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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SALES TAX REFERENCE (L) NO. 10 OF 2005
WITH
SALES TAX REFERENCE NO. 35 OF 2017**

M/s. Bharat Heavy Electricals Ltd. ... Applicant
vs.
The State of Maharashtra ... Respondent

Ms. Nikita Badheka a/w. Mr. Parth Badheka for the Applicant.
Mr. B. B. Sharma, Spl. Counsel a/w. Mr. Himanshu Takke, AGP for the
respondent – State.

**CORAM : A.S. OKA & A.K. MENON, JJ.
RESERVED ON : 21st NOVEMBER, 2017
PRONOUNCED ON : 20th DECEMBER, 2017**

JUDGMENT (PER A. K. MENON, J.)

1. This reference under Section 61 of the Bombay Sales Tax Act, 1959 has been made by the Maharashtra Sales Tax Tribunal, Mumbai on the application of M/s. Bharat Heavy Electricals Ltd.

2. The reference was admitted on the following question :

“Whether, on the facts and circumstances of the case and on a true and correct interpretation of the terms and conditions agreed between the parties as embodied in the work order dated 20-10-1978, the Tribunal was justified in law in holding that the impugned supplies of materials made by the Applicant's Mumbai unit to RCF of

Mumbai, were sales of those materials liable to tax under the Bombay Sales Tax Act, 1959?”

The facts in brief leading to the reference are as set out below.

3. The applicant is a Government of India undertaking having branches throughout India. The applicant was duly registered under the Bombay Sales Tax Act 1959 as well as and Central Sales Tax Act, 1956. During the period in question M/s. Rashtriya Chemicals & Fertilizers Ltd. (“RCF”) had engaged the applicant apparently for designing, engineering, supplying, erection, installation and Commissioning of the Trombay-V Expansion Project at RCF site for a total price of about Rs.22 crores under a contract dated 20th October 1978.

4. It is reported that during the period in question from 1st April, 1979 to 31st March, 1980 the contract was performed. The Assistant Commissioner of Sales Tax Assessment treated the transaction as a transaction of sale. The applicant produced the relevant documents and correspondence before the Deputy Commissioner of Sales Tax claiming that the contract was a divisible contract for supply of labour and could not be treated as a contract for sale. It was contended that the property in the case was not simply transferred and delivered, but the same was erected and installed.

5. The Deputy Commissioner, however, held the transaction to be one of sale and not of the nature of a works contract. The Sales Tax Officer levied

penalty under Section 36(3) of the Bombay Sales Tax Act, 1959 (the said Act) apparently without giving an opportunity of being heard. It was found although the goods were located in Maharashtra, the sales were finalised from various other states. The Mumbai office of the applicant was required to reflect the transaction in the returns and pay the applicable taxes. The taxes were deposited by the applicant as and when instructions were received from other places. The penalty levied was challenged.

6. Being aggrieved by the demand made pursuant to assessment orders dated 16th March, 1984 and 20th May, 1984 appeals were filed. The appeals came to be partly allowed upon certain part payments being made. However, not being satisfied with the partial relief granted, Second Appeals came to be filed before the Tribunal. The Second Appeals were decided on or about 6th February, 1993. The main issue raised in these Second Appeals was whether the transactions between the applicant and the RCF pursuant to the work order dated 20th October, 1978 was a works contract transaction or a sales transaction. If they were work contract transactions, then they would not be liable to tax under the said Act otherwise tax was payable. The Tribunal found that the transaction was a Sales transaction and there was clear cut break-up therein of the total contract price of Rs. 22 crores being cost of the material, compressors supplied and other costs of transportation. Rectification Applications filed were rejected. Accordingly, the transaction was to be treated

as sales liable to sales tax under the said Act. The levy of tax having been confirmed, the applicant filed Reference Application nos. 9 and 10 of 1993 seeking to raise certain questions of law under Section 61 of the said Act. Today the primary question we are concerned with is whether the transaction amounted to a Sale or not. The Tribunal had held that supplies of material were sales, liable to tax under the said Act.

7. Ms. Badheka, learned Counsel appearing on behalf of the applicant contended that the transaction was clearly a works contract. She invited our attention to the contract dated 20th October, 1978 which is in the form of a letter agreement addressed to the applicant at Hyderabad. The contract is issued by the Fertilizer (Planning and Development) India Ltd. (FPDIL) on behalf of RCF Ltd., Trombay V Expansion Project. The contracting parties are therefore FPDIL and the applicant. Reference is made to the minutes of meeting held between 24th March 1977 and 26th March, 1977, a subsequent proposal, related correspondence and discussions. Ms. Badheka submitted that the reading of the contract will reveal that it was for complete Design, Engineering, Manufacture, Testing, supply, transportation to site, storage at site, erection, testing, supply, transportation to site, storage at site, erection and and pre-commissioning of one set each Carbon Dioxide Compressor with Turbine, Air compressor with Turbine along with accessories and spares. She invited our attention to the scope of the contract described in the second

schedule of the contract viz. to adopt complete design, manufacture, testing, supply, erection and pre-commissioning of the four compressors of certain specifications.

8. Ms. Badheka submitted that the price payable described in the third schedule of contract also refers to complete design, engineering, manufacture, testing, supply, transportation to site, storage at site, erection and pre-commissioning of one each of Carbon Dioxide Gas compressor, Air compressor, Ammonia Refrigeration compressor and Synthesis Gas Compressor each with turbine and other accessories for a sum of Rs.22 crores. Ms. Badheka submitted that only Central Sales Tax was payable on prices of certain equipment described in first schedule. She further submitted that it would be improper to consider the contract as one of sale and the contract was in fact for design, erection and commissioning of the plant, hence not susceptible to payment of tax under the Bombay Sales Tax. She therefore submitted that the question referred may be answered in the negative in favour of the applicant assessee and against the revenue.

9. In the course of submissions Ms. Badheka relied upon the following judgments in support of the Applicants case:

(i) *Commissioner of Sales Tax vs. Steel Plant Pvt. Ltd.* ¹

(ii) *Sentinel Rolling Shutters & Engineering Company Pvt. Ltd. v. Commissioner of Sales Tax* ²

¹ 99 STC 532 (BOM)

² [1978] 42 STC 409

(iii) *Ramsingh & Sons Engineering Works v. Commissioner of Sales Tax, U.P.*³

(iv) *Kone Elevator India Pvt. Ltd. vs. State of Tamil Nadu and Others*⁴

10. Mr Sharma, learned Counsel appearing on behalf of the respondent submitted that the applicant's contentions are flawed, inasmuch as the transaction was essentially one of supply of equipment. The contract is clearly mentioned as a “divisible” contract. He invited our attention to the Work Order dated 20th October, 1978 which clearly makes reference to the word “divisible works contract”. Mr.Sharma pointed out that the description of complete designing, engineering, manufacturing, testing, supplying, transportation work were secondary and in fact the transaction involved sale of relevant equipment.

11. In the first schedule to the agreement Mr. Sharma invited our attention to the definition of “equipment”. In the second schedule he referred to clause 2.2.1 with regard to supply of equipment under the contract. As also clause 2.9.0 deals with final acceptance. He submitted that the contract read as a whole will be one that which is essentially one of supply and installation. Given that meaning and intention the contract has been described as “divisible works contract”, firstly for supply of parts being the main transaction and secondly for erection and commission of equipment.

³ 1979 SCR (2) 621

⁴ [2014] 71 VST (SC)

12. Mr. Sharma had invited our attention to the definition of “equipment” on the site in clause 2.2.1 and 2.9.1. We have since perused the entire contract and found that there is scope of the contract which is restricted to four different processes each of them complete with drive turbine, accessories and spares. The scope of contract also includes provision of certain data sheets. The works contracts requires the contractors i.e. the applicants to furnish all documents drawings, test certificates and manuals as seen from clause 2.5.1. The contractor is also required to furnish the Civil design data to enable FPDIL to design the foundation. Thus it is clear that the foundation is being carried out by FPDIL and not the applicant. He therefore submitted that the question be answered in the affirmative.

13. We have heard counsel at considerable length and with their assistance scrutinised the impugned order and the contractual provisions. At the outset we will deal with the contractual provisions since it these provisions that will determine the factual aspects of the nature of the contract and parties obligations thereunder. The relevant provisions are as set out hereafter;

(A) Clause 2.6.1. envisages import license for import of equipment and components and supply of the same to FPDIL against payment. The said clause is material and is reproduced :

2.6.1. IMPORT LICENCE : Contractor shall make their own arrangements for import license for import of equipment, and

components and supply the same to FPDIL against rupee payment.

(B) Clause 2.8.1. provides for inspection and testing at the contractors works. FPDIL has the right to access the contractors works for inspecting the material and workmanship used in relation to manufacturing and testing of the equipment.

(C) Clause 2.9.0 talks of final acceptance which contemplates that after erection the equipments will be tested for satisfactory Commercial running to prove guaranteed performance for rated capacity.

(D) Under clause 2.10.0 contractor is to furnish a phased schedule for erection of the equipment with a time bar chart for various stages. The said clause is material and is reproduced below;

2.10.0 : Phased schedule for erection of contract

Contractor shall furnish a phased schedule for execution of the contract giving time bar chart for various stages of manufacture, inspection, shipping, clearance and dispatch. Contractor shall also furnish monthly progress report to FPDIL.

It will be seen from the said clause that execution of the contract largely involves manufacture, inspection, shipping, clearance and dispatch.

14. The third schedule deals with prices. The total price is stated as Rs.22 crores out of which the sum of Rs.18.10 crores is the cost of Compressors-Turbine sets including condensing system, Lube oil/Sea oil

system, complete instrumentation, spare rotors, 2 years maintenance spares and instrument spares, the sum of Rs.2.12 crores is cost of complete piping, transportation, handling, insurance, erection testing and pre-commissioning is estimated at Rs.1.78 crores. Clause 3.2 provides that Central Sales Tax is payable extra on the prices set out at clause 3.1.0 (a & b). Thus it will be seen that Rs.20.22 crores is only value of goods supplied the remaining 1.78 crores includes transportation, handling, insurance, erection, testing and pre-commissioning. We do not have the benefit of break up of Rs.1.78 crores nor has the applicant made any attempt to disclose the same.

15. The fourth schedule deals with payment terms which includes reference to preparation of invoices and provision of performance bond. The requirement for preparation of invoices refers to the obligation of the applicant to prepare item wise challan packing-wise. No reference is made to any invoices being required to specify work to be carried out for erection of a plant and in relation to the works contract. The Performance Bond referred to in clause 4.5.0 also holds a contractor fully responsible for proper workmanship and specific performance of the equipment under the contract. No reference is made to the work to be carried out in relation to installation.

16. It is the fifth schedule that refers to the time schedule for erecting the four compressors. As seen earlier, the foundation is to be prepared by FPDIL and not the applicant. The applicant is to supply equipment and erect it on the

site. Work of erection is not separately valued but is tied with transportation costs and insurance. In any event this is only a fraction of total cost of Rs.22 crores. In the circumstances, it is difficult to accept the contention of the applicant that the contract is one of work. In value terms, we find that the amounts spent for erection is minuscule. This notwithstanding, the transaction seems to be for supply of the compressors at a site prepared by FPDIL in terms of foundation and merely fixing four compressors. The fifth schedule also provides for materials and workmanship guarantees which are restricted to specification laid down in the contract and free from defects in design and material in relation to equipment and not in relation to the work of installation. Repair and replacement of the equipment is also contemplated at site. There is nothing to indicate that the guarantees also include the entire erection work.

17. Reference to clause 5.3.0 is material. Under the said clause the applicant is to guarantee performance of the equipment. Said clause is reproduced below :

5.3.0 : PERFORMANCE GUARANTEE

Contractor shall guarantee that the performance of the equipment supplied shall be strictly in compliance with the contract specifications and shall perform the duties specified in the contract, provided that the equipment has been properly installed under the supervision of contractor's personnel and has been under normal and proper use and maintenance. Before tests are performed contractor reserve the rights of inspection, checking for proper setting of every unit and component

parts.

18. The sixth schedule deals exclusively with packing, marking and despatch instructions since there is no dispute over the fact that the equipment with the contract envisages to a large extent supply of equipment. It is not necessary to rely upon detailed provisions of this schedule except that in clause 2.0 we find the obligations of FPDIL which are reproduced here for ease of reference :

2.00 FPDIL'S / OWNER'S / OBLIGATION

FPDIL/ OWNER obligations shall be limited to the following :

2.01 To make available sufficient leveled area for erection of the contracted equipment and construction of site office / stores.

2.02 To make available bench marks, elevation and such reference lines as may be necessary for locating equipment.

2.03 To undertake execution of all civil works.

2.04 To provide for water for drinking and construction purposes at one point.

2.05 To supply electricity at one point near to the job site at usual charges, as applicable to other Contractors working at Site.

2.06 To provide Crane facilities, subject to availability, usual hire charges as applicable to other contractors. The following capacity cranes are available.

Name of Crane	Capacity Boom Capacity (Tonnes)	With normal Length Boom length (FT)	Capacity Boom Capacity (Tons)	With Maximum length Boom length (FT)
<i>1. P & H Crane</i>	<i>80</i>	<i>50</i>	<i>18</i>	<i>120</i>
<i>2. 22 RB</i>	<i>16</i>	<i>30</i>	<i>11/2</i>	<i>70+30 (Jib)</i>
<i>3. Unit Coles fixed boom</i>	<i>6</i>	<i>30</i>		

2.07 To make available medical facilities at owner's hospital for the Contractor's staff/labour to the extent available at usual charges.

19. Now coming to the case law cited by Ms. Badheka in *Steel Plant Pvt. Ltd.(supra)*, this Court considered the scope of contract between assessee and the Bombay Municipal Corporation as a contract for work and labour and not a contract for sale. The court had found that the taxing authority had failed to establish that the contract in question involved sales of machinery and equipment and that the mere fact that provision had been made for payment of sales tax on value of machinery cannot convert a works contract into a sales transaction. This observation was made in the context of the fact that the revenue had relied upon the bill of quantity which formed part of the contract wherein there was specific mentioning of general sales tax leviable on the value of machinery required for erection of the plant and which was a subject matter of the contract. The Court did not choose to rely upon the bill of quantities to conclude that it was a contract of sale and also observed that the burden of proving that a work contract involved physical sale of material is upon the revenue and that such burden cannot be discharged merely by showing that the property could be so transferred to the other party.

20. In the case of *Sentinel Rolling Shutters & Engineering Company Pvt. Ltd. (supra)*, the contract was a contract for work and not a contract of sale. The question referred by the Tribunal was answered in favour of the assessee and

in the course of rendering the said decision, the Supreme Court found that the contract in that case was one for installing rolling shutters. Rolling Shutters came into existence in a unit when component parts were fixed in position at location and laying property of the customer as soon as came into being. There was no transfer of property in the rolling shutter by the manufacturer as in a chattel. It was essentially found to be a transaction for fabricating component parts and fixing them on the rails so as to constitute a rolling shutter. Thus it was found that the contract was a contract for work and labour and not a contract of sale. It was also found that the masonry work required to be carried out before and after erection was to be carried out by the customer at his own costs.

21. In the case of *Ramsingh & Sons Engineering Works (supra)*, the Court went on to examine how the erection of the crane was carried out in a step by step process. Each column has to be placed on a grouted foundation, seven feet deep. The column thus becomes permanently fixed to the earth and rose to about 40 feet made in three or four pieces joined together with nuts and bolts at the time of erection. The Court examined in great detail the process by which the crane was set up, all of which indicated that the process is certainly not one which could have been described as a mere sale of a crane.

22. In *Sentinel Rolling Shutters (supra)* in which the Apex Court observed that fabrication and erection is one indivisible process. In that case the process of assembling and erection was found to require high degree of skill

and it was not a contract of sale, since it had involved a three motion electrical overhead traveling crane. The Court found similarity between the decision of *Sentinel Rolling Shutters (supra)* and the facts in *Ramsingh & Sons Engineering Works (supra)*. It was found that the Indian Standard Institution publication laying down the code of practice for design of overhead traveling Cranes shows that a three motion electrical overhead traveling crane consists of 44 main component parts and it is only when they are put together and assembled at the site they assume the shape of a crane. Hence it was found that the contract was one of indivisible kind. Fabrication and erection involved one indivisible process.

23. In the instant case when we examine the facts and the document on record before the Tribunal we have the benefit of perusing the following invoices which are annexed at Exhibit-J to the Reference:

Invoice/Debit Note No.	Work Order No.	Billing advice No. and date	Amount Rs.
HY-XX-05-9-2069	1-0-465-805-71	1694 /2.1.80	4,69,080.00
HY-XX-05-9-2068	1-0-557-504-71	1695/2.1.80	4,80,546.40
HY-XX-07-9-2235	1-2-477-515-03	1853/24.1.80	12,17,840.00
HY-XX-07-9-2234	1-2-465-515-02	1854/24.1.80	2,39,304.00
HY-XX-07-9-2233	1-2-463-515-02	1855/24.1.80	4,70,704.00
HY-XX-07-9-2232	1-2-467-515-03	1856/24.1.80	2,39,096.00

Apart from these documents nothing else is placed before the Tribunal which will help us to analyse the transactions as already stated.

24. Ms. Badheka had also relied upon a recent decision of the Supreme Court in the case of *Kone Elevator India Pvt. Ltd.(supra)*. The issue involved

was whether a contract for manufacture, supply and installation of lift is a works contract and not a contract of sale. It was held by the majority judgment that a contract for manufacture, supply and installation of lift is a works contract and not a contract for sale. The judgment deals with the fact that the lift has to be understood in the conceptual context of the manufacture of components such as the lift car, motor, ropes, rails etc. having their own identity prior to installation and without which installation lift cannot be mechanically functional because it is a permanent fixture of the building and installation of a lift in building cannot be regarded as transfer of a chattel or goods but composite contract.

25. *Kone Elevator (supra)* deals with a composite contract for the purchase and installation of the lift and the various technical aspects that go into the installation of the lift including the obvious labour and service elements. The Court considered the concept of “works contract” and held that a works contract is an indivisible contract but, by legal fiction it is divided into two parts one for sale of goods, and other for supply of labour and services. Secondly “**Dominant nature tests**” or “**degree of intention tests**” or the “**Overwhelming component tests**” [See paragraph 44 of *Kone Elevator (Supra)*] require to be administered before treating the contract as a works contract. Thirdly it holds that the term “works contract” as used in clause 29A of Article 366 of the Constitution takes in its sweep all genre of works contracts and is not to be narrowly construed to cover one species of contract

to provide for labour and services of work and lastly once the characteristics of work contract are met in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.

26. In *Kone Elevator (supra)* the Supreme Court has considered the issue of re-opening of assessment and orders of assessment under challenge before the Court were set aside and assessment which have attained finality were treated as closed. In a dissenting judgment, in the facts of that case, it was found that supply of lift by the assessee satisfies the definition of “Sale” under the Sale of Goods Act and therefore does not question the deemed sale and the entire contract should not be held to be works contract. Even after the Constitutional amendment introducing Article 366(29A)(b), it will have to be duly examined whether a particular contract would fall within the expression “works contract” and only thereafter, the incidence of taxation could be provided in the contract. It was observed that the contract must in no uncertain terms that it was one for carrying out “the work” and the supply of material parts. The dissenting view holds that in the facts of *Kone Elevator (supra)* the contract was only for supply of lifts and other element of works were virtually insignificant compared to the element of sale which was paramount.

27. In our view considering the factual matrix and the law and after applying the tests in Kone Elevator, it is evident that in the facts of the present case the contract was clearly one for supply and erection of equipment, supply of equipment being dominant purpose. No doubt the State of Maharashtra had enacted the Maharashtra Sales Tax on "Transfer" of property of goods involved in works contract Act only in 1982 but the contention that during the period under consideration 1979-80 and 1980-81 the State had no power to levy the tax on Works contract will not be of any assistance to the applicant. In our view the contract in the instant case is predominantly for supply of equipment, erection and installation. FPDIL was required to carry out all preparation work, provide foundation, provide all civil works required, the equipment was merely supplied and installed.

28. We also found that in the Second Appeal vide order dated 30th March, 1998 partial relief was given while considering the applicants contention that the transaction with RCF Limited was a works contract. It had considered the applicants claim that the transaction with RCF was a works contract but the applicant had not produced, at that time, a copy of the agreement or correspondence or certificate from RCF that it is works contract. Later it was found that upon perusal of the contract that an invoice was raised by the appellant. The transaction entered by the applicant with RCF is one for sale and not for works contract. While allowing the appeal party some relief was granted in a sum of Rs.1,49,368/- balance of claim to be demanded.

29. In *Kone Elevator (supra)* the Supreme Court has considered a series of judgments including that of *Sentinel Rolling Shutters (supra)* and has concluded that the question will depend upon intention of parties executing the contract and there can be no standard formality that one can distinguish a contract of sale from contract of work and labour. The Supreme Court also reiterated that as held in the case of ***Larsen and Toubro Limited vs. State of Karnataka***⁵ the dominant nature of a contract must be examined. The “dominant nature test” can be culled out in what is reproduced below :

“Whether the contract involved a dominant intention to transfer the property in goods, in our view, is not at all material. It is not necessary to ascertain what is the dominant intention of the contract. Even if the dominant intention of the contract is not to transfer the property in goods and rather it is the rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if it otherwise has elements of works contract...”

30. The aforesaid extract read with four concepts that the Supreme Court has identified in paragraph 44 of the *Kone Elevator (supra)* will help to establish whether the contract in question is a works contract. Applying the aforesaid tests to the facts of the case we have no hesitation in concluding that reading the terms of the contract referred to herein above merely because there are small element of work in the contract, it cannot be concluded that the contract in the present case is a works contract. It is essentially a contract

5 [2013] 65 VST 1 (SC)

for supply of compressors and allied equipment with a minuscule amount of work. It is also seen that the contract is itself described as a “divisible contract”.

31. Furthermore, Clause 2.00 detailing FPDIL'S / OWNER'S obligations in our view clinches the issue inasmuch as, it is FPDIL obligation to make available erection of the contracted equipment, make available bench marks, elevation and reference lines for locating equipment and undertake execution of all civil works including supply of electricity and providing crane facilities each for hire charges. Thus this is not turnkey job for manufacturing, supplying and erection of compressor as contended by the learned Counsel for the applicant. In a turnkey contract, save and except the site being made available, most other activities would have been undertaken by the contractor, but not so in the instant case as evident from the above. This brings us to the numerous invoices and debit notes all of which are addressed to the Finance Manager, RCF. Invoices are drawn by the applicant. They make reference to the Work Order and provide for supply of compressors. The prices includes Central Sales Tax as is 4% on the compressors and spares supplied. Administering the three tests contemplated in Kone Elevator and taking an overall yet balanced view on facts we are unable to accept the contention of the appellant that the contract dated 20th October, 1978 is a Works Contract.

32. The Advanced Law Lexicon by P. Ramnatha Aiyar defines “Works Contract” as follows : *“WORKS CONTRACT” means an agreement in writing for the execution of any work relating to construction, repair, or maintenance of any building or superstructure, dam weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, workshop, powerhouse, transformers or such other works of the State Government or public undertakings as the State Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or public undertaking or its official for and on behalf of such public undertaking and includes an agreement for the supply of goods or material and all other matters relating to execution of any of the said works.* It also refers to the phrase “Work Contract” as including a contract for sale of goods involved in the works contract. Applying the aforesaid definition to the facts of the present case, in our view, it is not possible to hold that contract in the case at hand would amount to a Works Contract.

33. Furthermore in ***Rainbow Colour Lab and Another vs. State of M. P. and Others***⁶ the Supreme Court had occasion to consider whether the State can divide works contract into a contract for Sale of Goods and Contract for supply of labour and services and for that purpose the dominant intention was to be ascertained. In the facts of that case it was held that prior to amendment of Article 366 of the Constitution by the 46th amendment State's

6 (2000) 2 SCC 385

could divide works contract into a contract for sale of goods involved contract for labour supply and service. For that purpose the *dominant intention* of the works contract should be transfer of property. The 46th amendment permitted the States to divide the Works Contract into two contracts by legal fiction, one a contract for sale and other for supply of labour and services. The division of the contract could be made only if the works contract involved dominant intention of transfer of property but not a contract where the transfer of property takes effect as incidental to the contract of service.

34. Although in *Rainbow (Supra)* it was held that the State cannot impose sales tax on the works contract simpliciter in the guise of an expanded definition found in Article 366 [29-A](b) read with Section 2(n) of the M.P. General Sales Tax Act, 1959, in the instant case, even assuming a contract was a works contract, we are of the view that the labour element was only incidental. The contract is itself described as a divisible contract. The intention of parties as derived from the diverse contractual provisions set out above leaves us in no manner of doubt that the contract in question was not a works contract but the dominant intention was of sale of equipment. Having reached that conclusion the question referred for our opinion is answered in the affirmative, in favour of the revenue and against the appellants with consequences to follow.

35. In the result, the following order must follow :

- (i) The question referred to this Court is answered in the affirmative, in favour of the revenue and against the assessee.
- (ii) No order as to costs.

(A.K. MENON, J.)

(A.S. OKA, J.)