
(1984) 01 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil S.T. Reference No. 14 of 1973

Sunder Das Jindal and Company

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-01-1984

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 2(f)

Citation : (1984) RLW 70 : (1984) 56 STC 89 : (1984) WLN 267

Hon'ble Judges : Kanta Bhatnagar, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; A.K. Mathur, Additional Advocate-General, for the Respondent

Judgement

Dwarka Prasad, J.—This is a reference made by the Board of Revenue for Rajasthan at Ajmer, referring to this Court a question of law arising out of its order dated 19th June, 1970, as directed by this Court u/s 15(3A) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"). The Board of Revenue has referred the following question to this Court for its opinion:

Whether, on the facts and in the circumstances of the case, the applicant can be said to be a "dealer" within the meaning of Section 2(f) of the Rajasthan Sales Tax Act, 1954, for the purposes of the present controversy ?

2. The assessee-firm M/s. Sunderdass Jindal and Co., Suratgarh, entered into a contract on 31st October, 1964, with the Government of Rajasthan for manufacture and supply of bricks and tiles to the State Government for use in the construction of the Rajasthan canal. A tender notice was published by the Executive Engineer, Rajasthan Canal Project, III Desert Division, Suratgarh, inviting sealed tenders on prescribed forms from experienced kiln contractors, for the manufacture and supply* of 256 lacs pucca tiles and 55 lacs pucca bricks at Suratgarh for the use in the construction of the Rajasthan canal, within the specified time. The assessee's tender was found to be lowest and after approval by the Chief Engineer, Rajasthan Canal Project, the Executive Engineer informed

the assessee-firm that its tender for manufacture and supply of bricks and tiles at Suratgarh was accepted and the assessee was directed to start work immediately. An agreement was also entered into between the assessee-firm on the one part and the Executive Engineer, on behalf of the Governor of the State of Rajasthan on the other part. The coal and slack coal was agreed to be supplied to the contractor by the State Government and the price thereof was also agreed to be adjusted from the running bills. The department also agreed to supply water to the contractor from the canal for use in the manufacture of bricks and tiles on payment of nominal price. We shall presently refer to the relevant terms and conditions of the contract.

3. After the completion of the contract, the assessee-firm submitted an application before the Commissioner of Sales Tax, Rajasthan, Jaipur, u/s 12A of the Act, requesting the Commissioner to determine the question as to whether the assessee was a "dealer" within the meaning of Section 2(f) of the Act. It was submitted on behalf of the assessee-firm that it was not a "dealer" as the contract was one for work and labour. The case of the assessee-firm was that it had executed the work of manufacture and supply of bricks and tiles according to the contract entered into with the State of Rajasthan. The case of the assessee was that all the materials necessary for the manufacture of tiles and bricks were supplied by the State Government under the agreement, including earth, coal, water and site for brick kiln. The case of the assessee further was that he only provided labour, for the manufacture of bricks and tiles according to the specifications provided by the State and that the ownership of the materials and the finished goods always remained vested in the State Government. The Additional Commissioner, Sales Tax, Rajasthan, Jaipur, by his order dated 31st August, 1968, held that the contract entered into by the assessee-firm with the Government was for the supply of pucca bricks and tiles for valuable consideration and as such the assessee was a "dealer" within the meaning of the Act, so far as the contract work was concerned.

4. Thereafter the assessee-firm filed a revision petition before the Board of Revenue for Rajasthan at Ajmer. The Board of Revenue by its order dated 19th June, 1970, agreed with the Additional Commissioner and held that the contract entered into by the assessee-firm with the State Government was for sale of bricks and tiles, in the course of business of a contractor and as such the assessee was a "dealer" within the meaning of Section 2(f) of the Act. The assessee then filed an application u/s 15(1) requesting the Board of Revenue to make a reference about the question as to whether the assessee was a "dealer" to this Court. But the Board of Revenue failed to make a reference within the prescribed time. Thereupon, the assessee-firm moved this Court u/s 15(3A) for issuing a direction to the Board of Revenue to refer the question of law arising out of its order to this Court. This Court, by its order dated 3rd April, 1972, held that a question of law does arise out of the order of the Board of Revenue dated 19th June, 1970, and the Board was directed to state the case and refer the aforementioned question to this Court for its answer.

5. Now, a dealer, whose turnover in the previous year in respect of sales or supply of good exceeds the specified limit, is liable to pay tax under the Sales Tax Act on his taxable turnover. The expression "dealer" has been defined in Section 2(f) of the Act as under :

(f) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes-

(i) a local authority, a company, an undivided Hindu family or any society (including a co-operative society), club, firm or association which carries on such business;

(ii) a society including a co-operative society, club, firm or association which buys goods from, sells, supplies or distributes goods to its members;

(iii) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(iv) a casual trader.

6. The assessee would be a "dealer" if the transaction or contract is one of sale of goods, as asserted on behalf of the department and as held by the Board of Revenue. On the other hand, the case of the contractor, assessee-firm, is that all materials, including the earth from which the bricks and the tiles were made and the coal used for burning them and also water, were supplied by the State and the contractor was only required to use his labour and skill in converting the State-owned material into bricks and tiles and as such the contract was not one for sale of goods but it was a contract for work and labour.

7. It is well-settled that whether a particular transaction is a contract for sale or a works contract depends upon the true construction of all the terms and conditions of the agreement, depending upon the intention of the parties executing the contract and the surrounding circumstances. The contract with which we are concerned, is contained in the tender and the conditions of the contract for manufacture and supply of bricks and tiles entered into by the parties. The tender on acceptance by the competent authority constituted the contract between the parties. The tender was for the supply of 55 lacs pucca bricks and 256 lacs pucca tiles at Suratgarh, burnt with the Government coal at the site of the kiln at specified rate per thousand accepted bricks and tiles. Clause 8 of the tender provided that all taxes, octroi and royalty, etc., levied or payable under any rule or regulation by or to the State Government or to any local authority shall be borne by the contractor. It has also been provided in the agreement that the Government shall not bear any loss nor be liable for compensation for any loss or damage occurring to the contractor during the manufacture on account of any natural calamity such as rain, storm, floods or

any other mishap. The contractor was required to deposit an earnest money with the tender for the due and faithful performance of the contract and in case of acceptance of tender, the earnest money was to be merged in the 10 per cent amount retained by the State Government during the currency of the contract, as security for the due and faithful performance of the contract, until final settlement of accounts. Clause (2) of the contract provided that the land required by the contractor for the site of brick kiln, sheds and like purpose would be provided rent-free by the Government. The Executive Engineer would select the land. The contractor was to make his own arrangements for water supply, but in case water was supplied to him from irrigation channel and the Government agreed to supply the same, then for the water thus supplied to the contractor he would be charged 50 paise per thousand bricks and tiles moulded. The bricks and tiles, which shall be supplied by the contractor, shall be of good quality, pucca, thoroughly and equally burnt, regular and uniform in shape and of specified size. The contractor was to prepare his own moulds of bricks and tiles. Clause (4) of the agreement provided that the quantity of slack coal issued to the contractor, if not utilised by him for the specific purpose for which it was issued, as stipulated in the agreement, would be returned by him or the contractor would make payment of the cost of such coal at double the rate at which the coal was supplied to him. The slack coal supplied by the State Government to the contractor would be made available at the rate specified in the contract and the price thereof would be realised in full, from the running payments made to the contractor in accordance with the terms of the agreement. It was also agreed to in Clause (4) that the contractor shall not sell or remove any rejected out-turn of the kiln, without the permission of the Executive Engineer in writing. If any material is not required by the Government, the contractor shall not remove or sell the same on the completion of the contract and if any material is not required by the Government, the same may be released to the contractor with permission of the Executive Engineer and the contractor would be liable to make payment to the State Government at Rs. 1.25 per thousand bricks or 100 cubic feet bats. Clause (7) of the agreement authorised the Executive Engineer, at any time before the bricks or tiles were burnt, to destroy any material which in his opinion was improperly moulded. Any bricks or tiles not coming up to specifications but offered for acceptance of pucca bricks and tiles, would be the absolute property of the State Government and the contractor would have no right to demand any payment whatsoever in respect of same. The Executive Engineer was to supervise the work of the contractor and the manufacture work executed in pursuance of the agreement shall be open to inspection and supervision of the Engineer-in-charge and his subordinates. Clause (11) of the agreement provided that if the Government at any time took over any imperfect, oversized or undersized bricks, the same shall be paid for at the specified rates.

8. The distinction between a contract for sale of goods and a contract for work and labour is that in the case of the former the main object is a transfer of property in delivery of possession of chattel to the buyer.

9. In Halsbury's Laws of England (3rd Edition), Volume 34, the following test has been laid down for deciding whether a contract is for a sale of goods or for labour supplied ? "Was it the intention of the parties in making of the contract that a chattel should be produced and transferred as a chattel for consideration ?

10. Benjamin, in his treatise on the Law of "Sale of Personal Property" (8th edition), laid down the following propositions at page 167 :

1. 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 delivered 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 previous to the completion of the chattel, the property in its materials was vested chattel, in the workman or in his employer. If the intention and result of the contract is to transfer for a price property in which the transferee had no previous property then the contract is a contract of sale.

Where, however, the passing of property is merely ancillary to the contract for the-performance of work such a contract does not thereby become a contract of sale.

3. Accordingly,

(i) Where the employer delivers to a workman either all or the principal materials of 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 materials (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 for sale of the completed chattel, any materials supplied by the employer when added to the workman's materials vest in the workman by accession.

4. The fact that the value of the materials supplied by one of the parties exceeds, the value of the materials supplied by the other, does not conclusively prove that the more valuable are the principal materials.

11. The contention of the learned counsel for the assessee-firm is that land was given free by the State Government and that bricks were made out of earth belonging to the State Government, and therefore, the bricks and the tiles all along have been the property of the State and there could be no transfer of property in them to the State after they were burnt. We are unable to agree with

this contention of the learned counsel. It does not appear that the earth all along continued to belong to the State. When the earth was dug out for making the bricks, the same stood transferred to the assessee-firm though without making any payment. It may be presumed that in quoting his rate for bricks and tiles the contractor would take into account free supply of earth for making the bricks and tiles. But what was supplied by the contractor to the State Government was not earth, but the contract was for supply of bricks and tiles, which are something different from the earth which the contractor got free of charge from the State. It is difficult to presume that it was intended by the parties that property in the earth would always continue in the State, in spite of its conversion by the contractor into a different thing, as bricks or tiles.

12. Another test which may be usefully applied is as to at which party's risk the bricks or tiles remained on the land until they were delivered to the State. The contract speaks of "supply" or "delivery" of bricks and tiles to the State by the contractor. It is clearly contemplated that until the delivery was made, the bricks and tiles, finished or unfinished, remained at the risk of the contractor. Supposing the bricks or tiles prepared or in the process of preparation were destroyed by rain, storm, or flood or other natural calamity, then it was the contractor who would suffer, as there is a clear provision in the agreement that any loss or damage occurring to the contractor during the manufacture, on account of any natural calamity such as rain, storm or floods or any other mishap shall be borne by the contractor and no compensation shall be payable in respect thereof by the State Government.

13. In *C.B. Gosain Vs. State of Orissa*, their Lordships of the Supreme Court dealt with a similar case relating to manufacture and supply of bricks at Rourkela in Orissa. It was held in that case that the contract was for sale although the word "sale" was not used in the contract. Their Lordships held that the contract was for supply of material at specified rate, which showed that the contract was for sale of bricks and that it was transfer of property in the bricks for consideration, notwithstanding the fact that the word "sale" was not used. Their Lordships observed as under in the aforesaid case :

Here the intention of the parties in making the contract clearly was that the company would obtain delivery of the bricks to be made by the appellant; it was a contract for the transfer of chattels qua chattels. The essence of the contract was the delivery of the bricks, though no doubt they had to be manufactured to a certain specification. It would be absurd to suggest that the essence of the contract was the work of manufacture, and the delivery of the bricks was merely ancillary to the work of manufacture....

The fact that under the contract the bricks had to be manufactured according to certain specifications, and therefore, the appellant had to bestow a certain amount of skill and labour in the manufacture of the bricks, does not affect the question. That was not the essence of the contract. The object of the contract none the less remained the delivery of bricks. It has never been doubted that

"the claim of a tailor or a shoemaker is for the price of goods when delivered, and not for the work or labour bestowed by him in the fabrication of them.

14. The same view was reiterated by their Lordships of the Supreme Court in *Commissioner of Sales Tax, Gujarat Vs. Sabarmati Reti Udyog Sahakari Mandali Ltd.*, which was again a case relating to a contract for manufacture and supply of bricks. After extensively detailing the terms of the contract, their Lordships held that the case was governed by the principles laid down in *C.B. Gosain Vs. State of Orissa*. An attempt was made to point out certain distinguishing features of the case. But their Lordships of the Supreme Court held that there was no real distinction, so far as the question of sale of goods was concerned, and observed as under :

All the above terms relate to a stage in the process of proper and efficient manufacturing of bricks and are not inconsistent in a contract of sale. These terms do not appear to impinge on the character of the contract as one for sale of the bricks manufactured. The Government in its overall interest and anxiety for general welfare could insist on compliance with certain beneficial legal measures. It could also insist on certain terms which will ensure efficient production of the material. Provision against sub-letting when the land was given free by the Government is also understandable. All the above features do not negate the concept of a contract of sale of the bricks that are ultimately manufactured. The true test in this case is whether in making the contract brick produced was transferred as a chattel for consideration and we are clearly of the opinion that this has taken place in this case. The property in the bricks was entirely of the assessee. He had not only to manufacture them but also to stack them for facilitating delivery. The essence of the contract was, therefore, the delivery of the bricks after manufacture. The present case cannot be distinguished from the decision of *C.B. Gosain Vs. State of Orissa*,

15. The Madras High Court, however, in *C. Krishnaswami Rao v. State of Madras* 1968 22 STC 146 distinguished the decision of their Lordships of the Supreme Court in *C.B. Gosain Vs. State of Orissa*, on the ground that the contract in the case before them was differently worded and the inferences made by their Lordships of the Supreme Court in *C.B. Gosain Vs. State of Orissa*, could not be made applicable to the *Krishnaswami Rao's* case 1968 22 STC 146. That case was also relating to manufacture and supply of bricks. However, with great respect to the learned Judges, we may observe that the distinction which was sought to be drawn from *C.B. Gosain Vs. State of Orissa*, does not appear to us to be so real as to make a different principle applicable to the contract in *Krishnaswami Rao's* case 1968 22 STC 146. The terms which were considered to be distinguishing in that case were that the contractor had to manufacture bricks by using clay belonging to the Corporation and supply those bricks only to the Corporation and not to any other person. Practically all the materials required for manufacture of bricks were provided by the Corporation itself, which retained overall control over the work of the assessee right from the commencement of

process of manufacture down to the actual supply of bricks. Then there was a stipulation in the contract that neither the clay nor the bricks nor the coal supplied by the Corporation for the manufacture of bricks, even though paid for by the assessee could be utilised by the assessee for any other purpose. Different rates were fixed for supply of bricks at the site of the kiln and at the work site of the Corporation. On these facts, their Lordships of the Madras High Court came to the conclusion that at every stage of manufacture the bricks continued to be the property of the Corporation and what the assessee was called upon to do was only to manufacture bricks out of the earth supplied and to deliver the bricks at the places indicated by the Corporation and thus the contract was a pure and simple works contract. We may humbly submit that similar distinction was sought to be drawn in Sabarmati Reti Udyog Kamdar Sahakari Mandril's case 1972 29 STC 419, but their Lordships of the Supreme Court observed that those terms were inserted in the contract for proper and efficient manufacturing of bricks and were not inconsistent with a contract of sale.

16. The aforesaid decision of the Madras High Court in Krishnaswami Rao's case 1968 22 STC 146 was followed by the Gujarat High Court in Sabarmati Reti Udhog Kamdar Sahakari Mandal Ltd. v. Commissioner of Sales Tax, Gujarat State 1972 29 STC 419 and C.B. Gosain Vs. State of Orissa, was distinguished on almost the same grounds on which their Lordships of the Madras High Court distinguished that case in Krishnaswami Rao's case 1968 22 STC 146 . But the aforesaid decision of the Gujarat High Court was reversed by their Lordships of the Supreme Court in Commissioner of Sales Tax, Gujarat Vs. Sabarmati Reti Udyog Sahakari Mandali Ltd., referred by us above.

17. We may also refer to another decision of the Madras High Court in A. K. Ranganatham & Sons (Pvt.) Ltd. v. Government of Tamil Nadu 1973 32 STC 60 in which their Lordships of the Madras High Court followed Krishnaswami Rao's case 1968 22 STC 146 and the decision of the Gujarat High Court in S. R. U. K. S. Mandal's case 1972 29 STC 419. As the decision of the Gujarat High Court in S. R. U. K. S. Mandal's case 1972 29 STC 419 has been reversed by their Lordships of the Supreme Court, we respectfully submit that the two decisions of the Madras High Court in Krishnaswami Rao's case 1968 22 STC 146 and Ranganatham's case 1973 32 STC 60 cannot be considered as good law, in view of the subsequent decision of their Lordships of the Supreme Court in Commissioner of Sales Tax, Gujarat Vs. Sabarmati Reti Udyog Sahakari Mandali Ltd.,

18. The learned counsel for the assessee cited before us some other cases which are not relevant to the present case and are distinguishable. The cases in State of Gujarat Vs. Kailash Engineering Co., The Commissioner of Commercial Taxes, Mysore, Bangalore Vs. Hindustan Aeronautics Ltd., and State of Gujarat (Commissioner of Sales Tax, Ahmedabad) Vs. Variety Body Builders, relate to the construction of railway coaches. In these cases, their Lordships of the Supreme Court held that they related to pure work contracts, inasmuch as the Union of

India did not become owner only of ready railway coaches, but the property in their bodies vested in the railway even during the process of construction and no sale was involved. Similarly, the case of *State of Madras v. Richardson & Cruddas Limited* 1963 21 STC 245 related to a contract for fabrication and installation of steel structures for a sugar factory in the State of Mysore. It was held by their Lordships of the Supreme Court that the contract was for completing stipulated work and for that purpose to use materials belonging to the employer. If the performance or execution of the contract was accessory to work and labour, the contract must be regarded as a works contract, and not a contract for sale.

19. The distinction between a contract for work done and a contract for sale or for supply of goods has been clearly drawn by their Lordships of the Supreme Court in *Commissioner of Sales Tax M.P. Vs. Purshottam Premji*, wherein their Lordships observed as under :

The primary difference between a contract for work or service and a contract for sale of goods is that in the former there is in the person performing work or rendering service no property in the thing produced as a whole notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party for price. Mere transfer of property in goods used in the performance of a contract is not sufficient; to constitute a sale there must be an agreement express or implied relating to the sale of goods and completion of the agreement by passing of title in the very goods contracted to be sold.

20. In that case the contract was to quarry stones from the quarries belonging to the railway and supply ballast at specified rates. It was held that the property in the ballast at all relevant times remained with the railway and as such the ballast was never the property of the contractor. There was no question of the contractor transferring any property in it to the railway, therefore, there was no sale involved in the supply of ballast by the contractor to the railway under the contract. The case of *Chandra Bhan Gosain* 1963 14 STC 766 was distinguished and it was observed that if it was not of essence that a chattel should be produced and transferred as a chattel, then it may be a contract for work done and not a contract for sale of goods.

21. The decisions of the Supreme Court in the cases of *State of Rajasthan v. Man Industrial Corporation Ltd.* 1969]24 STC 349 (SC) and *State of Rajasthan v. Nenu Ram* 1970 26 STC 268 (SC) relate to manufacture and fixation of doors and windows and those cases are distinguishable as the contract in those cases was not for manufacture and supply of goods but fixation was an essential part of the contract which involved work and labour. As there were no two separate contracts, one of sale and another of service, but there was a joint contract of manufacture and fixation of window leaves or doors and as such the contract was

essentially one for service. Their Lordships of the Supreme Court held in those cases that only on the fixing of the windows or doors, the contract could be fully executed and the property in the windows passed to the employer on the completion of the work and not before.

22. The decision in *Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax*, again related to a case for the manufacture, supply and fixation of iron shutters at the customers' premises for lump sum payment. Their lordships of the Supreme Court held in that case that the contract was indivisible and was not a contract for supply of goods simpliciter, but was a continuous contract involving fabrication of rolling shutters and its actual fitting at the premises and was completed only when the erection of the shutters was complete. Thus, such a contract was held to be a works contract. This case was one of the types of *Man Industrial Corporation Ltd.*'s case 1969 24 STC 349 (SC) and *Nenu Ram*'s case 1970 26 STC 268 (SC). Their Lordships of the Supreme Court reversed the decision of the Allahabad High Court in *Commissioner of Sales Tax v. Vanguard Rolling Shutters and Steel Works* 1976 38 STC 229, which was followed by the Bombay High Court in *Sentinel Rolling Shutters and Engineering Co. Pvt. Ltd. v. Commissioner of Sales Tax* 1977 39 STC 504 . The decision of the Bombay High Court was also later reversed by the Supreme Court in *Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax*, following its earlier decision in *Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax*,

23. The case of *Ram Singh and Sons Engineering Works Vs. Commissioner of Sales Tax, U.P.*, is also similar to the aforesaid cases as the contract was not merely of supply of goods but of fabrication and erection of an electrical overhead three-motion travelling crane. It was held by their Lordships of the Supreme Court that erection was an integral part of the contract and the customer at no stage became the owner of the crane until the property in it was transferred after the erection of the crane.

24. The case of *Patnaik and Company Vs. State of Orissa*, related to a contract for construction of bus bodies on the chassis supplied by the State Government. In that case also *C.B. Gosain Vs. State of Orissa*, was followed and it was observed that the building of the body on the chassis supplied by the State was a contract for manufacture and sale of the bus bodies. It was held by their Lordships of the Supreme Court in that case that the question whether the contract is one for execution of work or for performance of service, or is a contract for sale of goods must be decided on the basis of the intention of the parties gathered from a true interpretation of the terms of the contract viewed in the light of the surrounding circumstances. In that case *Sikri, J.*, as he then was, speaking for the majority of the Supreme Court, applied the same test which we have referred to above, namely, that in case a fire took place on the premises before delivery of the goods and the goods are destroyed or spoiled then on whom would the loss fall ? It was held by their Lordships of the Supreme Court in

that case that till the delivery was made, the bus bodies remained the property of the contractor. In that case, it was further held that a contract for sale of goods to be manufactured did not cease to be a contract for sale of goods, merely because the process of manufacture is supervised by the purchaser.

25. The learned counsel for the assessee referred to some more cases dealing with a contract with a photographer or sculptor, but those cases are also distinguishable as the occupation of a photographer or sculptor or an advertisement company preparing and supplying designs are essentially cases relating to skill and labour and they have been held to be contracts for work and labour. Such cases are also distinguishable from the case before us.

26. In our view, the terms and conditions of the contract in the present case are more or less of the type as existed in the cases before their Lordships of the Supreme Court in *C.B. Gosain Vs. State of Orissa*, and *Commissioner of Sales Tax, Gujarat Vs. Sabarmati Reti Udyog Sahakari Mandali Ltd.*, both of which also related to the manufacture and supply of pucca bricks. Although the earth was supplied free of cost by the State Government to the contractor, yet the coal and slack coal were supplied to him subject to adjustment of price thereof in the running bills of the contractor. Similarly, water was although supplied by the State Government from irrigation canals, but the same was charged. The contractor was responsible for making his own arrangement for the remaining raw materials such as fuel, wood, kerosene, etc. The contract was for manufacture and for supply of bricks and tiles and the property in the bricks and tiles did not pass to the State Government until the delivery was given by the contractor to the officer of the State Government. Until the delivery took place, the goods remained at the risk of the contractor. In case the goods would have been burnt or otherwise destroyed by fire, rain or flood or some other viz., major before the delivery took place, the entire loss would have to be borne by the contractor, according to the terms of the agreement between the parties. Moreover, the contractor was made liable for payment of taxes, octroi and royalty and obviously the taxes included the sales tax as well. There is no doubt that considerable control was exercised by the department and the goods were also subjected to inspection by the department, but that was because of the anxiety of the State Government to see that the bricks and tiles according to the specifications were manufactured within the time-limit. When the State Government was to purchase all the materials manufactured by the contractor-assessee, it was certainly reasonable to exercise the power of inspection and quality control.

27. After considering all the terms and conditions of the contract, we have no doubt in our mind that the contract in the present case was one for sale of pucca bricks and tiles manufactured by the assessee and as the assessee had entered into a contract for sale of bricks and tiles he was a "dealer" within the meaning of Section 2(f) of the Act. The question referred to us is, therefore, answered in the affirmative and in favour of the revenue and against the assessee.