind. As observed by the Supreme Court in *State of Rajasthan v. Man Industrial Corporation Ltd.* [1969] 24 S.T.C. 349 sc , whether a particular

contract is one for sale of goods or is a contract for service depends upon the main object of the parties gathered from the terms of the contract, the circumstances of the transaction and the custom of the trade, and no universal rule applicable to all transactions may be evolved. In *State of Gujarat (Commissioner of Sales Tax, Ahmedabad) Vs. Variety Body Builders*, the Supreme Court has said that it can be treated as well-settled that there is no standard formula by which one can distinguish a contract of sale from a contract for work and labour. There may be many common features in both the contracts, some neutral in a particular contract, and yet certain clinching terms in a given case may fortify a conclusion one way or the other. It will depend upon the facts and circumstances of each case. The question is not always easy and has for all the time vexed jurists all over. Reference may also be made here to our decision in *Hindustan Tiles and Cement Industries v. State of Maharashtra* [1975] 36 S.T.C. 326. We have observed in this case as follows :

"The position in law is now well-settled by a number of decisions of the Supreme Court. There can be a contract simpliciter for the sale of goods. There can also be a contract simpliciter for work and labour in which all that is rendered by the party contracting to do work or provide labour is either the doing of the work contracted for or the providing of the labour stipulated. Neither of these two types of cases can, from the nature of things, give rise to any difficulty. A difficulty, however, arises when in a contract not only work is to be done but the execution of such contract requires the providing of materials by the contractor, namely, by the person undertaking the work and labour part of the contract. In such a case there are three distinct types of contract which the parties can enter into : the first, a contract for the sale of goods in the supply of which or for bringing such goods into being, some work and labour will have to be done by the seller; the second, a contract in which work and labour will have to be done and any supply of materials which will be involved in the execution of the contract is merely incidental thereto; and the third, a contract which is a composite contract, one part of it being for the supply of goods, and the other part for work and labour. In the last type of contract, the two contracts, one for the sale of goods and the other for the rendering of work and labour, may either be in separate documents or, as is more often the case, embodied in the same document. The test for determining in which category a particular contract will fall depends upon the intention of the parties Where the intention of the parties is that goods should be sold and delivered and, in addition thereto, work and labour should also be done or carried out, the intention of the parties is to enter into two contracts, one for the sale of goods and the other for work and labour, even though these two contracts are embodied in one document."

7. It is in the light of these principles that we have to consider the matter before us. Coming to the terms of the contract between the parties, the more important ones whereof we have set out earlier, it is significant that delivery of the said shutters was to be effected after six to eight week ex works, which would mean that delivery would be effected at the factory of the assessee in Bombay.

Condition No. 2 of the printed conditions shows that once the delivery of the goods was effected claims for rejection could not be entertained. Condition No. 3 shows that once the delivery was taken no claim could thereafter be made by the party taking delivery for damage, breakage or complete loss. Condition No. 10 shows that payment was to be made on the basis of overall measurements and the measurements would be checked before installation. The terms of payment show that 90 per cent. of the amount payable under the contract was to be paid by the time of delivery of the said shutters, viz., 25 per cent. advance and 65 per cent. against delivery, and only the remaining 10 per cent. was to be paid after the completion of erection. It is true that under the contract the assesseees were to erect or installation the said shutters at the said factory premises at Sholapur. But it is significant that condition No. 4 provides that all masonry works required before and after erection would have to be carried out by Shah & Co. and the typed conditions in this regard show that unskilled labour was to be provided also by Shah & Company. On a fair reading of the terms and conditions it appears to us that once delivery of the goods, namely, the said shutters was taken, as provided in the contract, at the factory of the assesseees, the property in the goods passed to the purchaser taking delivery. It also appears to us that this contract is a composite contract comprising of two contracts, the main contract being for the supply of the said shutters and there being a further contract for the erection thereof. We may make it clear that it has not been contended before us at all that the contract in question is really an indivisible contract of sale. The Deputy Commissioner of Sales Tax and the Tribunal have both treated it as a divisible contract and the department here has also supported that view. It appears to us that the view taken by the Tribunal is correct. Mr. Shah laid great emphasis on the fact that 10 per cent. of the amount payable under the contract was payable only after the completion of the erection and handing over of the said shutters to Shah and Company. It was urged by Mr. Shah that this terms showed that until the said shutters were properly erected and put in a working condition the contract was not completed and the assesseees were not in law entitled to get any part of the amount payable under the contract. We are unable to accept this contention. It is true that 10 per cent. of the amount payable is to be paid only on the completion of erection and handing over of the said shutters. If this term is, however, read with the other terms, to which we have referred earlier, it will be clearly seen that once the delivery was taken, at the assesseees' factory in Bombay, no claim for rejection could thereafter be entertained and the erection work had to be carried out at the customer's risk. The unskilled labour required for erection was also to be provided by the purchaser or the customer. In these circumstances, it appears to us that all that was required to be done at the time of handing over of the said shutters after the erection thereof was to show that the shutters were in a working condition. There was no question of rejecting the shutters at that time. It is true, as pointed out by Mr. Shah, that, in terms, the contract between the parties provides for a composite price. But, in our view, the terms of payment show that out of this amount 90 per cent. represented the price of the shutters and 10 per cent. could be attributed to the

charges for erection. This is the view which the Tribunal has taken on consideration of all the relevant facts, and we see no reason to take a different view.

8. One other contention of Mr. Shah may also be noticed at this stage. It was urged by him that the work of manufacturing the said shutters and of erecting them at the site was of a highly technical and complicated nature. He contended that, really speaking, what the parties were bargaining for under the said contract was not the shutters as such but for the shutters as installed. As far as the question of the skill involved in the manufacturing of the shutters is concerned, we may point out that this would not be very material to the decision of the question before us. If a person places an order with a manufacturer for certain goods to be prepared according to his specification, the mere fact that skill and labour would have to be expended in the manufacture of these goods would not be any ground for saying that the transaction is not one of sale. As far as the skill and labour involved in the work of erection of the said shutters is concerned, the Tribunal has noted in detail the work which the assessee had to carry out and after considering the same has pointed out that this work briefly consists of making correct markings on the walls, adjustments of tension of springs, tension testing and fixation of channels, and of gear boxes in the gear type of shutters. Taking into account all these factors the Tribunal has come to the conclusion that though it involved technical work to be done by experienced persons, the predominant idea under the contract was not of obtaining the technical skill of the assessee but of obtaining the supply of the said shutters and thereafter getting them erected in the factory premises. We are inclined to agree with this view of the Tribunal. We have examined the nature of the work which the assessee were required to do and which we have briefly described above. We are of the view that although it is work which does require some skill and ability, it is not work of a highly complicated nature, which would require a very high degree of technical skill, and work of this type cannot be compared with the work of setting up an elaborate plant or equipment. We are unable to accept the submission of Mr. Shah that the predominant idea underlying the contract was to obtain the skill and labour of the engineers and the mechanics of the assessee.

9. Coming next to the cases cited before us, we would, before referring to the same, like to point out that in determining a question such as the one before us a good deal would depend upon the terms and conditions of the contract in question and the surrounding circumstances. It is, therefore, a somewhat unprofitable exercise to try to compare in detail the terms and conditions of the contracts in the cases cited before us with the terms and conditions of the contract before us. What has really to be borne in mind is the principles laid down in those decisions and whether they have any application to the case before us. We find that considerable support for the view which we are taking can be derived from the decision of a Division Bench of the Allahabad High Court in *Commissioner of Sales Tax v. Vanguard Rolling Shutters and Steel Works*

[1976] 38 S.T.C. 229. In that case, the assessee manufactured iron shutters according to the specifications given by the parties and then fixed them at their premises. The price charged included the price of shutters as also the cost of labour involved in fixing them at the premises. Under the terms of the contract the shutters had to be carried to the site of the purchasers at their cost and the assessee's responsibility ceased when the shutters left the assessee's premises. The masonry work had to be done by the purchasers at their cost, according to the assessee's instructions. The assessee was entitled to receive full price of the shutters against delivery prior to despatch or documents by bank and there was no provision for making any payment after fixing. It was held that under the terms of the contract, the supply of shutters was a sale liable to tax and the contract was not a works contract. It was further held that although the assessee had also undertaken to fix the iron shutters at the premises of the purchasers, yet that part of the contract was only incidental to the supply of the shutters and the property in the shutters passed to the purchasers when they took delivery of the shutters in the factory premises of the assessee and not when the shutters were fixed in their premises. The terms of the contract in that case are in many regards remarkably similar to the terms of the contract in the case before us. It is true that under the contract before the Allahabad High Court the entire price of the shutters was payable against delivery, whereas in the present case, 90 per cent. of the price was payable against delivery and the balance of 10 per cent. had to be paid after the said shutters were installed and put in working condition. This difference would, however, only show that the contract in the case before us is not an indivisible contract of sale. If the principles in this decision are to be applied, there can be no doubt that the contract before us is a divisible or composite contract and one of the contracts contained in it is a contract for the sale of the shutters for which 90 per cent. of the amount had to be paid as the price. The Division Bench of the Allahabad High Court has, in the aforesaid decision, referred to an earlier observation of the same High Court in *Commissioner of Sales Tax v. Haji Abdul Majid and Sons* [1963] 14 S.T.C. 435, that if an article is sold it makes no difference whether the assessee prepared it in accordance with the specifications given by the customer or had prepared it in anticipation of the order and exposed it for sale. The observation of the Allahabad High Court in this case, viz., *Commissioner of Sales Tax v. Haji Abdul Majid and Sons* [1963] 14 S.T.C. 435, that it makes no difference whether an article is ready-made article or is prepared according to the customer's specifications as also whether the assessee prepares it separately from the thing and then fixes it on or does the preparation and the fixation simultaneously in one operation has been cited with approval by the Supreme Court in *T.V. Sundram Iyengar and Sons Vs. The State of Madras*, . In this case, the question before the Supreme Court was whether the supply for consideration by an assessee of bus bodies constructed and fitted to the chassis provided by the customers amounted to a sale chargeable to sales tax. The Supreme court held that the property in the materials used by the assesseees in constructing the bus bodies never passed to their customers during the course of construction. It was

only when the complete bus with the body fitted to the chassis was delivered to the customer that the property in the bus body passed to the customer. Therefore, the supply of bodies constituted a sale and the assesseees were liable to pay sales tax.

10. We may also refer to another decision of a Division Bench of the Allahabad High Court in *Commissioner of Sales Tax v. Ram Singh & Sons* [1975] 36 S.T.C. 10. In that case, the assessee carried on the business of manufacturing and selling sugarcane machines, parts and cranes, and was assessed to sales tax on a certain sum which represented the amount received by it from two sugar mills for the manufacture and erection of three cranes in the mills. The assessee manufactured the cranes in its factory, constructed structures like columns and bridges at the site of the mills, installed iron rails thereon, fitted the cranes on them and handed over the cranes, after satisfactory trials, in working order. The assessee furnished certificates from the mills that the price received by it included erection and installation charges at the site of the mills. It is significant that even in this case, where the installation work involved required a much higher degree of skill than that involved in the erection work of the shutters in the present case, the court has still taken the view that the contract in question was one of sale and not of work and labour.

11. Mr. Shah placed strong reliance on the decision of the Supreme Court in *State of Rajasthan v. Man Industrial Corporation Ltd.* [1969] 24 S.T.C. 349 (S.C.) In that case, pursuant to an invitation of the Executive Engineer, the assessee submitted its tender for fabricating and fixing certain windows in accordance with specifications, designs, drawing and instructions. The windows were to be fixed to the building with rawl plugs in cut stone-works. The rate quoted by the assessee was based on the current price of mild steel billets and the price was to be revised if there was a change in the controlled price of the billets supplied to the assessee. It was held by the Supreme Court that the contract undertaken by the assessee was to prepare the window-leaves according to the specifications and to fix them to the building. There were not two contracts, one of sale and another of service. Fixing the windows to the building was also not incidental or subsidiary to the sale, but was an essential term of the contract. The window-leaves did not pass under the terms of the contract as window-leaves. Only on the fixing of the windows as stipulated could the contract be fully executed and the property in the windows passed on the completion of the work and not before. Mr. Shah has drawn our attention to an observation in this judgment that fixing of the windows to the building with rawl plugs required special technical skill. It was urged by him that the skill involved in erecting the steel shutters was greater than the skill which would be involved in fixing such windows as were in question before the Supreme Court and hence the present contract should also be construed as an indivisible contract of work. We find that this decision is not very helpful to the assesseees in the case before us. In the first place, in that case it appears that the steel billets were to be supplied by the State of Rajasthan and the price under the contract was liable to revision if there was a change in the

controlled price of these billets. This would show that what the assessee was really engaged to do under the contract was to fabricate the windows out of the steel billets supplied and to fix them to the building in question. Secondly, on the terms and conditions of the contract there, it was found that the property in the windows passed only after they were installed whereas in the case before us we have taken the view that the property in the said shutters passed to Shah & Company once the delivery was taken.

12. Reliance was next placed by Mr. Shah on the decision of the Supreme Court in the case of State of Gujarat (Commissioner of Sales Tax, Ahmedabad) Vs. Variety Body Builders, , to which we have already referred earlier. In that case, the respondent-assessee entered into three contracts with Western Railway (all containing similar terms) for construction of railway coaches on the underframes supplied by the railway. It was held in that case that the intention of the parties at the time of entering into the contract was not the transfer of any completed railway coach by the contractor to the railway. The end-product, being the railway coach, was the result of work, labour and materials of the contractor as well as of the railway as also of the latter's constant supervision and control. From the totality of the material terms and conditions in the agreement, it was not possible to say that the parties intended that the contractor transferred the property in the railway coach to the railway after its completion. The essence of the contract or the reality of the transaction as a whole indicated that the contract was a contract for work and labour. This decision again is of no help to the assessees at all because the terms and conditions of that contract are materially different from those of the contract before us. As we have already pointed out, the underframes were to be supplied by the railway and there was an elaborate provision for constant supervision and control by the railway over the work of construction of the coaches on these underframes. The contractor had to supply constructional materials and fittings which should ordinarily be as per the railway's standard. The railway staff was to work in association with the contractor's staff to the extent required for installation of electrical equipments and so on. In view of the important differences in the terms and conditions of the contracts concerned, this case cannot be of any relevance to the decision of the question before us.

13. We now come to the three other cases cited by Mr. Shah which, in our view, are not of much assistance to the assessees as in those cases the work required to be done by the assessees was of a highly skilled and technical nature and which can bear no comparison with the work of erection of the said shutters in the case before us. In *Mather and Platt Ltd. v. State of Maharashtra* [1969] 24 S.T.C. 496, the contract entered into by the assessees with a mill was to install their patented "Grinnell" automatic sprinkler and fire-alarm system to protect the purchaser-mill against fire. The specification and estimate submitted by the assessees provided not only for the supply of machinery and materials but also for the installation work of an elaborate and technical nature which had to be carried out by the assessees' skilled fitters. It was held that the predominant

intention of the parties to the contract was to carry out the work of installation of the automatic sprinkler plant and the fire-alarm system in the mill and hence the contract was an indivisible contract of service and labour. It is significant that in this case the contract provided in terms that no installation would be deemed to be complete so as to vest the same in the purchaser until fully paid for and the terms of the contract also showed that the property in the installation remained vested in the assessee until the whole of the purchaser price had been paid. In view of this and also highly skilled nature of work involved in that contract, we are afraid that this case cannot be compared with the case before us. In the case of *Otis Elevator Co. (India) Ltd. v. State of Maharashtra* [1969] 24 S.T.C. 525, the contract was for supply, delivery erection and installation of lifts at site and for three months free maintenance of the installation. This work, which was undertaken, was found to be of a highly complicated and technical nature involving considerable experience. It was held there that the contract was an indivisible contract of work and there was no contract for the sale of the lifts as such. In our view, the work involved in that case was of such a highly skilled and technical kind that it cannot compare with the nature of work involved in the case before us. Moreover, there was a provision in the contract there for three months free maintenance of the installation, whereas there is no such provision in the contract in the present case. Reliance was also placed by Mr. Shah on the decision of a Division Bench of the Madras High Court in *Richardson and Cruddas Ltd. v. State of Madras* [1965] 16 S.T.C. 827. In that case, the assessee-company carried on the business of structural engineers and contractors. It was held that where the contract consists of the fabrication and erection of steel structures or buildings on the site of the customer, the main test is to find out whether the customer ever bargained for the sale and purchase of the component parts used in the work of fabrication and erection or construction. If, under the contract, structural materials are to be affixed to the land and only thereafter the property therein would pass to the customer notwithstanding that they were approved by him, and even paid for, the contract would be a works contract. The fact that payments are made before the work is completed in its entirety is not of decisive significance. On the basis of this decision, it was urged by Mr. Shah that in the present case also the property in the shutters passed only when they were erected and fixed in the factory premises and hence the contract must be held to be a works contract. The mere fact that 90 per cent. of the price was payable earlier, it was submitted, made no difference. In our view, the reliance placed by Mr. Shah on this decision is somewhat misplaced. In the first place, as we have already pointed out, on the terms and conditions of the contract before us, we are of the view that the property in the shutters passed to Shah & Co. when delivery thereof was taken ex factory of the assessee. We must also bear in mind that Shah & Company have described themselves in their letter addressed to the assessee dated 11th July, 1972, as civil engineers and contractors having their office in Bombay. The said rolling shutters were to be erected and installed at Sidheshwar Sahakari Sakar Karkhana at Sholapur. It is quite clear that this factory could not have belonged to Shah & Company and

Shah & company must have been engaged for carrying out certain construction work at the site of this factory. It is beyond dispute and it is not disputed before us, that at some stage the property in the shutters supplied by the assesseees did pass to Shah & company and this passing of property could not have been at the stage when the shutters were installed, because the factory never belonged to Shah & Company. In this connection, we may refer to certain observations of the Supreme Court in the leading case of *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, After referring to the leading English case of *Love v. Norman Wright (Builders) Ltd.* [1944] 1 K.B. 484 , the Supreme Court has observed that in the case before it there was no question of an agreement to supply materials as parcel of a contract to deliver a chattel; the goods to be supplied were the curtains and rails which were the subject-matter of the contract itself. Nor was there any question of title to the goods passing as an accretion under the general law, because the buildings where they had to be erected belonged not to the defendants but to the Government and, therefore, as between the parties to the contract, title could pass only under their contract. In these circumstances, in our view, the case of *Richardson & Cruddas Ltd. v. State of Madras* [1965] 16 S.T.C. 827, relied on by Mr. Shah, is not of any assistance to the assesseees. We may also refer at this stage to one other case on which reliance was placed by Mr. Shah, viz., *State of Rajasthan v. Nenu Ram* [1970] 26 S.T.C. 268 (S.C.). In that case, a contract for supplying and fixing wooden windows and doors together with frames and painting them in the construction of the police lines building was held to be an indivisible contract for the supply and fixing wooden doors and windows at the site. It was held that the goods were not sold as movables and the property was to pass only when the wooden chowkhats and windows, etc., were fixed on the site and hence the amount payable to the assessee for the work was not liable to sales tax. This decision also is not very helpful in the determination of the question before us. In the first place, in this decision, the Supreme Court has mainly followed its decision in *State of Rajasthan v. Man Industrial Corporation Ltd.* [1969] 24 S.T.C. 349 (S.C.), which we have already distinguished for the reasons given by us earlier. In this case *State of Rajasthan v. Nenu Ram* [1970] 26 S.T.C. 268 (S.C.) also the property in the wooden chowkhats and windows was to pass only when the same were fixed on the site. Moreover, the Supreme Court has pointed out that on the documents and other relevant facts and circumstances, the High Court was fully justified in coming to the conclusion at which it arrived that the contract was one and indivisible. In the present case, as we have pointed out, the property in the shutters passed at the time when the assesseees took delivery of the same ex factory. We may also point out that both these cases, viz., *State of Rajasthan v. Man Industrial Corporation Ltd.* [1969] 24 S.T.C. 349 (S.C.) and *State of Rajasthan v. Nenu Ram* [1970] 26 S.T.C. 268 (S.C.) , have been distinguished by the Supreme Court in *T.V. Sundram Iyengar and Sons Vs. The State of Madras* , to which we have already referred and for the reasons which we have set out earlier.

14. In our view, the Tribunal was right in taking the view that the contract between the assesseees and Shah & Company was a divisible contract which essentially consisted of two contracts, one for the supply of the shutters of the aforesaid two types for money and the other for service and labour.

15. In the result, the question referred to us is answered in the affirmative. The assesseees to pay to the respondent the costs of this reference fixed at Rs. 300.

16. Reference answered in the affirmative.