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SENTINEL ROLLING SHUTTERS & ENGINEERING CO. (P) LTD.

v.

COMMISSIONER OF SALES TAX, MAHARASHTRA

September 12, 1978

B [P. N. BHAGWATI AND V. D. TULZAPURKAR, JJ.]

Contract of Work and Labour and Contract of Sale tests for guidance.

The appellant assessee entered into a contract dated 28th June, 1972 for fabrication, supply erection and installation of Sentinel's Pull and Push type and Reduction Gear type rolling shutters in sheds Nos. 3 and 4 of the Sidheshwar Sahakari Sakar Karkhana belonging to M/s. C. M. Shah & Co. (P) Ltd. as per the terms and conditions of the contract. The special terms C and conditions provided that the actual transportation charges would be in addition to the price stipulated in the contract and the delivery would be 6/8 weeks, ex-works from the date of receipt of the final confirmation of the order. The terms of payment also formed part of the special terms and conditions and they provided 25% advance, 65% against delivery and remaining 10% after completion of erection and handing over of shutters to the satisfaction of the company. The assessee carried out its part of the D contract by erecting and installing the rolling shutters. Since the assessee entertained doubt as to whether the contract was a contract for sale or a contract for work and labour, the assessee made an application dated 16-9-72 to the Commissioner of Sales Tax for determining this question. The Deputy Commissioner of Sales Tax took the view that the contract was a contract for sale of rolling shutters and the work of erection and installation was merely incidental to the sale and the assessee was therefore liable to pay E sales tax on 95% of the amount receivable by it under the contract. In appeal the Sales Tax Tribunal held the contract to be a composite contract consisting of two parts, one for sale of the rolling shutters and the other for execution of the work of erection and installation. The High Court on a reference agreed with the tribunal and answered it in favour of the Revenue.

F Allowing the appeal by special leave the Court

HELD : (1) The contract was a contract for work and labour and not a contract of sale. The contract is one single and indivisible contract and the erection and installation of the rolling shutter is as much a fundamental part of the contract as the fabrication and supply. [655 D-E]

Vanguard Rolling Shutters & Steel Works v. *Commissioner of Sales Tax, U.P.* 39 STC 372 applied.

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Various 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 H 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 component parts are fixed in position on the premises and it, 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 is thus clearly and indisputably a contract for work and labour and not a contract for sale. [653 H, 654 A] A B

(2) Whether a particular contract is one for sale of goods or for work and labour depends upon the main object of the parties gathered from the terms of the contract, the circumstances of the transaction and the custom of the trade. [649 D-E]

(3) A contract where not only work is to be done but the execution of such work requires goods to be used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price : it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for supply of goods where some work is required to be done as incidental to the sale. Where a contract is of the first type, it is a composite contract consisting essentially of two contracts, one for the sale of goods and the other for work and labour. The second type of contract is clearly a contract for work and labour not involving sale of goods, while the third type is a contract for sale where the goods are sold as chattels and some work is undoubtedly done, but it is done only as incidental to the sale. 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. [649 F-H, 650 F-G] C D E

(4) To resolve the difficulties experienced in application of the primary test courts have evolved some subsidiary tests. One such test may be formulated as follows : "The primary difference between a contract for work or service and a contract for sale of goods is that in 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". [651 B-C] F

Commissioner of Madhya Pradesh v. *Purushottam Premji* 26 S.T.C. 38; *State of Rajasthan* v. *Man Industrial Corporation*, 24 S.T.C. 349; *State of Rajasthan* v. *Nenu Ram*, 26 STC 268; referred to. G

(5) The provision "ex-works delivery" in the contract does not make the contract a contract for sale. A rolling shutter as a complete unit is not fabricated by the manufacturer in his factory but he manufactures only the component parts and it is only when the component parts are fitted into position and fixed on the premises that a rolling shutter comes into being as a commercial article and, therefore, when the contract provides that the delivery of the goods shall be ex-works, what is obviously meant is that the com- H

ponent parts shall be delivered to the company at the works of the assessee and once they are delivered, they shall not be liable to be rejected by the company. But that does not mean that as soon as the component parts are delivered to the company, the contract is fully executed. The component parts do not constitute a rolling shutter and it is the obligation of the assessee under the contract to fix the component parts in position on the premises and erect and instal a rolling shutter. The execution of the contract is not completed until the assessee carried out this obligation imposed upon it under the contract and a rolling shutter is erected and installed at the premises. [654 C-F]

(6) The true nature of the contract cannot depend on the mode of payment of the amount provided in the contract. The parties may provide by mutual agreement that the amount stipulated in the contract may be paid at different stages of the execution of the contract, but that cannot make the contract one for sale of goods if it is otherwise a contract for work and labour. The payment of the amount due under the contract may be spread over the entire period of the execution of the contract with a view either to put the manufacturer or contractor in possession of funds for the execution of the contract or to secure him against any risk of non-payment by the customer. That cannot have any bearing on the determination of the question whether the contract is one for sale or for work and labour [654 H, 655 A-C]

State of Madras v. *Richardson & Cruddes Ltd.*, 21 STC 245, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1001 of 1977.

Appeal by Special Leave from the Judgment and Order dated 24-2-77 of the Bombay High Court in Sales Tax Reference No. 28 of 1975.

Hemendra K. Shah, M. H. Gami, P. H. Parekh, C. B. Singh and *M. Mudgal* for the Appellant.

S. T. Desai and *M. N. Shroff* for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI, J. This appeal by special leave raises the vexed question whether a particular contract is a contract of sale or a contract of work and labour. This has always been a difficult question, because most of the cases which come before the courts are border line cases and the decisions given by courts are by no means uniform. But so far as the present case is concerned, it does not present any serious difficulty and is comparatively free from complexity or doubt for there is a decision of this Court which is directly applicable and is determinative of the controversy between the parties.

The assessee who is the appellant before us is a private limited company carrying on business as engineers, contractors, manufacturers and fabricators and in the course of its business, it entered into a contract dated 28th June, 1972 with M/s C. M. Shah & Co. (P) Ltd. (hereinafter referred to as the Company) for fabrication, supply,

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erection and installation of Sentinel's Pull and Push type and reduction Gear type rolling Shutters in sheds Nos. 3 and 4 of the Sidheswar Sahakari Sakar Karkhana belonging to the Company. The detailed specifications of the Rolling Shutters were given in the contract and the price was stipulated to be Rs. 7/- per sq. ft. and rft. for Pull and Push Type Rolling Shutters and Rs. 9/- per sq. ft. and rft. for the Reduction Gear Type Rolling Shutters, the price in both cases being inclusive of "erection at site". The contract was expressed to be subject to the terms and conditions set out in a printed form and there were also certain special terms and conditions which were specifically written out in the contract. Since considerable reliance was placed on behalf of the Revenue on some of the printed terms and conditions of the contract, we shall set them out *in extenso* :

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"2. Once the delivery of the goods is effected, rejection claims cannot be entertained.

4. All erection work shall be carried out at Customer's own risk and no claim for incidental structural breakages, damages to the property of the customers or others shall be entertained. All masonry works require before and or after erection shall be carried out by customer's own cost.

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10. All payment shall be on overall measurements only. Customer desiring to check the correctness of the overall measurements shall notify their intention in advance and shall get the measurements checked before installation. No dispute on this ground shall be entertained once the erection is completed.

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12. Terms of Business : 50% advance with the order and the balance against delivery of the goods ex-work prior to erection, or against through Banks."

The special terms and conditions provided that the actual transportation charges would be in addition to the price stipulated in the contract and the delivery would be 6/8 weeks ex-works from the date of receipt of the final confirmation of the order. The terms of payment also formed part of the special terms and conditions and they provided "25% advance, 65% against delivery and remaining 10% after completion of erection and handing over of shutters to the satisfaction" of the Company. The assessee carried out its part of the contract and manufactured the two types of Rolling Shutters according to the specifications provided in the contract and erected and

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A installed them in sheds Nos. 3 and 4 of the Sidheswar Sahakari Sakar Karkhana. It does not appear from the record as to when the bill relating to the contract was submitted by the assessee to the Company, but it was dated 19th August 1972 and presumably it was sent by the assessee after the fabrication of the two types of Rolling B Shutters was completed, but before they were erected and installed at the premises of the Company. Since the assessee entertained doubt as to whether the contract was a contract for sale or a contract for work and labour, the assessee made an application dated 16th September 1972 to the Commissioner of Sales Tax for determining this question, for on the answer to it depended the taxability of the amount C to be received by the assessee against fulfilment of the contract. The Deputy Commissioner of Sales Tax, who heard the application, took the view that the contract was a contract for sale of the two types of Rolling Shutters and the work of erection and installation was merely incidental to the sale and the assessee was, therefore, liable to pay sales tax on 95% of the amount receivable by it under the contract, D since that represented the sale price of the Rolling Shutters, the remaining 5% being attributable to the work and labour involved in erection and installation. The assessee, being aggrieved by the order passed by the Deputy Commissioner of Sales Tax, preferred an appeal to the Sales Tax Tribunal, but the Sales Tax Tribunal also took the same view and held that the transaction of supply of the two types E of Rolling Shutters embodied in the contract amounted to a sale but so far as the price was concerned, the Sales Tax Tribunal observed that since 90% of the amount under the contract was payable at the stage of delivery, that should be taken to be the sale price and the balance of 10% should be held to be "the charges for the work". The F contract was thus held by the Sales Tax Tribunal to be a composite contract consisting of two parts, one for sale of the two types of Rolling Shutters and the other for execution of the work of erection and installation. This led to an application for a reference by the assessee and on the application, the following question of law was referred for the opinion of the High Court :

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> "Whether having regard to the facts and circumstances of the case the Tribunal was justified in law in coming to the conclusion that the contract in question essentially consisted of two contracts, one for supply of materials for money consideration and the other for service and labour done."

H The High Court made a detailed and exhaustive review of the decided cases and held, agreeing with the Sales Tax Tribunal, that the contract between the assessee and the Company "was a divisible con-

tract which essentially consisted of two contracts, one for the supply of shutters of the aforesaid two types for money and the other for service and labour", and accordingly answered the question 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 question whether a particular contract is a contract for sale or for work and labour is always a difficult question and it is not surprising to find the taxing authorities divided on it. The difficulty, however, lies not in the formulation of the tests for determining when a contract can be said to be a contract for sale or a contract for work and layout, but in the application of the tests to the facts of the case before the Court. The distinction between a contract for sale and a contract for work and labour has been pointed out by this Court in a number of decisions and some tests have also been indicated by this Court, but it is necessary to point out that these tests are not exhaustive and do not lay down any rigid or inflexible rule applicable alike to all transactions. They do not give any magic formula by the application of which we can say in every case whether a contract is a contract for sale or a contract for work and labour. They merely focus on one or the other aspect of the transaction and afford some guidance in determining the question, but basically and primarily, whether a particular contract is one for sale of goods or for work and labour depends upon the main object of the parties gathered from the terms of the contract, the circumstances of the transaction and the custom of the trade.

It may be pointed out that a contract where not only work is to be done but the execution of such work requires goods to be used may take one of three forms. The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price : it may be a contract for work in which the use of materials is necessary or incidental to the execution of the work; or it may be a contract for supply of goods where some work is required to be done as incidental to the sale. Where a contract is of the first type, it is a composite contract consisting essentially of two contracts, one for the sale of goods and the other for work and labour. The second type of contract is clearly a contract for work and labour not involving sale of goods, while the third type is a contract for sale where the goods are sold as chattels and some work is undoubtedly done, but it is done only as incidental to the sale. No difficulty arises where a contract is of the first type because it is

A divisible and the contract for sale can be separated from the contract for work and labour and the amount payable under the composite contract can be apportioned between the two. The real difficulty arises where the contract is of the second or third type, because in such a case it is always a difficult and intriguing problem to decide B in which category the contract falls. The dividing line between the two types of contracts is some what hazy and "thin partitions do their bounds divide". But even so the distinction is there and it is very much real and the Court has to perform at times the ingenious exercise of distinguishing one from the other.

The distinction between a contract for sale and a contract for work C and labour has been pointed out in Halsbury's *Laws of England* Third Edition, Volume 34, Article 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 D 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 end in anything that can properly become the subject of sale : neither the ownership of E 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."

F 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 G work. A clear case of the former category would be a contract for supply of airconditioner where the contract may provide that the supplier will fix up the airconditioner in the premises. Ordinarily a separate charge is provided in such contract for the work of fixing up but in a given case it may be included in the total price. Such a contract would plainly be a contract for sale because the work of fix- H ing up the airconditioner would be incidental to the sale. Then take a contract for constructing a building where considerable quantity of materials are required to be used in the execution of the work. This

would clearly be a contract for work and labour and fall within the latter category. But, as we pointed out earlier, there may be, and indeed as the decided cases show, there are a large number of cases which are on the border line and it is here that difficulty is often experienced in the application of this primary test. To resolve this difficulty, the courts have evolved some subsidiary tests. One such test is that formulated by this Court in *Commissioner of Madhya Pradesh* v. *Purshottam Premji*(1), 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*(2) 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. This Court, speaking through Shah, J., analysed the nature of the contract and pointed out : "The contract undertaken by the respondent was to prepare the window-leaves according to the specifications and to fix them to the building. There were not two contracts—one of sale and another of service. "Fixing" the windows to the building was also not incidental or subsidiary to the sale, but was an essential term of the contract. 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. It was, therefore, held to be a works contract. The same reasoning was applied by this Court in *State of Rajasthan* v. *Nenu Ram*(3) for holding that a contract for supply and

(1) 26 S.T.C. 38.
(2) [1969] 24 S.T.C 349 (S.C.)
(3) 26 S.T.C. 268.

A fixing of wooden doors and windows with sashes and frames and wooden chawkhats in the Police Lines building was a contract for work and labour. Let us, therefore, apply this test in order to determine what is the nature of the contract in the present case : is it a contract for sale or a contract for work and labour ?

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Now, it is clear that the contract is for fabrication, supply, erection and installation of two types of Rolling Shutters and 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 Com-
C pany. 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
D erection and installation of the Rolling Shutters that the contract would be fully executed. It is necessary, in order to understand the true nature of the contract, to know what is a Rolling Shutter and how it is erected and installed in the premises. It is clear from the statement Ex. C to the petition for special leave, which statement was
E submitted before the Sales Tax Tribunal and the correctness of which was at no time disputed before us, that a Rolling Shutter consists of five components parts, namely, two brackets welded with 'U' type clamps, one pipe shafting with high tension springs Shutter screen made out of 20G/18G thickness of metal as required by the customer, side guides or guide channels welded with iron clamps to the bottom
F with provision of locking arrangements with welded handles and top cover. These component parts are fabricated by the manufacturer and taken to the site and fixed on the premises and then comes into existence a Rolling Shutter as an identifiable commercial article. The method of fixing the component parts in position in the premises so as to bring into existence the commercial article known as a Rolling
G Shutter is fully described in the statement Ext. C. First of all, certain masonry work is required to be done by the customer and that has to be carried out by the customer at his own cost. Then the brackets are fixed on either side on the top portion of the opening by grouting holes on the masonry walls and inserting the bolts. Thereafter the holes are filled with cement and the pipe shafting with high tension
H springs is inserted into the 'U' clamps of the brackets. Then the iron curtain of the Rolling Shutter is hoisted over the high tension springs and tightened by means of nut bolts and guide channels are then fixed

by grouting masonry walls where side guide clamps are to be fixed. After fixing the clamps to the grouted portion of the wall, the same is plastered and then the iron curtain of the shutter is lowered through the guide channels to operate the shutter manually up and down. The Rolling Shutter is then 'born' and it becomes a permanent fixture to the premises. The Indian Standards Specification Book for Metal Rolling Shutter and Rolling Grills also gives a similar procedure for fixing the component parts of the Rolling Shutter on the premises. It clearly shows that a rolling shutter consists of curtain, 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 cover is 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 specification 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 authorised representative in a sound manner, so as to afford trouble-free and easy operation, long life and neat appearance". It will, thus, be seen that the component parts do not constitute a rolling shutter until they are fixed and erected on the premises. It is only when the components 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 component parts are fixed in position on the premises and it 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 is thus clearly and indisputably a contract for work and labour and not a contract for sale.

The Revenue leaned heavily on the provision in the contract that the delivery of the goods shall be ex-works and once the delivery of the goods is effected, no claim for rejection shall be entertained and relying on this provision, the Revenue contended that under the contract the rolling shutters were to be delivered by the assessee to the company ex-works, that is, at the works of the assessee and the property in the rolling shutters passed to the company as soon as they were delivered and hence it was a contract for sale. We do not think this contention of the Revenue has any force and it must be rejected. It is clear from the above discussion that a rolling shutter as a complete unit is not fabricated by the manufacturer in his factory but he manufactures only the component parts and it is only when the component parts are fitted into position and fixed on the premises that a rolling shutter comes into being as a commercial article and, therefore, when the contract provides that the delivery of the goods shall be ex-works, what is obviously meant is that the component parts shall be delivered to the company at the works of the assessee and once they are delivered, they shall not be liable to be rejected by the company. But that does not mean that as soon as the component parts are delivered to the company, the contract is fully executed. The component parts do not constitute a rolling shutter and it is the obligation of the assessee under the contract to fix the component parts in position on the premises and erect and instal a rolling shutter. The execution of the contract is not completed until the assessee carries out this obligation imposed upon it under the contract and a rolling shutter is erected and installed at the premises. It is true that clause (12) of the printed terms and conditions provides that 50% of the amount under the contract shall be paid as advance and the balance against delivery of the goods ex-works but this clause is clearly overridden by the special term specifically written out in the contract that 25% of the amount shall be paid by way of advance, 65% against delivery and the remaining 10% after completion of erection and handing over of the rolling shutters to the satisfaction of the company. This provision undoubtedly stipulates that 90% of the amount due under the contract would be paid before erection and installation of the rolling shutters has commenced, but that would not make it a contract for sale of rolling shutters. The true nature of the contract cannot depend on the mode of payment of the amount provided in the contract. The parties may provide by mutual agreement that the

amount stipulated in the contract may be paid at different stages of the execution of the contract, but that cannot make the contract one for sale of goods if it is otherwise a contract for work and labour. It may be noted that the contract in *State of Madras* v. *Richardson & Cruddas Ltd.*(1) contained a provision that the full amount due under the contract shall be paid in advance even before the execution of the work has started and yet the Madras High Court held, and that view was affirmed by this Court, that the contract was a works contract. The payment of the amount due under the contract may be spread over the entire period of the execution of the contract with a view either to put the manufacturer or contractor in possession of funds for the execution of the contract or to secure him against any risk of non-payment by the customer. That cannot have any bearing on the determination of the question whether the contract is one for sale or for work and labour.

Here the last portion of the special term in regard to payment of the amount due under the contract also makes it clear that it is only when the component parts are fitted into position in the premises that a rolling shutter would be complete and this rolling shutter has to be to the satisfaction of the company and it is then to be handed over by the assessee to the company and then, and then alone, would the remaining 10% be payable by the company to the assessee. It is, therefore, clear that the contract is one single and indivisible contract and the erection and installation of the rolling shutter is as much a fundamental part of the contract as the fabrication and supply. We must, in the circumstances, hold, driven by the compulsion of this logic, that the contract 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 *Vanguard Rolling Shutters & Steel Works* v. *Commissioner of Sales Tax, U.P.*(2) to which one of us (Bhagwati, J.) was a party.

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.

S.R. *Appeal allowed.*

(1) 21 S.T.C. 245.
(2) 39 S.T.C. 372.