

leading to this appeal filed at the instance of the State.

3. The salient features of the contract executed by and between the respondent - contractor and the consumer, namely, Reliance Petroleum Limited is to make services of pest control available to the consumer by use of chemicals to be procured and supplied by the contractor. Admittedly, in the course of the execution of the contract there is no trace of the goods/materials used for execution of the contract.

4. Notwithstanding the question raised and the exhaustive debate that has taken place before us the issue has been dealt with by a three judge bench of this Court in Larsen and Toubro Limited and another vs. State of Karnataka and another¹. The

1 (2014) 1 SCC 708

provisions of clause (29A)(b) of Article 366 of the Constitution of India has been considered in Larsen & Toubro Limited (supra) and it has been held that the expression "goods (whether as goods or in some other form)" appearing in sub-clause (b) of clause (29A) of Article 366 of the Constitution of India has the effect of enlarging the term "goods" by bringing within its fold goods in all different forms. Paragraph 56 of the opinion rendered in Larsen & Toubro Limited (supra) which deals with the above issue may be conveniently extracted below:

"56. It is important to ascertain the meaning of sub-clause (b) of clause (29-A) of Article 366 of the Constitution. As the very title of Article 366 shows, it is the definition clause. It starts by saying that in the Constitution unless the context otherwise requires the expressions defined in that article shall have the meanings respectively assigned to them

in the article. The definition of expression "tax on sale or purchase of the goods" is contained in clause (29-A). If the first part of clause (29-A) is read with sub-clause (b) along with latter part of this clause, it reads like this: "tax on the sale or purchaser of the goods" includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. The definition of "goods" in clause (12) is inclusive. It includes all materials, commodities and articles. The expression, "goods" has a broader meaning than merchandise. Chattels or movables are goods within the meaning of clause (12). Sub-clause (b) refers to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression "in some other form" in the bracket is of utmost significance as by this expression the ordinary

understanding of the term "goods" has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods. The 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 its form as goods and have acquired some other form involved in the execution of a works contract."

5. A Constitution Bench of this Court in Kone Elevator India Private Limited vs. State of Tamil Nadu², while considering the correctness of its earlier view with regard to dominant nature of the contract test, had, apart from holding that the dominant nature test would no longer be determinative, considered paragraph 56 of the report in Larsen & Toubro Limited

(supra) and has accepted the same to be the correct position in law.

6. In view of the above position of law enunciated in Larsen & Toubro Limited (supra) and Kone Elevator India Private Limited (supra) the view taken by the High Court that there is no deemed sale of the goods used in the contract executed by the respondent - contractor cannot have our approval. We, therefore, set aside the order of the High Court and allow this appeal.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
JANUARY 30, 2018

ITEM NO.19

COURT NO.3

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 12290/2017
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 22-09-2016
IN TA NO. 706/2013 PASSED BY THE HIGH COURT OF GUJARAT AT
AHMEDABAD)

STATE OF GUJARAT

PETITIONER(S)

VERSUS

BHARAT PEST CONTROL

RESPONDENT(S)

(AND IA NO.221/2018-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 30-01-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s)

Mr. Preetesh Kapoor, Adv.
Mrs. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Mamta Singh, Adv.
Ms. Shodhika Sharma, Adv.

For Respondent(s)

Mr. Munjaal Bhatt, Adv.
Mr. Kailash Pandey, Adv.
Mr. Ranjeet Singh, Adv.
Mr. Gaichangpou Gangmei, AOR

UPON hearing the counsel the Court made the following
O R D E R

Permission to file additional documents is
granted.

Leave granted.

The appeal is allowed in terms of the signed
order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]