
(1968) 06 GUJ CK 0001
In the Gujarat High Court
Case No : Sales Tax Reference No. 13 of 1966

State of Gujarat	Vs	APPELLANT
Sant Kabir Cement Moulding Works		RESPONDENT

Date of Decision : 26-06-1968

Acts Referred:

Citation : (1968) 22 STC 493

Hon'ble Judges : R.B. Mehta, J; B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, A.G. and H.V. Chhatrapati, instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; S.L. Mody, for the Respondent

Judgement

Mehta, J.—The short question which has been referred in this reference is :

"Whether on the facts and in the circumstances of the case the transaction evidenced by bill No. 49 dated 19th January, 1964, is an indivisible works contract or whether it is a composite contract involving the sale of cement jali for an estimated value thereof"

2. The short facts giving rise to this reference are as under :-

The opponent-firm M/s. Sant Kabir Cement Moulding Works is manufacturing cement articles such as flower-pots, benches, sinks, kitchen platforms, jalis, windows etc. The opponent received a letter from an architect on behalf of a customer dated 28th December, 1963, in the following terms :

"You manufacture cement jalis according to designs. Please come with quotations for manufacturing and fitting jalis in the galas (apertures) after seeing our design."

3. The said contract was executed in the following manner. The design was selected by the customer from an album and after the selection of the design, the opponent-firm prepared rough cement blocks on rods. These materials were then taken to the site and they were fitted in the gala or aperture and fastened

in the course of the building operation. When the work was completed it resulted in the jali of the required design. The opponent-firm thereafter preferred a bill, which in this case was bill No. 49, dated 19th January, 1964, in the following words :-

"Gala fitted a cement jali of block danda type in your bungalow according to the measurement 3".11" X 6".9"... Complete. Rs. 159.19 ..."

4. On an application u/s 52 the Deputy Commissioner of Sales Tax held that this transaction involved a sale of cement jali for an estimated value thereof. In appeal the Tribunal held that the contract was one and indivisible works contract and that it did not involve the sale of jali as such. The Tribunal accordingly allowed the appeal. The Tribunal has, therefore, referred the present question to this Court.

5. The principles for determination of a contract of sale and a works contract are now well settled. In the State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [1958] 9 S.T.C. 353 their Lordships at page 381 examined the nature and incidents of works contracts according to the various English decisions. The decision in Tripp v. Armitage [(1839) 4 M.&W. 687; 150 E.R. 1597] was noted, where a builder had entered into an agreement to build a hotel. The agreement provided inter alia that the articles which were to be used for the structure had to be approved by the trustees. When the builder became bankrupt, the dispute arose between his assignees in bankruptcy and the trustees as regards title to certain wooden sash-frames which had been approved on behalf of the trustees but had not yet been fitted in the building. The trustees claimed them on the ground that property therein had passed to them when once they had approved the same. Lord Abinger, C.B., negating this contention observed :

".....this is not a contract for the sale and purchase of goods as movable chattles; it is a contract to make up materials, and to fix them; and until they are fixed, by the nature of the contract, the property will not pass."

6. Parke, B., observed :

".....but in this case, there is no contract at all with respect to these particular chattles, it is merely parcel of a large contract. The contract is, that the bankrupt shall build a house; that he shall make, amongst other things, window-frames for the house, and fix them in the house, subject to the approbation of a surveyor; and it was never intended by this contract, that the articles so to be fixed should become the property of the defendants, until they were fixed to the freehold."

7. This decision had been approved by the House of Lords. Thereafter, their Lordships considered the principle of accretion under which title to the party passes. At page 386 their Lordships pointed out that there could be no question of title to the materials passing as movable in favour of the other party to the contract. Their Lordships further observed that it might be that when the thing to be produced under the contract was movable property, then any material

incorporated into it might pass as a movable, and in such a case the conclusion that no taxable sale would result from the disintegration of the contract could be rested only on the ground that there was no agreement to sell the materials as such. But their Lordships were concerned with a building contract, and in the case of such a contract, the theory that it could be broken up into its component parts and that as regards one of them it could be said that there was a sale must fail on both the grounds that there was no agreement to sell materials as such, and that property in them did not pass as movables. Their Lordships summed up the entire position by observing that the expression "sale of goods" was a nomen juris, its essential ingredients were an agreement to sell movables for a price and property passing therein pursuant to that agreement while in the case of a building contract, it was one entire and indivisible one in which there was no sale of goods.

8. In *State of Gujarat v. Kailash Engineering Co. (Pvt.) Ltd.* [1967] 19 S.T.C.13 a question had arisen before the Supreme Court in the case of the engineering concern which constructed three coaches over the chassis supplied by the Western Railway Administration under a contract with the latter and received money therefor. It was provided in the contract that as soon as the plant and materials were brought on the site where the coaches were to be constructed, the ownership in them would vest in the railway. The coach bodies were not separately described as units or components to be supplied by the respondent to the railway. The duty of the respondent was described throughout the contract to be that of constructing, erecting and furnishing coach bodies on the underframes supplied. At no stage did the contract mention that ready coach bodies were to be delivered by the respondent to the railway. In fact even from the earliest stage during the process of construction of the coach bodies, the unfinished bodies in the process of erection were treated, under the terms of the contract, as the property of the railway. Since these unfinished bodies were to be in the charge of the respondent during construction, the respondent was made liable, under the contract, to reimburse the railway for loss by fire etc. Their Lordships held that as the terms of the contract indicated that the respondent was not to be the owner of the ready coaches and that the property in those bodies vested in the railway even during the process of construction, the transaction was clearly a works contract and did not involve any sale.

9. Applying these settled principles to the facts of the present case, if we turn to the order of the petitioner it clearly mentions that the manufacturer had to prepare and fit the jali in the building gap or aperture (gala) after the design given by him was approved. The said contract was performed by getting the designs from the album first approved and thereafter bringing the materials consisting of rough cement blocks on rods on the site. There was no contract of sale of ready-made jali or even of these materials. The order was clearly an order to fill up the gap by constructing the jali, prepared on the site as per the approved design. Thus, the contract never involved any element of sale of a prepared cement jali or of the raw materials as such. The contract was clearly

one for adopting or suitably filling up the gap in the building or apertures only as per the order given and as per the specified design the jali had to be constructed in that gap. The order was clearly one for a job work contract and the construction as per the specified design and it did not involve any element of sale of a prepared jali or of raw materials. It was clearly one and indivisible works contract in which both the tests as evolved by their Lordships in the Gannon Dunkerley's case [1958] 9 S.T.C. 353 were fulfilled, viz., that there was no agreement to sell any movable cement jali for a price and that the property therein did not pass as movables, pursuant to any such agreement. Such a contract for a job work as per the approved design would not amount to any composite contract of sale, but would clearly be one indivisible works contract. The Tribunal was, therefore, right in treating the transaction as such.

10. In the result, our answer is that it is an indivisible works contract and not a composite contract involving sale of cement jali for an estimated value thereof. The State shall pay the costs of this reference to the opponent-assessee.

11. Reference answered accordingly.