

(1963) 02 AHC CK 0013

Allahabad High Court

Case No: S.T.R. No. 87 of 1956

Commissioner of Sales Tax

APPELLANT

Vs

Haji Abdul Majid and Sons

RESPONDENT

Date of Decision: Feb. 18, 1963

Acts Referred:

- Uttar Pradesh Sales Tax Act, 1948 - Section 11
- Uttar Pradesh Trade Tax Act, 1948 - Section 11(6)

Citation: (1963) 14 STC 435

Hon'ble Judges: M.C. Desai, C.J; K.B. Asthana, J

Bench: Division Bench

Advocate: A.P. Pandey and K.C. Agarwal, for the Respondent

Final Decision: Allowed

Judgement

K.B. Asthana, J.

In this reference u/s 11 of the U. P. Sales Tax Act at the instance of the Commissioner of Sales Tax, U. P., the following question has been referred for decision by the High Court:

Whether in the circumstances of this case the entire cost of the ready-made bodies of the buses is liable to tax under the U. P. Sales Tax Act or only the cost of materials used in the manufacture thereof would be taxable.

2. M/s. Haji Abdul Majid and Sons (hereinafter referred to as the assessee) carry on the business of constructing bus bodies on the chassis supplied by the customers in the town of Meerut. For the year 1950-51 the Sales Tax Officer assessed the assessee on a total turnover of Rs. 82,800 in respect of thirty-six bodies on an average value of Rs. 2,300 each. It appears that due to certain reasons the assessee could not file an appeal against the assessment order in time and applied in revision before the learned Judge (Revisions) who by his order dated 23rd June, 1955,

reduced the taxable turnover to Rs. 62,100 making an allowance of a sum of Rs. 20,700 as the labour charges involved in constructing the bus bodies. The learned Judge (Revisions) found that the bodies of the buses were not transferred in a ready-made form to the owner of the bus and the primary work of the assessee was to construct the body of the bus on the chassis. He held that the initial contract was not for the transfer of any ready-made bodies but only for the doing of the work of construction and that the mere fact that in executing the contract for the work of construction some materials were also to be used would not convert the nature of the initial contract for construction into a sale. Accordingly it was held by him that what was sold by the assessee to the customer was the material used in the execution of the work and the charges for the skill and labour for which the initial contract of work was made could (sic) be treated as a part of the sale. The contention on behalf of the tax authority that the assessee sold to the customer ready-made bus bodies and was liable to tax on the whole turnover of Rs. 82,800 as determined by the Sales Tax Officer was rejected. It is in these circumstances that at the instance of the Sales Tax Commissioner, U.P., the above-said question of law has been referred for our opinion.

3. Sri Shanti Bhushan, Senior Standing Counsel, appearing for the Sales Tax Commissioner submitted that on the facts and circumstances established in the case, the transaction in reality between the assessee and his customer was one of sale of bus bodies in a ready-made form and not the sale of materials used in the manufacture thereof. It was urged that merely because the body is constructed part by part on the chassis supplied by the customer it would not change the real nature of the transaction, as the resultant product which ultimately is fixed to the chassis is a bus body which is "goods" or a "chattel" and thus the transaction is one of sale of goods or a chattel and liable to be taxed. In other words, the transaction in question is of the same nature as the customer selecting a ready-made body from the assessee and then asking him to fix it on the chassis. Sri K. C. Agarwal, the learned counsel for the assessee, submitted that on the facts of the case the real contract between the parties was a contract for work to be carried out by the assessee and no sale of any chattel or goods was involved. He urged that the transaction is of the same nature as that carried on by a building contractor according to specifications.

4. On the contentions raised by the learned counsel for the parties the material question that falls for determination is whether the transaction in its true nature is a transaction of sale of goods or chattel, that is, of bus bodies. Turnover as defined in Clause (i) of Section 2 of the U. P. Sales Tax Act means the aggregate amount for which the goods are supplied or distributed by way of sale or bought or sold by a dealer. It has not been disputed on behalf of the assessee that a readymade bus body would be "goods" and if a dealer carried on the business in the supply or distribution of ready-made bus bodies by way of sale, then the aggregate amount for which such bus bodies were sold would represent his turnover liable to be taxed under the Act. The question then arises, will the circumstance that the purchaser

places an order for building a body according to specifications on the chassis supplied by him and the body is built by the assessee part by part on that chassis make any difference, that is, whether the contract in the latter circumstance would be a contract of sale as distinguished from contract for work and labour ?

5. In paragraph 3 at page 6 of volume 24 of the Halsbury's Laws of England (III Edition) the point has been summarised as follows :

A contract of sale of goods must be distinguished from a contract of work and labour. The distinction 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 possession of, a chattel to the buyer. Where the main object of 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 the sale of a chattel.

6. On the facts of the present case it is clear that, the materials which were used for building the body on the chassis were owned by the assessee. It is also clear that the body built by the assessee by bestowing its work and labour ends in a product which can become a proper subject of sale and when the work is complete the customer or purchaser takes delivery of possession of the bus body fixed to his chassis. In the circumstances the conclusion is inescapable that there takes place a transfer of the property in the bus body built by the assessee and it would be difficult to hold that the transaction so made is not a contract of sale of the bus body, but is a contract for work and labour. In the case of *Mckenzie's Ltd, v. State of Bombay* [1962] 13 S.T.C. 602, a Division Bench of the Bombay High Court in similar circumstances held that the entire amount realised by the assessee for constructing bus bodies on the specified chassis supplied by the Government represented its turnover for the purposes of sales tax. In the case of *Love v. Norman Wright (Builders) Ltd.* [1944] 1 K.B. 484, where the defendants to the case had agreed with the Secretary of State to supply blackout curtains and curtain rails and fix them in a number of police stations and the defendants in their turn entered into a sub-contract with the plaintiffs that they should prepare those curtains and rails and erect them in the police stations, the question arose whether the sub-contract was one of sale of goods or for work and service ; the supply of material being only in connection with the work undertaken, it was held that the contract was one for sale. It was observed by Goddard, L.J.:

On this point we agree with the learned Judge who has held that as the contract involved transferring to the defendants for a price chattels, namely, curtains in which they had no previous property, it was a sale of goods. If one orders another to

make and fix curtains at his house, the contract is one of sale though work and labour was involved in the making and fixing....

7. It would be seen that the mere circumstance that the parties had agreed that the curtains were to be prepared, supplied and fixed up did not deprive the contract of its essence, viz., a sale of curtains. The point would be well illustrated by taking example of a person going to a merchant tailor and ordering a suit to be tailored according to his measure. The tailor supplies the cloth selected by the customer and then prepares a suit and delivers it to the customer. In its essence the contract is one for sale of a suit. However, a person who gives a suit length to a tailor and orders him to tailor a suit according to his measure and deliver the same to him, the contract is not one for sale of the suit but for work and labour to be bestowed upon the suit length supplied to the tailor. No hard and fast rule can be laid down as to in what circumstances the transaction amounts to a sale of goods or to a contract for work and labour. It will depend upon the facts and circumstances of each case. Reference may also be made to the case of Kanpur Journals Ltd. v. Commissioner, Sales Tax, U.P. [1956] 7 S.T.C. 661 decided by a Division Bench of this Court in which the distinction between a contract for sale and a contract for work has been clearly brought out and which supports the above conclusion.

8. The learned counsel for the assessee has referred to the case of Kays Construction Co. v. The Judge (Appeals), Sales Tax, Allahabad [1962] 13 S.T.C. 302 which was a case decided by a learned Judge of this Court, as an authority for the proposition that the contract in the present case on the facts established was one for work and labour and not for sale of a chattel. The case cited is distinguishable on facts and is not helpful to the assessee. The learned counsel for the assessee also strongly relied upon the two decisions of the Supreme Court in State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd. [1958] 9 S.T.C. 353 and Carl Still G. m. b. H. and Anr. v. State of Bihar and Ors. [1961] 12 S.T.C. 449. In neither of these two cases the question involved in the present case fell for decision before the Supreme Court. In Gannon Dunkerley's case [1958] 9 S.T.C. 353 the Supreme Court considered the nature of building contracts and not of a contract for preparation or production of a chattel and it was held that the material used by a contractor in building a house is not sale by him and as such the cost of those materials, though involved in the realisation of the contract consideration could not in label taxed as turnover for sale of goods. In the case of Carl Still [1961] 12 S.T.C. 449 under a contract entered into by the appellant with a company, the appellant agreed to set up a complete coke oven battery ready for production as well as by-products plants at Sindri in the State of Bihar and to erect and construct buildings, plants and machineries and deliver and supply accessories and articles and render services described in the schedule for an all-inclusive price. Their Lordships of the Supreme Court on the facts and circumstances of that case and on the terms of the agreement concluded that the contract was not for the sale of the machinery but was a contract for work and labour inasmuch as in their Lordships' opinion the contract was to be taken as a

whole and could not be divided up or split up into separate contracts, that is, one for sale of machinery and the components and the other for erecting the same at the spot.

9. The question whether the materials used by the assessee in building the bus bodies in the circumstances of the case were sold to its customer hardly arises as on the facts found in the case, in my opinion, the transaction was one for sale of the completed bus body and not of each material or part used in constructing the bus body. In fact the customer did not intend to buy the nuts and bolts used in building the body as nuts and bolts, nor did the customer intend to buy other materials as such materials, which were used in the bus body. In other words, the subject-matter of the sale was the bus body and it is difficult to hold, in the circumstances of the case, that what was intended was that the customer bought at first the materials used for building the body and then entered into a contract with the assessee for putting them together in the shape of a bus body and fixing the same on the chassis.

10. The answer to the question referred to, therefore, is that in the circumstances of the case the entire cost of the ready-made bodies of the buses is liable to tax under the U.P. Sales Tax Act and not only the cost of materials used in the manufacture thereof.

11. The costs of this reference are assessed at Rs. 100 which the assessee shall pay to the Commissioner, Sales Tax, U.P.

12. Copies of this judgment shall be sent to the Judge (Revisions), Sales Tax, and the Commissioner of Sales Tax, U.P., under the signature of the Registrar and the seal of the Court as required u/s 11(6) of the Sales Tax Act.

M.C. Desai, C.J.

13. I agree with the answer proposed by my brother Asthana.

14. The essential element of a contract of sale is transfer of property in the goods to be sold to the customer. On the other hand, the essential element of a contract of work is that the contractor uses his labour and skill to produce a certain result. When a customer buys an article exposed for sale from an assessee, without any work to be done to, or in regard to it, under the contract of sale, it is clearly a sale ; when no labour and skill are to be used by the assessee there cannot possibly arise any question of its being a contract for work. It does not matter in the least that the article itself was produced by the assessee using his labour and skill on certain materials. At the extreme is the case where a customer, who wants a certain work to be done by the assessee, supplies to him all the materials required in the work and asks him to do it by spending his labour and skill on them. This is clearly a case of a contract of work ; when the assessee does not transfer property in any goods to the customer there cannot possibly arise any question of his selling anything to him. If a

customer gives his gold to a goldsmith and asks him to prepare an ornament out of it, the goldsmith executes a contract of work and does not sell when he prepares the ornament and delivers it to the customer. Between these two extremes lie cases which partake of the essential elements of a contract of sale and a contract of work and the question arises whether they fall in one class or the other. They have to fall in one class or the other.

15. If a contract, which involves elements of both classes, is split table into two contracts, one of sale and the other of work, the difficulty disappears and it will be treated as two contracts. If a customer fixes the price of all the materials of a suit to be made by an assessee and the tailoring charges separately and the assessee prepares a suit and delivers it to him he clearly performs two contracts, one of sale of the materials for the price agreed upon, and the other of work of preparing a suit out of the materials by simply using his labour and skill on them. In such a case sales tax would be paid by the assessee on the price of the material sold and neither on the tailoring charges nor on the total of the two.

16. When such a contract is not split table into two, as stated above, it must be held to fall in one class or the other according to the predominant element. If the predominant element is that of a sale, it must be held to be a sale and, if the predominant element is of a performance of a contract of work, it is a contract of work. If a customer gives a piece of cloth to an assessee and asks him to make it into a suit, and the assessee by using his own thread and buttons prepares a suit, though he transfers his property in the thread and the buttons, it is a contract for work, because the labour and skill spent by him in the preparation far predominate over the value of the articles in which he transfers property. It may be said that though he uses the articles it is not primarily with the object of transferring his property in them to the customer; he uses them because otherwise he cannot perform the contract of work. The essential object behind his using them is the performance of the contract of work and not the transfer of property in them. Actually he does not directly transfer his property in them as such; the transfer indirectly takes place when he delivers the suit to the customer. Further, the articles are used in the performance of the contract of work before the transfer of property and there was no contract at all between the assessee and the customer about their sale (ordinarily there is no such contract) and their price was not fixed at all and instead it was taken to be included in the tailoring charges. If the price of the articles was fixed separately from the tailoring charges it would be a contract split table into two contracts. There will be no difficulty in holding that the case is of a contract of work and not of a contract of sale. If a customer purchases an article from an assessee with the stipulation that the assessee will do some work to it, or in relation to it, in order to make it usable or secure, it is a case of sale even though the assessee has to do some labour and skill. For example, if a customer buys a refrigerator or a radio from an assessee on condition that he will install or fix it in the customer's premises, the element of transfer of property in the refrigerator or

radio far predominates over the element of labour and skill and one would have no hesitation in saying that it is a case of sale and not of contract of work. The assessee has, when fixing the price of the refrigerator or radio, taken into consideration the labour and skill that he will have to use in fixing or installing it. The contract is one indivisible contract because the price of the refrigerator or radio was not separated from the charges of fixing or installing it.

17. 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. When an assessee enters into a contract for sale of an article to be manufactured by him it is a contract of sale and not a contract of work even though he has to spend his labour and skill in producing it. The reason is that the essential contract between the parties is that he should transfer property in the article, after preparing it, to the customer. Transfer of property is the predominating element and the use of labour and skill is only an incidental and subordinate element. Had an article of the specifications required by the customer been in existence the assessee would have sold it at once to him and it is only because it was not in existence that he has to prepare it. The mere fact that the labour and skill are used after the contract for sale does not convert it into a contract of work. When as a result of performance of a contract property in an article is transferred by an assessee to the customer it is clearly a sale unless the contract is splittable.

18. If under a contract an article is to be prepared from the assessee's materials and it is to be fitted to something belonging to the purchaser it is immaterial if the assessee takes the article to the purchaser's premises and fixes it on the thing, or the purchaser takes the thing to the assessee's premises and the assessee fixes it on it and delivers the whole thing to the customer. If a customer takes the thing to the assessee's premises and asks him to fix the article, it makes no difference whether the assessee prepares the article first and then fixes it to the thing or starts preparing the article on the thing itself so that when the whole work is finished the result is the same as if the article had been prepared separately and then fixed on the thing. Since it makes no difference whether an article is a ready-made article or is prepared according to the customer's specifications, it should also make no difference whether the assessee prepares it separately from the thing and then fixes it on it or does the preparation and the fixation simultaneously in one operation.

19. In the instant case what the customer wanted was the construction of bodies on the chassis of his buses. The assessee could have prepared the bodies first and then fixed them on to the chassis or could have started the construction of the bodies by putting one plank after another on the chassis themselves. All the materials were to be supplied by the assessee. The element of sale predominated over the element of contract, of work. I, therefore, agree with my learned brother that the contract was of sale and not of work and that the assessee was liable.

20. I agree with the order proposed by my learned brother.