STATE OF TAMIL NADU

v.

ANANDAM VISWANATHAN

JANUARY 24, 1989

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Tamil Nadu General Sales Tax Act, 1959: Assessee entered into contract with Universities and educational institutions for printing question papers liability to sales tax—Nature of contract—Contract for work and contract for labour and work—Difference between—Ascertainment of intention of parties and nature of contract—Need for:

The respondent had entered into contracts with Universities and other educational institutions for printing of question papers for them. In the demand notes prepared the respondent gave the charges for printing, blocks, packing handling, delivery, postal and also value of paper and value of packing materials separately in the relevant assessment years. On re-examination the Assessing Officer noticed that printing charges and block making charges escaped assessment and brought them to tax.

In respect of subsequent assessment also claims for exemption towards printing charges and block making charges were disallowed. The appeals preferred by the Respondents were dismissed by the Appellate Assistant Commissioner, who reached a finding that the contracts were only for supply of printed question paper as a finished product and that there was no scope to disintegrate cost of paper with separate charges for printing and block making though the bills were made out in a different way.

The respondent preferred appeals to Sales Tax Appellate Tribunal. The Tribunal held that the respondent was assessable only on the sale value of paper and that printing and block making charges were not to be included in the assessment.

Against the Tribunal's Orders, the appellant preferred tax cases before the High Court. The High Court dismissed the cases and held that the contract between the assessee and the Universities is of highly confidential nature and that the printing of question papers could be entrusted only to those in whom the institutions got the highest confidence, and that the price paid for such confidentiality and trust is not

A the price for the sale of goods.

The present appeals by Special Leave are against the High Court's Orders.

In this appeal, it was argued on behalf of the appellant that printB ing charges and block making charges are includible in the assessable turnover of the Respondent. On behalf of the Respondent it was argued that the contract entered into between her and the educational institutions was a contract of work and labour and in the performance of the contract, indicentally she had to sell paper to them and hence except to the extent of the cost of paper she was not liable to pay sales tax in respect of the other amounts receive by her.

C

Dismissing the appeals,

HELD: 1.1 Contract for work in the execution of which goods are used may take one of three forms. The contract may be for work to be D done for remuneration and for supply of material used in the execution of works in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials, though not accessory to the execution of the contract, is voluntary or gratuitous. In the last class there is no sale because though property passed it did not pass for a price. Whether a contract is E of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods. [307H; 308A-B]

1.2 In each case the nature of the contract and the transaction F must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of a contract for work some materials are used and the property/goods so used, passes to the other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials. Whether or not and which part of the job work relates to that depends on the G nature of the transaction. [316G-H]

1.3 Normally, it may be that the goods prepared by the assessee which could not be exhibited for sale, would not be decisive of the matter and could in certain circumstances be sales liable to sales tax, but in all circumstances it depends upon the nature of the sale and the H nature of the transaction involved. Printing of question papers at the

behest of University or educational institutions is rather a delicate and confidential type of work and the price paid for supplying such printed question papers or printed matters entails primarily the confidence, and secondly the skill and to a very small measure the material. If that is the position, it cannot be categorised as entailing sale of goods but it is rather a contract for works done. [309G-H; 310A] A

Government of A.P. v. *Guntur Tobaccos Ltd.*, XVISTC 240 relied on. B

Hindustan Aeronautics Ltd. v. *State of Kerala*, [1984] ISCC 706 and *P.T. Varghese* v. *State of Kerala*, 37 STC 1171 approved.

Saraswati Printing Press v. *CST, Eastern Division Nagpur*, X STC 286 and *State of A.P.* v. *Sri Krishna Power Press, Vizianagaram*, XI STC 498. C

P.M. Venkatachalam Pillai v. *State of Madras*, XXIII STC 72; *State of Orissa* v. *Ramnath Panda*, XXVII STC 98; *S.R.P. Works and Ruby Press* v. *State of A.P.*, XXX STC 195 and *STO, Special Circle II, Palghat* v. *I.V. Somasundaram*, 33 STC 68. D

A.S. Hameed Bharath Press v. *State of Tamil Nadu*, 54 STC 379; *CST* v. *Uma Art Press*, 56 STC 300; *Chandra Bhan Gosain* v. *State of Orissa*, XIV STC 766; *CST* v. *M/s Sabarmati Reti Udyog Sanakari Mandali Ltd.*, 38 STC 203 and *Marcel (Furriers) Ltd.* v. *Tapper*, [1953] 1 WLR 49 referred to. E

2.1 The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property. Where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only a works contract. [316E] F

G

2.2 When the questions are set on a piece of paper and sent for printing, the University remains the owner until it divulges these to the intending candidates or the students. But that is a matter which is relevant in the method of communication of the question to the candidates appearing in the examination. The means employees for such communication entail use of mind, confidence, trust for the material, H

paper and the technical skill of printing. It is a combination of these various factors that results in printing the question papers and the payment made in the process entails a composite payment for all these. Question papers as such, after being printed are neither available commercially nor available to any community—commercial or otherwise save under specific circumstances for the candidates appearing at a particular time in an examination. [308D-E; 309C]

Court Press Job Branch, Salem **v.** *State of Tamil Nadu,* **54 STC 382 and** *CST* **v.** *M.P.V. Ratna Fine Arts Printing Press,* **56 STC 77 approved.**

State of Madras **v.** *Gannan Dunkerlay & Co. (Madras) Ltd.,* **IX STC 353;** *Patnaik & Co.* **v.** *State of Orissa,* **XVI STC 364 and** *T.V. Sundaram Iyengar & Sons* **v.** *State of Madras,* **35 STC 24 referred to.**

3. The contract in the present case is one, having regard to the nature of the job to be done and the confidence reposed, for work to be done for remuneration and supply for paper was just incidental. Hence, the entire price for the printed question papers would have been entitled to be excluded from the taxable turnover, but since the demand notes prepared by the assessee showed the costs of paper separately, it appears that it has treated the supply of paper separately. Except the materials supplied on the basis of such contract, the contract will continue to be a contract for work and labour and no liability to sales tax would arise in respect thereof. [317A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2346-47 of 1978 Etc.

From the Judgment and Orders dated 5.8.1976 of the Madras High Court in T.C. Nos. 436 and 437 of 1971.

R. Mohan and R.A. Perumal for the Appellant.

T.A. Ramachandran and Mrs. Janaki Ramachandran for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKARJI, J. Special leave granted in Special Leave Petitions (C) Nos. 10539, 4704 and 921 of 1979.

These appeals by leave under Article 136 of the Constitution, are from the orders of the High Court of Madras, involving a common question though for different assessment years. It would be appropriate to deal with Civil Appeal Nos. 2346-47/78, and the facts in other appeals are essentially the same. A

The assessee in these cases had entered into contracts with the Universities and other educational institutions in the country for printing question papers for the said educational institutions. The assessee in the demand notes prepared, gave the charges for printing blocks, packing charges, handling charges, delivery charges, postage, value of paper and value of packing materials separately in the relevant assessment years. The question involved is, whether the taxable turnover should also include the printing and block-making charges or not. It appears from the judgment of the High Court that for the assessment year 1966-67, the printing charges amounted to Rs.99,675.00 and block-making charges amounted to Rs.2,923.95, totalling Rs.1,02,598.95. Similarly, so far as the assessment year 1968-69 is concerned, the printing charges amounted to Rs.1,33,137 and block-making charges amounted to Rs.5,361.75 totalling Rs.1,38,498.75. B C D

The controversy involved in these appeals was, whether these two amounts were includible in the assessable turnover of the respondent in the respective years in question. The case of the assessee was that the contract entered into between her and the respective educational institutions was a contract of work and labour and in the performance of that contract, incidentally she had to sell paper to them and, hence, except to the extent of the cost of paper, in respect of the other amounts received by her she was not liable to pay sales-tax. On the other hand, the Government's stand was that the contract was for the sale of printed materials by the respondent to the respective educational institutions and, therefore, the entire amount will have to be taken into account as turnover liable to tax. In other words, would printing question papers and incidentally supplying the papers upon which such questions were printed, entail the entire cost to be liable to sales-tax. As was put before us, the question is, can one sell printed question papers and charge for the same? E F G

The High Court mentioned that till 1963 the assessee was herself doing the printing and the Tribunal held that during that period only the cost of paper was includible in the taxable turnover. With effect from 3.11.1963 the printing was done by a firm of which the assessee's sons and daughters were partners. The contract, however, continued H

to be entered into between the assessee and the respective educational institutions. According to the Govt., as appears from the judgment of the High Court, this made a difference and, as such, the order of the Tribunal in the previous years could not govern the assessment for the respective years referred to above.

The Tribunal, however, held against the revenue holding that only the value of paper was liable to be included in the taxable turnover of the assessee. The correctness of that decision was challenged before the High Court by two Revision Cases under section 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called 'the Act'). The High Court on an analysis of the facts and the several decisions came to the conclusion that printing of question papers involved confidentiality of the materials to be printed, and held that apart from the paper nothing else could be included in the total taxable turnover of the assessee. The High Court came to the conclusion that the contract entered into between the assessee and the University and other educational institutions was a composite contract i.e., a contract for work and labour, as well as a contract for sale of the paper. It was contended on behalf of the revenue that in case of sale of all printed materials, the sales-tax was liable on the entire work. In that view of the matter if the liability for sale of printed material would include the entire price then there was no authority, according to the revenue, to treat the question papers differently. It is, however, clear as the High Court noted, that the printng of question papers of educational institutions was an extremely and highly confidential matter. This is the first aspect of the matter which must be borne in mind. It was emphasised that such printing could not be entrusted to any press of one's choice, and the Universities and other educatioal institutions were only obliged to enter into such contracts with those in whom they have got the highest confidence so that the printer would not divulge the questions to be printed by him/her and will preserve the confidential nature of the transaction. Therefore, in printing question papers entrusted by educational institutions to the printer the value included the price of the confidentiality and the confidence reposed in the printer. It has to be borne in mind that the price paid for such confidentiality and trust is not the price for the sale of goods. In case of printing of other materials just like letter-heads, bills, account books or even printing works like a novel, story, poem or drama (subject to copyrights), the technical excellence and the professional efficiency of the printer, among other things, might enter into calculation for entrusting the job to a particular printer and the performance thereof. However, the position is different in case of printing of confidential matters like question

papers of the Universities or other educational institutions. The value paid for such printing job includes to a large extent the price of not only the technical and professional work but also the value, if it could be measured in terms of money, of the confidence and faith reposed that the printing materials should not be disclosed to anyone save to be returned back to the University or the educational institutions to be dealt with in accordance with its obligations.

The High Court noticed these points and came to the conclusion that in view of these peculiar features which will be present in the printing of matters which are confidential in nature and will not be present in other case the contracts pre-dominantly being contracts for work with confidence and faith, should be treated mainly as contracts for labour and not contracts for sale of any goods such as printed materials. It may be that in the execution of the contracts and for the purpose of completing the work, the parties might enter into the contracts for sale of the paper and in this context, it was a composite contract which can be split up into contract for sale of paper and contract for work and labour.

Relying on a decision of this Court in *Govt. of Andhra Pradesh* v. *Guntur Tobaccos Ltd.*, XVI STC 240, the High Court was of the view that the cost of paper shown separately in the contract would be liable to tax and except for that cost of paper and the material supplied in other respect, the contract was a contract for work and labour and there could not be any liability for sales-tax. According to the High Court, this would cover the printing charges. Blocks, it was found, were destroyed after the question papers had been printed. Hence, there was no question of sale of blocks or passing of the property. The High Court so held.

Following the aforesaid position in other matters which are the subject-matters of other appeals where the High Court held accordingly, it dismissed the revision application of the revenue. Aggrieved thereby, the appellant has come up to this Court by leave.

Our attention was drawn by both Mr. Mohan, learned counsel for the appellant and Mr. Ramchandran, counsel for the respondent to the decision of this Court in *Govt. of Andhra Pradesh* v. *Guntur Tabacco Ltd.*, (supra), where this Court laid down that a contract for work in the execution of which goods are 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 works for a price; it

may be a contract for work in which the use of materials is accesssory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials, though not accessory to the execution of the contract, is voluntary or gratuitous. In the last class there is no sale because though property passed it did not pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods.

In our opinion, the aforesaid tests lay down correct criteria for determining the question. Mr. Mohan, appearing for the revenue, pressed before us that the said principle requires clarification. He emphasised that Press has no ownership over the materials or papers upon which the questions were printed. Who then, Mr. Mohan posed, was the owner, author or the paper setter of the University or the educational institution or the printing Press? In our opinion, when the questions are set on a piece of paper and sent for printing the University remains the owner until it divulges these to the intending candidates or the students. But that is a matter which is relevant in the method of communication of the questions to the candidates appearing in the examination. The means employed for such communication entail use of mind, confidence, trust for the material, paper and the technical skill of printing. It is a combination of these various factors that results in printing the question papers and the payment made in the process entails a composite payment for all these and can only be dissected and determined in the way laid down by the principle enunciated in the afroesaid decision.

Our attention was, however, drawn by Mr. Mohan to a decision of the Bombay High Court in *Saraswati Printing Press* v. *Commissioner of Sales Tax, Eastern Division, Nagpur,* X STC 286. There the petitioner Press itself purchased the stationery and did printing work upon it according to the orders of individual customers and supplied the printed stationery to the customers. It was held that there the petitioner had produced a commercial commodity which was capable of being sold or supplied and when the petitioner sold the printed stationery to its customers, it sold goods to the customers upon which sales tax was leviable. In those circumstances, it was held that the transactions done by the said petitioner Press were not in the nature of works contracts but were sales of goods and therefore recourse to rule 5(3) of the rules could not be made. It was further held that as the petitioner did not immediately dispose of the stationery purchased by

it in favour of its constituents, but kept it in the Press and did printing work upon it and then supplied the finished product to its constituents, the provisions of clause (iv) of Explanation I of clause (m) of section 2 were not attracted. A

The High Court relied on the decision of the Allahabad High Court reiterating the principle that it is necessary to determine the substance of the contract, and as the substance of the contract is that skill and labour that had been exercised for the production of the article and sale of material is only ancillary to that. In our opinion, the principle upon which the High Court relied, is not applicable in case of transactions of printing of question papers. Question papers as such, after being printed are neither available commercially nor available to any community—commercial or otherwise, save under specific circumstances for the candidates appearing at a particular time in an examination. Mr Mohan also drew our attention to the decision of Andhra Pradesh High Court in *State of Andhra Pradesh* v. *Sri Krishna Power Press, Vizianagaram,* XI STC 498. There, the court reiterated that a transaction which results in the transfer of property in finished goods to another person cannot be described as a works contract. It was further held that where the assessee Press itself purchased stationery and did printing work upon it according to the orders of individual customers and supplied the printed stationery to the customers at an agreed price the transaction was sales liable to sales tax and not works contract. The fact that the goods prepared by the assessee could not be exhibited for sale to the general public is not decisive of the issue. According to the High Court the only test is whether the contract is for the sale of finished product. Mr. Mohan relying on the aforesaid observations submitted that the goods prepared by the assessee could not be sold to other customers, the person who placed order could be compelled to accept it or claim damages from the printers. He submitted that even in a case where goods are prepared according to the specific requisition to suit the requirements of individual customer, yet printing materials supplied thereto have been held to be sale of goods and he drew our attention to the several decisions referred to by the High Court of Andhra Pradesh in aid of his propositions. Normally, it may be that the goods prepared by the assessee which could not be exhibited for sale, would not be decisive of the matter and could in certain circumstances be sales liable to sales tax, but in all circumstances it depends upon the nature of the sale and the nature of the transaction involved. Printing of question papers at the behest of University or educational instituions is rather a delicate and confidential type of work and the price paid for supplying such printed question B C D E F G H

A papers or printed matters entails primarily the confidence, and secondly the skill and to a very small measure the material. If that is the position then, in our opinion, it cannot be categorised entailing sale of goods but it is rather a contract for works done.

B Mr. Mohan also relied on the decision of the Madras High Court in *P.M. Venkatachalam Pillai* v. *The State of Madras,* XXIII STC 72, where it was held that when a transaction is claimed to be a works contract, a decision on the question depends on the particular facts. The primary point to bear in mind in such cases is what is the intention of the parties viewing the transaction as a whole; do they intend an apportionment or view the transaction on compartmental basis as that C which represents labour and that which represents sale of the materials. Different tests may be applied in answering such a question as the stage of passing of property, risk and the like. But all these tests converge towards finding out what is the intention of the parties. There, the question was whether the assessee's turnover consisted of the aggregate of labour charges and the cost of materials in printing D work or of outright sales of finished commodity. The assessee relied on certain bills which showed the cost of materials and labour charges but he did not produce order books or other documents. The Tribunal found that the separate entries were only a make-believe apportionment for the purpose of sales tax and that what was sold was only a finished product. In those findings the Tribunal justified on the mate- E rials to uphold the liability for sales-tax. As emphasised by the Division Bench of the Madras High Court, the entire transaction should be viewed and the intention of the parties found out.

Our attention was drawn by Mr. Mohan to the decision of the F Orissa High Court in the case of *State of Orisssa* v. *Ramnath Panda,* XXVII STC 98. There the High Court held that in the case of an assessee, a printer supplying printed materials, where the customers supply paper and the assessee does nothing except printing on it, the contract is one of labour and there is no sale. Where the customer enters into an agreement that he would separately pay for the paper G and the assessee would merely print on it, then also there is no sale. Where the customer does not enter into any separate agreement but merely asks the assessee to supply the printed materials, the contract is indivisible and the supply of printed materials is a sale liable to sales tax. In such a case charging separately for the paper and printing in the bill issued to the customer does not alter the essential character of the H agreement, which is for the purchase of printed materials.

Our attention was also drawn to another decision of Andhra Pradesh High Court in *S.R.P. Works and Ruby Press* v. *State of Andhra Pradesh,* XXX STC 195. There, the petitioner was running a printing press, supplying cinema tickets printed on paper of different colours to the customers. The customers obtained samples from the petitioner and then placed orders giving specifications. The petitioner while making out bills, gave break-up figures, showing the cost of paper and the cost of printing separately and the total cost. The assessing authority assessed the petitioner only on the value of the paper for printing the tickets and granted exemption in respect of printing charges on the ground that they represented the cost of labour. The Deputy Commissioner revised the order and held that the transactions involved were sales of finished goods, viz., the tickets, and not merely of paper. The Tribunal agreed with the finding of the Deputy Commissioner and confirmed the order. On a revision it was held by the High Court on a consideration of some of the orders placed by the customers, that the orders were specifically for printing and supply of tickets. The fact that break-up figures were given in the bills was not decisive or conslusive in determining the question whether there were two contracts—one for supply of paper and the other for printing.

We agree that the transaction under its true perspective must be viewed and the intention of the parties must be found out.

Our attention was drawn to the decision of the High Court of Kerala in *The Sales Tax Officer, Special Circle II, Palghat* v. *I.V. Somasundaran,* 33 STC 68. In that case by printing something on paper, as in the cases of printing letter heads, invitation cards, wedding invitations, judgments of courts, or ration cards, the printed matter does not become "paper products" within the meaning of that expression in item 42 of Schedule I to the Kerala General Sales Tax Act, 1963. The High Court found that in such a case a further question arises as to whether it was sale of goods which could be taxed at all points. In order to spell out a contract of sale there must be an agreement which may be express or inferred from the circumstances. There can be an agreement for work and labour or there can be one for sale of goods. If essentially the agreement is one for work and labour, complete exemption from taxation should be allowed. If, on the other hand, it is a contract for sale, the whole turnover should be taxed.

A contract for printing of judgment of courts is essentially a contract for work and labour and there is no justification for bifurcating that contract into two different contracts, one for cost of labour and

A the other for sale of paper. Imposition of sales tax on the turnover relating to printing of judgments of courts is, therefore, unwarranted. In the case of contracts relating to the printing of ration cards, it is in the nature of job-works and it is essentially a contract for the sale of finished articles.

B In *P. T. Varghese* v. *State of Kerala,* 37 STC 171, the assessee who was conducting a press and printing bill books, vouchers, receipt books, letter heads, question papers and notices as ordered by his clients contended that he only executed a works contract for which he used his own paper, that the sale of paper used for printing could not be taxed under the Kerala General Sales Tax Act, 1963, as he was not the first seller of paper in the State, and that the remuneration C received by him from his clients for the work and labour could not also be taxed under the Act. It was held that the question really was whether the contract was for the sale of paper as well as for work and labour or whether it was a contract for printed materials as such or whether it was a contract for work and labour. If it was a contract for D sale of paper and for work it would be a composite contract where it might be possible to separate the sale from the work. If, on the other hand, it was a contract for printed materials, what was sold was not paper, but printed materials. If the contract was for work and labour, in which the use of materials was merely accessory or incidental, it would be a works contract which would not involve any sale and the E charges received would not be assessable to tax under the Sales Tax Act; and that the assessee's contract with the customers was not a contract for sale of paper in which labour was also involved making it a composite transaction which was capable of bifurcation into a contract for sale of materials and a contract for work and labour. What was sold was something other than paper. It could not be said that printed F materials such as bills books, vouchers and the like were mere paper or products of paper. Hence, the supply of bills books, vouchers etc. was liable to be taxed under the Act as finished products. It was further held that the question papers, however, were the subject-matter of a contract for work and labour and the charges realised by the assessee for printing them were not liable to tax. The High Court at page 176 of G the report observed:

> "Only in respect of those goods to which title has passed as a result of contract, can it be said that the goods have been sold. Where a person buys a "Picasso" or a "Ravi Varma", he does not intend to buy or pay for the canvas or the paint, H although canvas and paint are involved in the production of

the painting, and title to such materials is transferred to him. But such transfer of title to the materials is not pursuant to any agreement for the sale of the materials as such. It would never have been in his mind to pay separately for the materials and for the labour. What the buyer buys is a finished product which is a work of art. On the other hand, when a person gets his manuscript printed as an article or a book of verses, the printer does no more than a mechanical or technical job. The printer does not create the article or the poem, but merely renders his services to print which is in the nature of a job-work. The manuscript as such is the result of the skill, industry and scholarship of the author. In such a case, there is no sale of the article or book by the printer; nor would it be possible in such a case to spell out an agreement for the sale of materials such as paper or ink, which may have been incidentally used in the production of the printed work. While the painter sells a finished product which is a work of art, quite distinct and different from the materials used in its production, the printer merely does a job-work involving no sale; one is the work of an artist who is endowed with the finer qualities of imagination and taste and the other that of an artisan who is trained as a mechanic or technician. A printer of judgments, for example, does not produce and sell them; his work is purely that of a technician. This court has therefore held that printing of judgments is only a works contract. The work of a printer in certain cases may involve more than printing; he may be a producer of finished articles such as bill books, vouchers and the like. When such articles are printed and sold to the customers, what is sold is not paper or paper products but printed materials which are finished products. Such contracts cannot be considered as contracts for the sale of paper coupled with an agreement to render service. The sale of paper had never been the subject-matter of the agreement between the parties. Like in the case of painting which is a finished product being a work of art, the bill books and voucher are new products being printed materials; and the sale of such goods does not involve a composite cotract which can be bifurcated into an agreement for the sale of goods-be they canvas and paint or paper and ink—and an agreement for work."

A B C D E F G H

A In our opinion, the High Court rightly applied the test in that case. Further, our attention was drawn by Mr. Mohan to a decision of the Madras High Court in *A.S. Hameed Bharath Press* v. *State of Tamil Nadu,* 54 STC 379. There, the Tribunal found that the contracts between the assessee and his customers were indivisible contracts under which the assessee undertook to deliver printed material in B accordance with the customer's instructions and therefore considered the receipts in the assessee's business as representing turnover in sales of goods taxable under the Tamil Nadu General Sales Tax Act, 1959, and that the order form was a make-believe and did not reflect the real nature of the transactions between the assessee and his customers. It was held that given the finding by the Tribunal, the printed conditions in the order form were not to be accepted at face value and that the C transactions between the assessee and the customers involved only the supply of printed material at a price. The High Court held that the decision of the Tribunal that the entire receipts in the assessee's business must be held to be sales turnover liable to tax under the Act must be upheld.

D

As mentioned hereinbefore, the High Court was dealing entirely with sample printed materials of order forms of bill books. The Allahabad High Court had to consider this question in *Commissioner of Sales Tax* v. *Uma Art Press,* 56 STC 300. The decision in that case rested on the facts of that case and in the nature of the contentions E urged before us in this case, it would not be relevant to discuss the said decision in greater details.

In *Chandra Bhan Gosain* v. *The State of Orissa & Ors.,* XIV STC 766 at 769, it was reiterated that in case of a composite contract how to determine whether there was sale of goods or there was works to be F done depended upon the facts of each case, and the intention of the parties, what was the essence of the contract has to be found out. This court had to consider in *C.S.T., Gujarat* v. *M/s. Sabarmati Reti Udyog Sahakari Mandali Ltd.,* 38 STC 203, whether the contract was a works contract or contract for sale. There the assessee had entered into a contract with the Public Works Department of the Govt. of Gujarat G for the manufacture and supply of kiln-burnt bricks to that department. The contract was found to be in a tender "for supply of materials" containing a memorandum of the conditions. The nature of the work was described as "manufacturing and supplying kiln-burnt bricks for construction". In the tender the assessee stated the condition and analysing the decision in the light of *Chandra Bhan Gosain's* case, this H Court held that the contract was one for sale and not a works contract.

Mr. Mohan further drew our attention to the observations of the English decision in *Marcel (Furriers) Ltd.* v. *Tapper,* [1953] 1 WLR 49. There, the defendant, on behalf of his wife, ordered from the plaintiffs, a firm of furriers, a mutation mink coat. The defendant's wife selected skins of the colour she desired and specified the style of the coat she required, directing that it should be made with the skins running horizontally. Her instructions were carried out, but the coat was eventually rejected by her. The plaintiffs brought an action against the defendant claiming £950 for work done and materials supplied in the making of the coat. By his defence the defendant pleaded that the contract was one for the sale of goods of the value of £10 or over and was unenforceable pursuant to section 4 of the Sale of Goods Act, 1893 of England by reason of the fact that there was no note or memorandum in writing of the contract signed by the party to be charged or his agent. It was held that although a high degree of skill and craftsmanship might be required in making of the coat, the contract was no more than one for the making of an article for the special use of the customer by someone whose business it was to make it. The nature of the transaction, therefore, was that it was one for the making and supply of a particular article at a price and not one for work and labour done and materials supplied, and there being no memorandum in writing to satisfy the requirements of section 4 of the Sale of Goods Act, 1893, the contract was unenforceable. Hence, the principle following from the decision is that the nature of transaction has to be found out, whether it is making and supply of particular article or printing material.

Mr. Ramchandran, however, submitted before us that in view of the principles laid down by this Court in *The State of Madras* v. *Gannon Dunkerley & Co. (Madras) Ltd.*, IX STC 353 and *Hindustan Aeronautics Ltd.* v. *State of Karnataka,* 55 STC 314, the High Court was right. He submitted that the contract in essence was for supply of question papers which are not commercial commodities. The blank papers ceased to be the property of the dealer, the moment questions were printed on these. These are the exclusive properties of the University or other educational institutions, and were to be kept secret until the University chose to divulge these at the time of the examinations. The dealer cannot deal with the printed question papers. Upon printing he lost his capacity to contract, ceased to be the sole owner, and could not sell to anybody he chose. He had to hand-over the entire question papers to the University. It was a special kind of job entrusted for confidence reposed and for the delicate nature of the job to be performed. The work in connection therewith was predominantly

A in the transaction. The material and the skill in doing so, both are incidental. In that view of the matter he submitted that the High Court was right, and indeed a contract for sale pre-supposes the capacity in the dealer to contract with regard to the finished item. For this, reliance was placed on the observations of this Court in *The State of Madras's* case (supra), and also on *Hindustan Aeronautics Ltd's* case B (supra) at pages 320, 323 & 327. The thing produced must have individual existence as the sole property of the party who produced it, which can be passed on for a price, in order to be a sale. Reliance was placed on the observations in *Patnaik & Co.* v. *The State of Orissa,* XVI STC 364 and *T.V. Sundram Iyengar & Sons* v. *The State of Madras,* 35 STC 24.. The test is whether work and labour are bestowed C on anything that can properly become the subject of sale.

The court has to find out the primary object of the transaction and intention of the parties. In this connection, it is necessary to rely on the observations of this Court in *Hindustan Aeronautics Ltd's* case D (supra) at pages 327, 333-334 of the report.

The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property. Where the finished product E supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only a works contract. See the observation in *The Court Press Job Branch, Salem* v. *The State of Tamil Nadu,* 54 STC 383 and *Commissioner of Sales Tax, M.P.* v. *Ratna Fine Arts Printing Press,* 56 F STC 77.

In our opinion, in each case the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of a contract for work some materials are used and the property/goods so G used, passes to the other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials. Whether or not and which part of the job work relates to that depends as mentioned hereinbefore, on the nature of the transaction. A contract for work in the execution of which goods are used may take any one of the three forms as mentioned by this Court in *The* H *Government of Andhra Pradesh* v. *Guntur Tobaccos* (supra).

In our opinion, the contract in this case is one, having regard to the nature of the job to be done and the confidence reposed, for work to be done for remuneration and supply of paper was just incidental. Hence, the entire price for the printed question papers would have been entitled to be excluded from the taxable turnover, but since in the instant case the deemed notes prepared by the assessee showed the costs of paper separately, it appears that it has treated the supply of paper separately. Except the materials supplied on the basis of such contract, the contract will continue to be a contract for work and labour and no liability to sales-tax would arise in respect thereof. The High Court was, therefore, right in the view it took in Civil Appeals Nos. 2346-2347/78.

The facts in the other appeals are identical.

All these appeals are dismissed accordingly but without, in the facts and circumstances of the case, any order as to costs.

G.N. Appeals dismissed.