

Ram Singh & Sons Eng. Works vs Commissioner Of Sales Tax, U.P on 7 December, 1978

Equivalent citations: 1979 AIR 545, 1979 SCR (2) 621, AIR 1979 SUPREME COURT 545, 1979 (1) SCC 487, 1979 TAX. L. R. 1716, (1979) 2 SCR 621 (SC), 1979 SCC(TAX) 77, 1979 STI 7, 1979 2 SCR 621, 1979 SCC (TAX) 71, 1979 UPTC 548, (1979) 43 STC 195

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, R.S. Pathak

PETITIONER:

RAM SINGH & SONS ENG. WORKS

Vs.

RESPONDENT:

COMMISSIONER OF SALES TAX, U.P.

DATE OF JUDGMENT 07/12/1978

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

PATHAK, R.S.

CITATION:

1979 AIR 545 1979 SCR (2) 621

1979 SCC (1) 487

CITATOR INFO :

F 1984 SC 774 (25)

ACT:

Contract of sale and contract for work and labour, distinction and test of-Whether a contract for fabrication and erection of 3-motion electrical overhead (travelling cranes) is a contract of sale or contract for work and labour.

HEADNOTE:

The appellant assessee was a partnership firm carrying on business inter alia of manufacture and erection of cranes. During the assessment year 1965-66, the assessee entered into two contracts for supply and erection of 3-

motion electrical overhead travelling cranes. The assessee carried out both the contracts and fabricated and erected 3-motion electrical overhead travelling cranes according to the contract specifications. A question arose in the assessment of the assessee to sales tax for the assessment year 1965-66 whether the amount of Rs. 1,34,500/- received by the assessee under the contract with M/s. Kamlapati Motilal Sugar Mills and the amount of Rs. 2,38,000/- received under the contract with M/s. Upper Doab Sugar Mills Ltd., formed part of the turnover of the assessee and was liable to sales tax. The Sales Tax Officer took the view that the contracts were essentially contracts of sale of ready made cranes and the erection of the cranes at the factory site was merely incidental to the sales and the amounts of Rs. 1,34,500/- and Rs. 2,38,000/- received under the contracts were, therefore taxable. This view was upheld by the Assistant Commissioner in appeal, but in revision the Additional Judge (Revisions) held that each of the two contracts was a works contract not involving any sale of goods and hence the amounts were not exigible to sales tax. On a reference to the High Court at the instance of the Commissioner of Sales Tax, the High Court took the view that each of the two contracts was for supply of 3-motion electrical overhead travelling cranes as a complete unit and "the predominant object was supply of crane as complete unit" and "the bestowing of labour and skill in the execution of the contract" appeared to have been incidental to the supply of the machine." The High Court observed that in its view parties "intended the property to pass in the subject matter of the contract, namely, the completed crane as movable property" and concluded that it was a contract of sale of goods and not a contract for work and labour. The High Court accordingly answered both the questions referred to it against the assessee and in favour of the Revenue.

Allowing the appeal by special leave the Court,

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HELD: 1. The primary test to find out whether a contract is a contract of sale or a contract for work and labour is whether the contract is one whose main object is transfer of property in a chattel as a chattel to the buyer, though some work may be required to be done under the contract as ancillary or incidental to the sale or it is carrying out of work by bestowal of labour and service and materials are used in execution of such work. The Court's have evolved some subsidiary tests to resolve the difficulty arising in the application of this primary test as there are a large number of cases which are on the

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border line and fall within what may be called "grey area". One such test formulated by the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. Purshottam Premji, 26 STC 38 is:

"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 therein passes only under the contract relating thereto to the other party for price." [628 C-G]

Commissioner of Sales Tax, M.P. v. Purshottam Premji, 26 STC 38; State of Rajasthan v. Man Industrial Corporation 24 STC 349; Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. Commissioner of Sales Tax, Maharashtra, [1979] 1 SCR 644; applied.

2. Each of the two contracts for fabrication and erection of a 3-motion electrical overhead travelling crane is not a contract for sale but a contract for work and labour, (a) It is essentially a transaction for fabricating component parts and putting them together and erecting them at the site so as to constitute a 3-motion electrical overhead travelling crane. The transaction is no different than one for fabrication and erection of an open godown or shed with asbestos or tin sheets fixed on columns, (b) It is not as if a 3-motion electrical overhead travelling crane is fabricated by the manufacturer and then sold and delivered to the customer as a chattel, (c) The fabrication and erection of a 3-motion electrical overhead travelling crane is a highly skilled and specialised job and the component parts have to be taken to the site and they are assembled and erected there and it is only when this process is complete, then a 3-motion electrical overhead travelling crane comes into being. The process of assembling and erection requires a high degree of skill and it is not possible to say that the erection of a 3-motion electrical overhead travelling crane at the site is merely incidental to its manufacture and supply. The fabrication and erection is one single indivisible process and a 3-motion electrical overhead travelling crane comes into existence only when the erection is complete. The erection is thus a fundamental and integral part of the contract, because without it the 3-motion electrical overhead travelling crane does not come into being. The manufacturer would undoubtedly be the owner of the component parts when he fabricated them but at no stage does he become the owner of 3-motion, electrical overhead travelling crane as a unit so as to transfer the property in it to the customer. The 3-motion electrical overhead travelling crane comes into existence only when the component parts are fixed in position and erected at the site, but at that stage it becomes the property of the customer because it is permanently embedded in the land belonging to the customer. The result is that as soon as 3-motion electrical overhead travelling crane comes into being, it is the property of the customer and there is,

therefore, no transfer of property in it by the manufacturer to the customer as a chattel. [630C-D, 631E-H-632 A]

Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. Commissioner of Sales Tax, Maharashtra, [1979] 1 SCR page 644: followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1314 of 1975.

Appeal by Special Leave from the Judgment and Order dated 29-1-1975 of the Allahabad High Court in S.T.R. No. 771 of 1972.

S.C. Manchanda, Mrs. Urmila Kapoor 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 BHAGWATI, J. The short question that arises for determination in this appeal by special leave is whether a contract for fabrication and erection of a 3-motion electrical overhead travelling crane is a contract of sale or a contract for work and labour. The question is fortunately not beset with much difficulty since there is a recent decision of this Court in Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. Commissioner of Sales Tax, Maharashtra which affords considerable guidance and almost concludes the determination of the question in favour of the assessee.

The assessee, who is the appellant before us, is a partnership firm carrying on the business inter alia of manufacturing and erection of cranes. During the assessment year 1965-66, the assessee entered into two contracts for supply and erection of 3-motion electrical overhead travelling cranes, one with M/s Kamlapat Moti Lal Sugar Mills and the other with M/s Upper Doab Sugar Mills Ltd. The contract with M/s Kamlapat Moti Lal Sugar Mills provided for supply and erection of one 3-motion electrical overhead travelling crane at the price of Rs. 1,34,500/- and on the terms and conditions set out in a letter addressed by M/s Kamlapat Moti Lal Sugar Mills to be assessee:

"We confirm all the specifications given in your above referred quotation with the following changes:

1. Structural capacity will be suitable for safeload of two unloading crabs, i.e. 10 tons.
2. Span of the long gantry which is given 50' will be confirmed shortly.
3. Your supply will also include gantry of 35' x 50' to make the crane three-motions.
4. We shall not be required to give any material except electric line up to the crane.
5. You will be supplying crane-drivers cabin with automatic control panel free provided its trial is successful.

6. The minimum number of operations will be 30 per hour approx.
7. You will give us working trial of the equipment at least by 30th September, 1965.
8. The price of the above equipment will be Rs.1,34,500/-f.o.r. Khatauli, sales tax, excise duty will be extra, if payable. This price includes erection charges.
9. Terms of payment 40% advance with the order 10% after one month from the date of the order 25% after the erection of bridge and columns 15% after trial.

10% after one month's satisfactory performance. A penalty of 1/2% will be payable per week by you in case of delay per week after 30th September, 1965, and to a maximum of 5% of the total value. You will send your staff for erecting the unloader and we shall be providing you necessary tools and tackles and welding set when required. Available accommodation will also be provided."

The contract between Upper Doab Sugar Mills Ltd. was for supply and erection of two 3-motion electrical overhead travelling cranes with two crabs each at the price of Rs. 1,19,000/- for each crane and it was on the following terms and conditions:

"That the contractor will supply the company two cranes with two crabs each as under:-

(i) Crane bridge: The structural design of the crane bridge will be in accordance with the structural specifications of B.S.S. 466 for electric overhead travelling crane. The structural parts will be fabricated from good quality Tata tested steel sections. The girders for the main bridge will be of lattice construction type heavy duty.

(ii) Drivers cabin: The driver's cabin will be of weather proof outdoor construction. It will be with material in a position that the operator's view is not obstructed during the load handling and will travel along with the crane crab.

(iii)Electrical equipment for driver's cabin: The driver's cabin will be provided with the following electrical equipment and other necessary fittings:-

1. One protective paner for electrical equipment.
2. Drum controllers for all the motors.
3. Plug and sockets for hand lamp.
4. One electric light point.
5. One alarm bell and all other necessary fittings.

Steps ladders will be provided from the crane bridge for easy access to the cabins.

(iv) Wiring: Wiring with V.I.R. Wrain steel conduit pipes will be provided between individual motors and controllers, current collectors and resistances in the cabin. For connection of current to the trolley, a set of bars copper conductors complete with insulators and strainers mounted on the bridge will be provided. A set of current collectors will be mounted on the trolley, containing renewable graphitic carbon collectors.

PRICE: That for two complete cranes of the above mentioned specifications with two crabs each including erection, the company will pay to the contractor at the rate of Rs.1,19,000/- per crane with two crabs each including erection complete in all respects with necessary equipment. Mode of Payment:

1. 30% with the order
2. 20% after two months of the actual commencement of work
3. 25% after the completion of erection of columns and bridge.
4. 15% after completion and giving satisfactory trials.
5. 10% after one month's satisfactory work.

That the contractor will execute the entire work i.e. fabrication, erection and construction latest by 30th day of September, 1964 so that the trials can begin on the 1st October, 1964. The defects will be rectified by the 10th October, 1964. If the work is not completed by the 30th September, 1964, a penalty of Rs. 400/- per day from the 1st October, 1964 will be paid by the contractor to the company till the date of completion and satisfactory operation of the cranes.

That all such items which are considered defective by the company will be replaced at the contractor's cost within the above specified date to the company's entire satisfaction so that regular working of the cranes is ensured.

That all materials will be provided by the contractor and electricity will be charged at cost if consumed by the contractor. Only such tools which are available in the stores of the Co., will be given to the contractor on loan on returnable basis and the contractor will pay to the company the cost of such material which are not returned to the company. The final payment of the bills of the contractor will be made on his getting NOTHING DUE clearance certificate from the Stores Department of the Company.

That there will be no liability and responsibility of the company whatsoever besides payment of price of the cranes.

That sales tax or excise duty and other government duty, if any, will be extra. Packing and forwarding charges will also be extra."

The assessee carried out both these contracts and fabricated and erected one 3-motion electrical overhead travelling crane at the factory of M/s Kamlapati Moti Lal Sugar Mills and two 3-motion electrical overhead travelling cranes at the factory of M/s Upper Doab Sugar Mills Ltd. according to the contracts specifications.

The question arose in the assessment of the assessee to sales tax for the assessment year 1965-66 whether the amount of Rs. 1,34,500/-received by the assessee under the contract with M/s Kamlapati Moti Lal Sugar Mills and the amount of Rs. 2,38,000/- received under the contract with M/s Upper Doab Sugar Mills Ltd. formed part of the turnover of the assessee and liable to sales tax. The answer to this question depended upon whether the contracts with M/s Kamlapati Moti Lal Sugar Mills and M/s Upper Doab Sugar Mills Ltd. were contracts of sale or contracts for work and labour. If they were contracts of sale, the amounts of Rs.1,34,500/- and Rs. 2,38,000/-would be taxable as sale price forming part of the turnover, but not so, if they were contracts for work and labour. The Sales Tax Officer took the view that the contracts were essentially contracts of sale of ready made cranes and the erection of the cranes at the factory site was merely incidental to the sale and the amounts of Rs.1,34,500/-and Rs. 2,38,000/- received under the contracts were, therefore, taxable. This view was upheld by the Assistant Commissioner in appeal, but on an application for revision being filed by the assessee, the Additional Judge (Revisions) held that each of the two contracts was a works contract not involving any sale of goods and hence the amounts of Rs. 1,34,500/- and Rs. 2,38,000/- were not exigible to sales tax. The Commissioner of Sales Tax thereupon applied for a reference and on his application, the following two questions of law were referred for the opinion of the High Court:

1. Whether in the facts and circumstances of the case the turnover of Rs. 1,34,500/- made by the assessee in respect of Kamlapati Motilal Sugar Mills amounts to a works contract or sale of goods? If so, to what extent?
2. Whether in the facts and circumstances of the case the turnover of Rs. 2,38,000 made by the assessee in respect of the Upper Doab Sugar Mills amount to a works contract or sale of goods? If so, to what extent?

The High Court took the view that each of the two contracts was for supply of 3-motion electrical overhead travelling crane as a complete unit and "the predominant object was supply of crane as a complete unit" and "the bestowing of labour and skill in the execution of the contract" appeared "to have been incidental to the supply of the machine". The High Court observed that in its view the parties "intended the property to pass in the subject matter of the contract,namely, the completed crane as movable property" and concluded that it was a contract of sale of goods and not a contract for work and labour. The High Court accordingly answered both the questions referred to it in favour of the Revenue and against the assessee. The assessee thereupon brought the present appeal with special leave obtained from this Court.

Now, the distinction between a contract of sale and a contract for work and labour has been pointed out in Halsbury's Laws of England, 3 ed., volume 34, para 3 at page 6 in the following words:

"A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as 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 and 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."

The primary test is whether the contract is one whose main object is transfer of property in a chattel as a chattel to the buyer, though some work may be required to be done under the contract as ancillary or incidental to the sale or it is carrying out of work by bestowal of labour and service and materials are used in execution of such work. This test has been recognised and approved in a number of decisions of this Court and it may now be regarded as beyond controversy, but the real difficulty arises in its application as there are a large number of cases which are on the border line and fall within what may be called grey area. To resolve this difficulty, the courts have evolved some subsidiary tests and one of such tests is that formulated by this Court in Commissioner of Sales Tax, Madhya Pradesh v. Purshottam Premji where it has been said:

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

This was the test applied by this Court in the State of Rajasthan v. Man Industrial Corporation for holding that a contract for providing and fixing four different types of windows of certain sizes according to "specifications, designs, drawings and instructions" set out in the contract was a contract for work and labour and not a contract for sale Shah, J., speaking on behalf of the Court, analysed the nature of the contract and pointed out that "The window-leaves did not pass to the Union of India under the terms of the contract as window-leaves. Only on the fixing of the windows as stipulated, the contract could be fully executed and the property in the windows passed on the completion of the work and not before". The contract was not for transfer of property in the window leaves as window leaves. It was a contract for providing and fixing windows and windows could come into existence only when the window-leaves were fixed to the building by bestowing labour and skill and it was for this reason that it was held to be a works contract.

The same test reasoning was applied by this Court in *Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. Commissioner of Sales Tax, Maharashtra* (supra). There the question was whether a contract for fabrication, supply and erection of certain types of rolling shutters was a contract of sale or a contract for work and labour. This Court analysed the nature of the contract and pointed out that "not only are the Rolling Shutters to be manufactured according to the specifications, designs, drawings and instructions provided in the contract, but they are also to be erected and installed at the premises of the company. The price stipulated in the contract is inclusive of erection and installation charges and the contract does not recognise any dichotomy between fabrication and supply of the Rolling Shutters and their erection and installation so far as the price is concerned. The erection and installation of the Rolling Shutters is as much an essential part of the contract as the fabrication and supply and it is only on the erection and installation of the Rolling Shutters that the contract would be fully executed." This Court then proceeded to examine what is a rolling shutter and how it is erected and installed in the premises and observed that a rolling shutter consists of several component parts and 'the component parts do not constitute a rolling shutter until they are fixed and erected on the premises. It is only when the component parts are fixed on the premises and fitted into one another that they constitute a rolling shutter as a commercial article and till then they are merely component parts and cannot be said to constitute a rolling shutter. The erection and installation of the rolling shutter cannot, therefore, be said to be incidental to its manufacture and supply. It is a fundamental and integral part of the contract, because without it the rolling shutter does not come into being. The manufacturer would undoubtedly be the owner of the component parts when he fabricates them, but at no stage does he become the owner of the rolling shutter as a unit so as to transfer the property in it to the customer. The rolling shutter comes into existence as a unit when the components parts are fixed in position on the premises and it, therefore, becomes the property of the customer as soon as it comes into being. There is no transfer of property in the rolling shutter by the manufacturer to the customer as a chattel. It is essentially a transaction for fabricating component parts and fixing them on the premises so as to constitute a rolling shutter." The contract for fabrication, supply and erection of the rolling shutters was, on this reasoning, held by the Court to be a contract for work and labour and not a contract for sale.

If we consider what is a 3-motion electrical overhead travelling crane and how it is fabricated, erected and installed, it will become immediately clear that the analogy of the decision in *Sentinel Rolling Shutters & Engineering Co. (P) Ltd.*'s case (supra) to the present case is striking and it must lead us to the conclusion that each of the two contracts with which we are concerned here is not a contract for sale but a contract for work and labour. The publication of the Indian Standards Institution which lays down the Code of Practice for Design of Overhead Travelling Cranes and Gantry Cranes clearly shows that a 3-motion electrical overhead travelling crane consists of 44 main component parts and it is only when they are put together and assembled at the site that they assume the shape of a crane. It is not as if a 3-motion electrical

overhead travelling crane is fabricated by the manufacturer and then sold and delivered to the customer as a chattel. One single 3-motion electrical overhead travelling crane covers an area of 10,549 Square Feet at the site. When an order for fabrication and erection of 3-motion electrical overhead travelling crane is received by the manufacturer from the customer along with the specifications of the size and the materials, the manufacturer designs the machine according to the specifications and prepares the necessary drawings for its fabrication and manufacture and two copies of the drawings are sent to the customer for preparing the foundation at the site for erection of the columns which are ten in number along with four supporting columns. Each column has to be placed on a grouted foundation which is 7 feet deep and is securely bolted with foundation bolts, 5 on each side, which are grouted so as to be able to support the weight of the columns. The columns thus become permanent fixtures on the land of the customer and they constitute a permanent foundation for the 3-motion electrical overhead travelling crane. The detailed specifications of the foundation bolts and the columns are given in the publication of the Indian Standards Institution. It may be noted that even so far as the columns are concerned, they are not fabricated by the manufacturer in his factory and then taken to the site. Each column has a height of about 40 feet and it is made in three or four pieces and these pieces are joined together with bolts and welded at the time of erection at the site. Thereafter a 120 feet long gantry is assembled by the manufacturer in eight pieces and each piece is placed on two columns and the erection of the gantry on both sides is completed after bolting and screwing the gantry with the columns. Then about 60 pieces are fixed on to the gantry on both sides to form a platform to facilitate the operation and maintenance of the crane and the component parts of the railings are assembled at the site with bolts and welded to the gantry. Two distance pieces assembled out of diverse component parts are then fixed between both ends of the gantry to ensure stability. The manufacturer has to examine and ensure the levelling and alignment of the gantry and then the component parts of the rails are assembled and fixed on both sides of the gantry by means of M.S. cleats and bolts. The bridge which is fabricated out of numerous component parts at the site, is then put on the rails so that it can run on the gantry and travel about 180 feet from one end of the gantry to another. Then rails are fixed on the bridge and the trolley is put on the rails. The trolley consists of several component parts which are brought and assembled at the site. There is also a platform erected on the bridge for maintenance of the bridge and trolley and lastly, there is a lifting grab which is made of 36 pieces assembled at the site and this grab is fitted on to the trolley. It would thus be seen that the fabrication and erection of a 3-motion electrical overhead travelling crane is a highly skilled and specialised job and the component parts have to be taken to the site and they are assembled and erected there and it is only when this process is complete then a 3-motion electrical overhead travelling crane comes into being. The process of assembling and erection, requires a high degree of skill and it is not possible to say that the erection of a 3-motion electrical overhead travelling crane at the site is merely incidental to its manufacture and supply. The fabrication and erection is one single indivisible process and a 3-motion electrical overhead travelling crane comes

into existence only when the erection is complete. The erection is thus a fundamental and integral part of the contract, because without it the 3- motion electrical overhead travelling crane does not come into being. The manufacturer would undoubtedly be the owner of the components parts when he fabricated them but at no stage does he become the owner of the 3-motion electrical overhead travelling crane as a unit so as to transfer the property in it to the customer. The 3-motion electrical overhead travelling crane comes into existence as a unit only when the component parts are fixed in position and erected at the site, but at that stage it becomes the property of the customer because it is permanently embedded in the land belonging to the customer. The result is that as soon as 3-motion electrical overhead travelling crane comes into being it is the property of the customer and there is, therefore, no transfer of property in it by the manufacturer to the customer as a chattel. It is essentially a transaction for fabricating component parts and putting them together and erecting them at the site so as to constitute a 3 motion electrical overhead travelling crane. The transaction is no different than one for fabrication and erection of an open godown or shed with asbestos or tin sheets fixed on columns. There can, therefore, be no doubt that the contract in the present case was a contract for work and labour and not a contract for sale. This view which we are taking is completely supported by the decision of this Court in the Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. Commissioner of Sales Tax, Maharashtra (supra).

We accordingly allow the appeal, set aside the judgment of the High Court and hold that the contract in the present case was a contract for work and labour and not a contract for sale and conformably with this view we answer the question referred by the Sales Tax Tribunal in favour of the assessee and against the Revenue. The State will pay the costs of the assessee throughout.

V.D.K.

Appeal allowed.