

PETITIONER:  
VANGUARD ROLLING SHUTTERS AND STEEL WORKS LTD.

Vs.

RESPONDENT:  
COMMISSIONER OF SALES TAX, U.P.

DATE OF JUDGMENT 08/03/1977

BENCH:  
FAZALALI, SYED MURTAZA  
BENCH:  
FAZALALI, SYED MURTAZA  
BHAGWATI, P.N.

CITATION:  
1977 AIR 1505                      1977 SCR (3) 165  
1977 SCC (2) 250  
CITATOR INFO :  
R                      1978 SC1747 (7)

ACT:  
Sales Tax--Contract for sale of material and works  
contract--Tests for distinguishing.

HEADNOTE:

The assessee, who was a manufacturer of iron shutters, fabricates the different parts, and components and fits them into shutters. The shutters are prepared according to the specific requirements of the customer and fixed in the customer's premises. Though the masonry work connected with the fitting of the shutters was done by the customer, it was done according to the contractor's instructions. The contract was complete after the shutters were taken to the premises of the customer and affixed to the building; and when fitted into the walls the shutters become permanently embedded into the wall and are not detachable. The price charged by the contractor from the customer was a lumpsum and did not show a break up, of the materials used or fabricated or the cost of services or labour.

The assessee claimed that the contract being a works contract the proceeds from such contracts are not exigible to tax. But this plea was rejected by the Sales Tax Officer. The assessee's appeal was rejected by the Assistant Commissioner (judicial). The Judge (Revisions) Sales-Tax upheld the assessee's contention. On reference the High Court held that the contract was not a works contract but a contract for the supply of goods simpliciter.

Allowing the assessee's appeal,

HELD . The contract in the present case was a works contract and the transaction was not exigible to tax. The High Court was in error in holding that the assessee was liable to pay tax on the sale proceeds of the contract [171E]

(1) The question whether a contract can be said to be a works contract has to depend on the facts of each case. It is difficult to lay down any rule of universal application but some of the important tests evolved by this Court are: [168 H]

(i) Where the contract was primarily a contract for the

supply of materials at a price agreed to between the parties for the materials so supplied and the work or service rendered is incidental to the execution of the contract. the contract is one for sale of materials and the sale proceeds would be exigible to sales-tax. [169 A-B]

(ii) Where the contract is primarily for work and labour, and materials are supplied in execution of such contract, there is no contract for sale of materials but it is a works contract. The circumstance that the materials have no separate identity as a commercial article and it is only by bestowing work and labour upon them, that is, by affixing them to the building would be prima facie indicative of a works contract. Where certain materials are not merely supplied but fixed to an immovable property so as to become a permanent fixture and an accretion to the said property, the contract' prima facie would be a works contract. [169 C]

In the instant case the transaction was a composite, consolidated contract which was one and indivisible comprising labour and services executed for a lumpsum. The contract could be completed when materials with various component parts had been taken to the site, fitted into one another and then finally fixed into a frame so that the fixture became permanent and a, part of

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the premises. This operation could not be, said to be merely incidental to the contract, but was fundamental part of the contract itself. [168 F & 170 A]

(2) It is not correct to say that the contract could not be a works contract because the price was paid in advance and the title passed to the customer as soon as the shutters were packed and despatched to the site. Advance payment of the price was a term meant for the convenience of the parties as the contractor did not want to take any risk for delayed payment; the contract would be completed only after the shutters were finally assembled at the site and fixed according to specifications, which was essentially the responsibility of the contractor. [170 D]

State of Rajasthan v. Man Industrial Corporation Ltd. 24 S.T.C. 349, 355 and State of Rajasthan v. Nanu Ram 26 S.T.C. 268 followed.

State of Madras v. Richardson and Cruddas Ltd. 21 S.T.C. 245 (S.C.) and Commissioner of Sales Tax. M.P. v. Purshottam Premji 25 S.T.C. 38 referred to.

M/s T.V. Sundram Iyengar & Sons v. The State of Madras 35 S.T.C. 24-[1975] 2 S.C.R. 372 distinguished.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 106 of 1976.

(Appeal by Special Leave from the Judgement and Order dated 30.9.1975 of the Allahabad High Court in S.T.R. No. 698/70)

S.C. Manchanda, Mrs. Urrnila Kapoor, Y. D. Jain and Miss Kamlesh Bansal, for the appellant.

G.N. Dikshit and O.P. Rana, for the respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.--This is an appeal by special leave by the assessee who was a contractor dealing in fabrication of Vanguard rolling shutters and steel works. The assessee manufactures iron shutters according to specifications given by the parties and fixes the same at the premises of the customers. In the assessment year 1965-66 the assessee received an aggregate sum of Rs. 1,08,633-08 in the execution of such contracts. This amount was claimed by the

assessee as not being liable to sales tax during the assessment year 1965-66 on the ground that the same represented the proceeds of work contracts. The Sales Tax Officer rejected the plea of the assessee. and the Assistant Commissioner (Judicial) on appeal also affirmed the order of the Sales Tax Officer. But the plea of the assessee appears to have found favour with the Judge (Revisions) Sales Tax who decided that the amount was not exigible to sales tax, because the contracts in question were work contracts. Thereafter at the instance of the Commissioner, the Revising Authority made a reference to the High Court and referred the following question of law for its opinion:

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"Whether under the circumstances of the case and under the terms of the contract the supply of shutters and iron gates worth Rs. 1,08,633-08 was sale or amounted to work contract?"

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The High Court, after hearing the parties and considering the materials on the record, came to the conclusion that the contract entered into

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by the appellant was not a work contract but a contract for the supply of goods simpliciter and the assessee, was, therefore, liable to pay tax. The question referred to the High Court was answered accordingly.

The assessee's case was that having regard to the circumstances of the present case, the terms and conditions of the contract and the nature of the work done by the appellant the contract in question was out and out a work contract and not a contract for supply of goods or materials. In order to decide this question it may be necessary first to give the salient features of the contract between the parties. A specimen of the contract has been filed by the assessee as Annexure 'A' in the Paper Book the relevant portions of which may be extracted thus:

"Please erect at our premises .....Nos. of .....Nos. of following dimension against' the contract price of Rs.....

1. Full payment against delivery prior to despatch or documents by Bank. It is clearly understood that there will be no such thing as to make payment after fixing.

2. Material will be carried to the side of work at cost of the party. Our responsibility ceases when the same leaves our premises.

3.           x                               x                               x

4. We do not hold ourselves responsible for any structural damage or dispute with the landlord. Masonary work done by the party at his cost according to. our instructions.

5.           x                               x                               x

6. No responsibilities for non-delivery or late despatch of goods due to any reason beyond our control."

It would appear from the terms extracted above, that the assessee was required under the contract to fabricate the rolling shutters in the first instance, .to bring them to the site and thereafter to erect the same at the premises. In an application given to the Assistant Commissioner (Judicial), which is Annexure 'C' of the Paper Book, by the assessee he explains the various steps which the contractor had to take in order to fix the rolling shutters to the factory premises of the owner. First the different parts

and components of the rolling shutters are fabricated. It is only when the various component parts are fitted into one that they constitute the rolling shutter as one unit, and taken separately they have no separate existence. It was further explained that the component parts do not constitute a rolling shutter unless they are affixed to and erected in the building in position and in the required manner. It was further alleged that the contract was not concluded merely by delivery of fabricated materials but was completed only after the same were taken to the site and finally erected and affixed to the site of the building. In order to fix them

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to the premises certain masonry work had to be done by the owner and that too according to the instructions of the contractor. It was also averred that in erection of the shutters some parts were permanently embedded into the walls and lintals and they become permanent fixtures which are not detachable. The allegations made in Annexure 'C' have not been controverted by the State either in this Court or before the High Court. Moreover, the Indian Standard Specification Book for Metal Rolling Shutters and Rolling Grills the particulars of the fittings of rolling shutters, whose authenticity has not been doubted by counsel for the parties, clearly shows that rolling shutters consist of curtains, lock plates, guide channels, bracket plates, rollers, hood covers, gears, worms, fixing bolts, safety devices, anchoring rods, central hasp and staple. Each guide channel has to be provided with a minimum of three fixing cleats or supports for attachment to the walls or column by means of bolts or screws. The guide channels are further attached to the jambs, plumb either in the overlapping fashion, projecting fashion or embedded in grooves, depending on the method of fixing. All these operations take place at the site after despatch of the component parts of the rolling shutter. Hood covers are fixed in a neat manner and supported at the top at suitable intervals. This also has to be done at the site. Item 11.1 of the specifications shows that the rolling shutter curtain and bottom lock plate are interlocked together and rolled in one piece, but the other parts like guide channels, bracket plates, rollers etc., are despatched separately. Item 12.1 shows that all the rolling shutters are erected by the manufacturer or his authorized representative in a sound manner, so as to afford trouble-free and easy operation, long life and neat appearance. Even after erection is done, grease is applied to the springs and on the sides of the guide channels. Thus the process involved in the fabrication of a rolling shutter and its actual fixing to the premises at the site is a continuous one and is completed only when erection is completed in every way. The price charged by the contractor from the owner of the premises is one lumpsum without at all specifying as to what part is meant for the materials used or fabricated and what part for the services or labour put in by the contractor. It is, therefore, clear that in the facts and circumstances of the present case, the transaction is a composite consolidated contract which is one and indivisible comprising labour and services executed for a lumpsum. It is also clear that the materials are not merely supplied to the owner so as to pass as chattel simpliciter, but are actually fixed to an immovable property and after the same are fixed and erected they become a permanent fixture so as to become an accretion to the immovable property. In these circumstances, the con-

clusion is inescapable that the present contract cannot be said to be a pure and simple sale of goods or materials as chattels but is a work contract. It is well settled that a work contract is a contract for construction of bridges, buildings etc., and in for a lumpsum. The question as to under what circumstances a contract can be said to be a work contract is not free from difficulty and has to depend on the facts of each case. It is difficult to lay down any rule of universal application, but there are some well recognized tests which are laid down by decided cases of this Court which afford

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guidelines for determining as to whether a contract in question is a work contract or a contract for supply of goods. One of the important tests is to find out whether the contract is primarily a contract for supply of materials at a price agreed to between the parties for the materials so supplied and the work or service rendered is incidental to the execution of the contract. If so, the contract is one for sale of materials and the sale proceeds would be exigible to sales tax. On the other hand where the contract is primarily a contract for work and labour and materials are supplied in execution of such contract, there is no contract for sale of materials but it is a work contract. The circumstance that the materials have no separate identity as a commercial article and it is only by bestowing work and labour upon them, as for example by affixing them to the building in case of window-leaves or wooden doors and windows that they acquire commercial identity, would be prima facie indicative of a work contract. So also where certain materials are not merely supplied but fixed to an immovable property so as to become a permanent fixture and an accretion to the said property, the contract prima facie would be work contract. This is exactly what has happened in the present case.

In *State of Rajasthan v. Man Industrial Corporation Ltd.*(1), after discussing the entire case law on the subject, this Court observed as follows:

"The test in each case is whether the object of the party sought to be taxed is that the chattel as chattel passes to the other party and the services rendered in connection with the installation are under a separate contract or are incidental to the execution of the contract of sale."

Although the aforesaid case appears to us to be on all fours with the facts of the present case, the High Court merely noticed the decision, but did not try to apply it to the facts of the present case. In *Man Industrial Corporation Ltd.*'s case (supra) the contract was to prepare window-leaves according to specifications and fix them to the building. It was held that fixing the window leaves to the building was not incidental or subsidiary to the sale but an essential term of the contract, because the contract became complete only after the windows were fixed as stipulated in the contract. Similarly in the instant case, the contract could not be completed merely by sending the materials at the site but would be completed only after erection of the shutters. Had been made and the shutters fixed to the premises so as to become an accretion to the premises.

Mr. Dikshit appearing for the State submitted that in the present case the contract was merely for the supply of shutters in one unit after being fabricated by the contractor and the price was paid for the shutters, the question of fixing the shutters at the site was not an integral part

of the contract but was only incidental to the supply of materials and, therefore, the contract was not a work contract. We are, however, unable to agree with this contention, because as

(1) 24 S.T.C. 349, 355.

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discussed above, the materials were sent with various component parts which had to be taken at the site, fitted into one another and then finally fixed into a frame so that the fixture became permanent and a part of the premises. The operation to be done at the site as required by the instructions in the Standard Book could not be said to be merely incidental to the contract but was a fundamental part of the contract itself. In our opinion, therefore, the decision in Man Industrial Corporation Ltd's case (supra) fully covers the facts of the present case.

It was further argued by Mr. Dikshit learned counsel appearing for the State that it will appear from the terms of the contract that the price of the goods had to be paid in advance before delivery of the same to the customer which shows that the title to the shutters passed to the customer as soon as the shutters were packed and despatched to the site and the price paid and therefore the contract in the instant case could not be a work contract. It is not possible to accept this contention, because the advance payment of the entire price was a term meant for the convenience of the parties as the contractor did not want to take any risk for delayed payment of goods, but the contract would be completed only after the 'shutters were fully assembled at the site and fixed according to the specifications which was essentially the responsibility of the contractor. In Richardson' and Cruddas Ltd. v. State of Madras(1) there was a similar recital in the contract for full price to be paid in advance and still the Madras High Court held that the contract was a work contract. The decision of the Madras High Court was approved by this Court in Man Industrial Corporation Ltd's case (Supra) and affirmed by this Court in State of Madras v. Richardson and Cruddas Ltd.(2) For these reasons the contention put forward by Mr. Dikshit on this score is overruled.

In a later case of this Court in State of Rajasthan v. Nanu Ram(3) tenders were invited by the Chief Engineer from the contractors for supplying and fixing of wooden door and windows, sashes together with frames and painting them in the police lines building and for supplying and fixing the wooden chowkhats and this was held to be a work contract. The decision in Man Industrial Corporation Ltd's case (supra) was followed by this Court in that case. Again in Commissioner of Sales Tax, M.P. v. Purshottam Premji(4) this Court indicated the essential difference between a contract for work and services and a contract for sale of goods and observed as follows:

"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 .... 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 (1) 16 S.T.C. 827.

(2) 21 S.T.C. 245 (S.C.).

(3) 26 S.T.C. 268.

(4) 26 S.T.C. 38.

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therein passes only under the contract relating thereto to the other party for price."

The High Court placed great reliance on the decision in M/s T.V. Sundram Iyengar & Sons v. The State of Madras(1). In that case what had happened was that the contractor built bus bodies and fitted the same to the chassis provided by the customers and charged the price for building the body and fitting the same to the chassis. It was held by this Court that the contract was completed only when the complete bus with the body fitted to the chassis was delivered to the customer and, therefore, the supply of body being one single unit constituted a sale of goods. That case is clearly distinguishable from the facts and circumstances of the present case. In the first place the supply of materials and completion of the contract was indisputably in respect of movable property, no immovable property was at all involved at any stage in the process of completion of the contract. The bus-body built by the contractor was moveable property manufactured by the contractor and had merely to be fitted to the chassis' which was also movable property. Secondly, the bodies constructed and fitted to the chassis were easily detachable. In the instant case, the shutters were fabricated and fixed to an immovable property so as to become a permanent fixture and they were also not detachable. The High Court failed to have noticed these important features which distinguish the aforesaid decision from the facts of the present case.

We are of the considered opinion that the present case is clearly covered by the two decisions of this Court referred to in Man Industrial Corporation Ltd's case and Nenu Ram's case (supra), and applying the same we hold that the contract in the present case was a work contract and the transaction was, therefore, not eligible to tax. The High Court was in error in holding that the assessee was liable to pay tax, on the sale proceeds of the contract.

We, therefore, allow this appeal, set aside the order of the High Court and restore the order of the Revising Authority and hold that the assessee was not liable to pay sales-tax. The appellant will be entitled to his costs throughout.

P.B.R.

Appeal allowed.

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