

Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708

Sales Tax and VAT

Works contract

What is - Development agreement entered into prior to completion of construction of the building, for construction and sale of individual flats in course of which title to an individual flat is transferred to the flat purchaser - Point in time from which such composite transaction is exigible to sales tax/VAT, and extent to which so exigible - Tripartite agreements between landowner, developer and flat purchaser whereunder the developer has undertaken to construct flats for the flat purchasers for monetary consideration stipulating they would get an undivided share in the land - Held, affirming Raheja, (2005) 5 SCC 162, that the same amounted to a works contract attracting liability to pay sales tax/VAT on transfer of property in goods involved in such works contract - There is nothing wrong in treating the transaction as a composite contract comprising both a works contract and a transfer of immovable property and levying sales tax on the value of the material involved in execution of the works contract - Observation in the referral order that if ratio in Raheja case is to be accepted then there would be no difference between a works contract and a contract for sale of chattel as chattel, held, not legally sustainable - Further, merely because the builder has a right of lien in the event due monies are not paid, does not alter the character of contract being a works contract - However, clarified that activity of construction undertaken by the developer would qualify as a works contract exigible to sales tax/VAT only from the stage developer enters into a contract with the flat purchaser - It is only value addition made to the goods transferred after such agreement with flat purchaser is entered into which alone can be made chargeable to sales tax/VAT by the State Government - Also, if at the time of construction and until the construction is completed, there is no contract for construction of the building with the flat purchaser, goods used in construction cannot be deemed to have been sold by the builder since at that time there is no purchaser - Whether the building is intended for sale ultimately after construction does not make any difference - Raheja case, held, correctly decided - Present appeals sent back to regular Bench for final disposal, (2014) 1 SCC 708-A

Constitution of India

Art. 366(29-A)(b) - Term works contract in - Meaning and Scope - Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term works contract - Held, nothing in Art. 366(29-A)(b) limits the term works contract to contract for labour and service only - Term works contract cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some works - It takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services, (2014) 1 SCC 708-B

Sales Tax and VAT

Works contract

Composite contract (both a contract for work/labour and a contract for sale) for purposes of Art. 366(29-A)(b) of Constitution - Works contract or contract for sale - No absolute test to distinguish - Held, traditional view of test of substance of the contract lost its significance in light of philosophy of Art. 366(29-A) of Constitution - By legal fiction under Art. 366(29-A)(b) of Constitution, it is permissible in a composite contract to make it divisible by separating the transfer of property in goods as goods or in some other form from the contract of work and labour - A transfer of property in goods under clause (29-A)(b) of Art. 366 of Constitution is deemed to be a sale of goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made, (2014) 1 SCC 708-C

Sales Tax and VAT

Works contract

Sale or works contract - Building contracts - Agreement between the promoter/developer and the flat purchaser to construct a flat and eventually sell the flat with a fraction of the land - Determination of - Held, is a works contract - Such activity of construction has all the characteristics or elements of a works contract - The ultimate transaction between the parties may be sale of flat but it cannot be said that the characteristics of works contract are not involved in that transaction, (2014) 1 SCC 708-D

Sales Tax and VAT

Works contract

Tax on goods deemed to have been sold in execution of a works contract - Liability to sales tax - Held, three conditions must be fulfilled, (i) there must be a works contract, (ii) goods should have been involved in the execution of a works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form - Building contracts are a species of works contract, (2014) 1 SCC 708-E

Constitution of India

Sch. VII List II Entry 54 r/w Art. 366(29-A) - Composite works contract/transfer of immovable property contract - Levy of sales tax by States on sale of goods element involved in the execution of works contract - Taxation of different aspects of the same transaction as separate taxable events, reiterated, is permissible - Held, aspects theory though does not allow the State Legislature to entrench upon Union List and tax services by including the cost of such service in the value of goods - But that does take away the power of the States to tax the sale of goods element in a composite contract of sale and service, (2014) 1 SCC 708-F

Sales Tax and VAT

Works contract

Levy of sales tax on the sale of goods involved in the execution of a works contract - States power to tax indivisible works contracts - Legislative history of, considered in detail from Gannon Dunkerley, AIR 1958 SC 560 to the enactment of the Constitution (Forty-sixth Amendment) Act - Problems connected with powers of States to levy tax and reasons for enactment of Forty-sixth Amendment Act, discussed, (2014) 1 SCC 708-G

Constitution of India

Art. 366(29-A)(b) and Sch. VII List II Entry 54 - Scope and effect of the definition clause - Expression tax on sale or purchase of the goods - Scope - Effect of insertion of Art. 366(29-A) by the Constitution (Forty-sixth Amendment) Act - Held, the States have now been conferred with the power to tax indivisible contracts of works - By enlarging the scope of tax on sale or purchase of goods in Sch. VII List II Entry 54 when read with the definition clause in Art. 366(29-A), now includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract - The taxable event is a deemed sale - View taken in Builders' Assn., (1989) 2 SCC 645, reiterated, (2014) 1 SCC 708-H

Constitution of India

Art. 366(29-A)(b) - Expression goods (whether as goods or in some other form) - Scope - Held, expression in some other form has enlarged term goods - Goods in some other form would thus mean goods which have by incorporation become part of immovable property are deemed as goods - Hence, definition of tax on the sale or purchase of goods includes a tax on the transfer or property in the goods as goods or which have lost their form as goods and have acquired some other form involved in the execution of a works contract - Viewed thus, a transfer of property in goods under clause (29-A)(b) of Art. 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made, (2014) 1 SCC 708-I

Sales Tax and VAT

Works contract

Tax on transfer of property in goods involved in execution of works contract - Transfer of movable property in a works

contract is deemed to be a sale even though it may not be sale within the meaning of the Sale of Goods Act - Held, by Forty-sixth Constitutional Amendment States have power to bifurcate a works contract/composite contract and levy sales tax on the value of the material involved in the execution of the works contract, (2014) 1 SCC 708-J

Constitution of India

Arts. 366(12) & (29-A) and Sch. VII List II Entry 54 - Works contract involving transfer of property - Liability to sales tax - Dominant intention test - Applicability - Whether contract involved a dominant intention to transfer the property in goods for purpose of, held, is not at all material - 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 a works contract, (2014) 1 SCC 708-K

Sales Tax and VAT

Maharashtra Value Added Tax Act, 2002 (9 of 2005)

S. 2(24) Expln. (b)(ii) [as amended w.e.f. 20-6-2006] - Transfer of goods involved in execution of a works contract for carrying out works coupled with sale of immovable property deemed to fall within expression sale of goods - Constitutionality, upheld - Held, amendment in Expln. (b)(ii) to S. 2(24) was brought about because of judgment in Raheja, (2005) 5 SCC 162 - As Raheja case lays down the correct legal position, said impugned statutory provision is not in breach of any constitutional boundaries, (2014) 1 SCC 708-L

Sales Tax and VAT

Maharashtra Value Added Tax Rules, 2005

R. 58(1-A) - Provision for valuation of the sale of goods element in a works contract determined by effecting certain deductions from the value of the entire contract - Constitutionality - Mode of valuation of goods provided in R. 58(1-A) has to be read to include value of goods at the time of incorporation of goods in the works even though property in goods passes later - Mode of valuation of goods provided in R. 58(1-A) read down to this extent - Maharashtra Government has to bring clarity in R. 58(1-A) as indicated above - Subject to this, validity of R. 58(1-A) of the MVAT Rules is sustained, (2014) 1 SCC 708-M