Read: Application dt. 16.5.08 by M/s. India Security Press, Nashik Road, holder of VAT Registration No.2730029530V and CST Registration No.27060552815 V.
Heard: Shri P. V. Surte, Advocate.

PROCEEDINGS

(Under Section 56 (1)(b) and (e) of the MVAT Act, 2002.)

No.DDQ/11-2008/Adm.3/25/B - 2 Mumbai, dt.09.03.2009

M/s. India Security Press, Nashik Road, has filed an application u/s 56 of the MVAT Act for determination of applicability of VAT on certain transactions as also whether the transactions are exigible to tax under Works Contract Act. The transactions on which the question is posed are reproduced as follows.

Sr.No.	*Name of the party & Address*	*Description of Invoice*	*Invoice No.*	*Date*
1.	The Superintendent of Stamps, Town Hall No.1, General Stamp Office, Fort Mumbai.	India Adhesive Court Fee Stamp. @ Rs.7.50/1 sheets.	350050101	12.5.2005
2.	--"--	Non Judicial Stamps @ Rs.3506/1000 sheets.	350050106	12.5.2005
3.	Joint National Saving Commissioner, 12, Seminery Hills, Nagpur.	Six Year N.S.C. VIII Issue. @Rs.598.00/1000 Certificates.	800050101	12.5.2005
4.	Director of Printing & Stationery, 21-A, Netaji Subhash Road, Mumbai-04.	Govt. of Maharashtra Non MICR Treasury Cheques in MICR format in continuous stationery. Service charge @ Rs.258/100.	C-198	3.8.2005
5.	The Post Master General, Mumbai Circle, GPO Buldg., 2nd Floor, Mumbai.	Ordinary Rectangular Envelopes with APD @ Rs.382.35/1000.	030050120	3.12.2005
6.	The Under Secretary (PVS), Ministry of External Affairs, CPV Division, PV-II Sec., Patiala House, Tilak Marg, New delhi-1.	India International Passport Booklets. @ Rs.136.00/1 Booklets.	900050130	6.1.2006

02. FACTS OF THE CASE

The India Security Press was established at Nashik in the year 1926. The press has two divisions (1) Security Press and (2) Currency Note Press. It is stated that both the divisions are organizations of Department of Economic Affairs and they work under the Union Ministry of Finance, Government of India, and it is claimed that it performs sovereign functions and do not carry on any business of commercial nature for anyone except the various State Governments and the Central Government.

It is submitted by the applicant that so far as currency note press is concerned, there is no dispute as the said division does not sell currency which is printed at the press (The MSTT through decision dt. appeal No.836 to 843 of 1990 decided on 31.8.1996 that currency is not goods –however a reference is filed against the decision by the department). It is further stated that the dispute is with regard to the Security Press Division which undertakes printing of Adhesive Stamps, Non-judicial Stamps, and other stationery required by various State Governments in India as also the printing of declarations in Form 'C", MICR Treasury cheques etc. required by Central Government as also by the State Governments which is commonly known as Non-Postal Items and also Postal Items such as Post Cards, Envelopes, Money Order Forms and Stamps required by the Postal department.

It is submitted that it is called a 'Security Press' for the simple reason that the aforesaid work of printing requires strict security, secrecy and confidentiality. All the stamps and allied items represent cash value of the stamp or the fees payable to the State Government or to the Union Government. It is submitted that the aforesaid function is a sovereign function of the Union Government required by law.

It is claimed that the press does not sell stamps, declarations in Form 'C' as prescribed by the Central Sales Tax Rules, 1956, the Postal Items etc. The press merely undertakes to print and supply them to the State Governments, as per the drawing and design furnished by the State Government along with an order. As such, in order to print these articles, the Press requires paper and ink which is mostly imported into India and partly purchased within India. The Press raises bills for supply of the printed items as paper is used for printing. The bills are raised in order to cover the cost of paper, ink and overheads. It is stated that the charges so received are in the nature of service charges and therefore, no sales tax was being charged in the bills.

It is submitted that there was litigation in the past when the Press approached the Maharashtra Sales Tax Tribunal which decided the issue with regard to the supply of duly printed currency notes to the Reserve Bank of India by a judgment delivered in second appeal No.836 to 843 of 1990 decided on 31.8.1996. It is informed that there were other questions as well. It is submitted that the taxability with regard to the other items was not decided by the Tribunal and the matter was remanded back to the Deputy Commissioner of Sales Tax. The Deputy Commissioner held all the items printed at the Press as taxable barring 'currency and the postal items' for various assessment years. Against those orders, the Press had preferred appeals before the Tribunal and the Maharashtra Sales Tax Tribunal decided that from time to time vide Second Appeals No. 1138 to 1148 of 1999 decided on 31.1.2007 etc.

The Tribunal treated the transactions as sales and confirmed the levy of tax, whereupon the press has filed Reference Applications under section 61 of the Bombay Sales Tax Act, 1959. Those matters have been referred to the High Court of Judicature at Bombay vide Reference Application No.60 to 70 of 2007 decided on 30.8.2007. The questions referred to the High Court is

> **"Whether the Tribunal was justified in holding that Revenue Stamps, Adhesive Court Fee Stamps, Non-judicial Stamps, Entertainment Stamps, are freely salable as they are sold through certain outlets and that printing the stamps does not amount to a Works Contract?**

In other words, though it was the case of the Press that there is no sale and at best the transaction is a Works Contract, the Tribunal was pleased to hold that it was a sale and therefore the matter has been referred to the High Court under the provisions of the Bombay Sales Tax Act, 1959.

It is submitted that the Press would like to know as to whether the transactions of supplying **India Adhesive Court Fee Stamps, Non Judicial Stamps, Six Year N.S.C. VIII Issue, Non MICR Treasury Cheques in MICR format in continuous stationery, Ordinary Rectangular Envelopes with APD @ Rs.382.35/1000 and India International Passport Booklets** are transactions of 'sale' within the meaning of section 2(24) of the Maharashtra Value Added Tax Act, 2002 or, in the alternative, whether the transactions fall under sub-clause (ii) of clause (b) of the Explanation to section 2(24) being transactions involving a transfer of property in goods (whether as goods or in some other form) involved in the execution of a Works Contract.

It is submitted that the Press would like to know the taxability of some of the articles printed by the Press and would also like to know the rate of tax if any applicable to the sale of those goods in case it is held that there is a sale.

It is stated the transactions are not 'sale' within the meaning of section 2(24) of the MVAT Act, 2002 and at best the transaction is a 'works contract' which involves supply of paper and ink having regard to the provisions of sub-clause (ii) of clause (b) of the Explanation to section 2(24) of the MVAT Act, 2002.

03. HEARING

The case was fixed for hearing on 14.8.2008. Shri P.V. Surte, Advocate, attended on behalf of the India Security Press. He stated that classification is sought on various items.

He stated that, he is aware of the Maharashtra Sales Tax Tribunal's decision in the case of India Security Press (S.A. No.138 to 148 of 1999, dt.31.1.2007) in which it was held that the supply of 'stamps' is a sale and not a contract of work. He further stated that the MSTT decision is on 'Court Fee Stamp and Non Judicial Stamps' but the ruling was given under the BST Act. He further argued that the application cannot be held as non maintainable because there is a new entry C-76 for printed material under the MVAT Act and the MSTT was not called upon to decide the classification of the product. He therefore stated that the question would be whether ' India Adhesive Court Fee Stamps' and 'Non-Judicial Stamps' are covered by schedule entry C-76 of the MVAT Act. The third product is 'Six Years NSC Cheque' which is an inter-stock transfer to the Central Department. He stated that as it is an inter-stock transfer it does not constitute a sale. As far as 'Non MICR Treasury Cheque' is concerned, he stated that the Tribunal has already held that 'cheques' are not goods. He argued that the product at Sr.No.5 is 'ordinary envelope' which is supplied to the Post Master General and they are exempted as per the MSTT Judgment. He further argued that the product at sr. no.6 is "India International Passport Booklets" whose supply is nothing but an inter-state stock transfer to the Ministry of External Affairs. He stated that it is a contract for printing and cannot be sold and they are not goods.

04. OBSERVATION

I have gone through the facts of the case. The products on which determination is sought are the following:

a. India Adhesive Court Fee Stamp.
b. Non Judicial Stamp.
c. Six Years NSC-VIII issue.
d. Non MICR Treasury Cheques.

e. Rectangular Envelopes.
f. India International Passport Booklets.

The applicant has raised the question as to whether the supply of the above items is sale' within the meaning of section 2(24) of the Maharashtra Value Added Tax Act, 2002 or, in the alternative, whether the transactions fall under sub-clause (ii) of clause (b) of the Explanation to section 2(24) being transactions involving a transfer of property in goods (whether as goods or in some other form) involved in the execution of a Works Contract.

India Security Press is owned and run by the Government of India and has two divisions i) Security Press & ii) Currency Note Press. Both the divisions are organizations of Department of Economic Affairs and work under the Union Ministry of Finance, Government of India. The security press is called 'Security Press' for the simple reason that the work of printing requires strict security, secrecy and confidentiality. All the stamps and other items represent the cash value of the stamp or the fees payable to the State Government or to the Union Government. It will be necessary to have a glance at the list of disputed items according to following:

<u>DETAILS OF TRANSACTIONS REFERRED UNDER SECTION 56(1) OF THE MVAT ACT, 2002.</u>

No.	**Bill No.**	**Date**	**Amount Rs.**	**Description of the goods**	**Supplied To**
1)	50101	12-5-05	8,70,000	India Adhesive Court Fee Stamps	Supdt.of Stamps
2)	50106	12-5-05	6,66,140	Non-Judicial Stamps	Supdt. of Stamps
3)	50101	12-5-05	4,32,354	Six Year N.S.C. VIII issue	Joint National Saving Commissioner
4)	C-198	13-8-05	5,54,700	Non-Micr Treasury cheques	Director of Printing & Stationery
5)	50120	3-12-05	7,647	Rectangular Envelopes	The Post Master General
6)	50130	6-1-06	4,08,00,000	India International Passport Booklets	Ministry of External Affairs.

The MSTT had occasion to deal with the issue as to whether the supply of Revenue stamps, **Adhesive Court Fee Stamps, Non-judicial Stamps, Entertainment Stamps, State Government Cheques,Stock Certificate Border Forms/Bonds,C/H/F declaration forms,**

Identity cards for Jammu and Kashmir are transactions of sale or works contract and the MSTT through its decision dt.31.1.2007 held that the transaction of supply of Revenue stamps, **Adhesive Court Fee Stamps, Non-judicial Stamps, Entertainment Stamps** is not 'a contract of work' but a transaction of sale and it confirmed the order of the lower authority in this regard. It declared the following:-

> …."'We tend to agree with the Dy. Commissioner that the various stamps mentioned at (a) are freely saleable in the sense **that they are sold through certain outlets against consideration and therefore the supply would amount to sale liable to tax under the BST Act and the Central Act**. The fact that such stamps are printed and supplied as per the design and specification of the State Government and that they are not allowed to be printed by any other press besides the appellant's press are not relevant here. The stamps so printed are ultimately meant for sale in the market and i.e. what is material to hold the appellant's supply as a sale. It is true that various non postal stamps printed by the present appellant cannot be sold by him in the market to anybody and he has mandatorily to supply them only to the particular authority at whose instance the stamps are printed. Therefore, strictly as per the aforesaid test even the supply of the said stamp may not constitute a sale as per the Sale of Goods Act. However, in our considered view the fact that the said stamps are subsequently freely sold by the particular authority through various outlets is quite crucial and relevant due to which we feel inclined to hold the said supplies by the present appellant as sale and not a Works Contract."

The MSTT while deciding the above held that the sale of stamps is a transaction of 'sale' on the basis of the following:

- They are sold through certain outlets against consideration and therefore the supply would amount to sale liable to tax under the BST Act and the Central **Act**.
- The facts that such stamps are printed and supplied as per the design and specification of the State Government and that they are not allowed to be printed by any other press besides the appellant's press are not relevant here.
- The stamps so printed are ultimately meant for sale in the market and i.e. what is material to hold the appellant's supply as a sale.

The appellant had raised the question as to whether the transaction is a sale within the meaning of section 224 of the MVAT Act or whether it is a Works Contract within the meaning of section 224(B)(II) of the MVAT Act, 2002. In this regard, I shall only say that the Tribunal has categorically held the transaction of supply of stamps whether 'Court Fee Stamps or Non Judicial Stamps'' as a transaction of sale under the BST Act. The definition of sale under the BST Act is not materially different from the definition of sale under the MVAT Act. Therefore, the decision of the Tribunal is equally applicable. In this view of the fact, the application for determination for classification of Non -Judicial Stamp and Court Fee Stamp becomes non maintainable under section 56(4) of the MVAT Act. Section 56(4) of the MVAT Act, says that if any question for determination arises from any order already passed **under this act or any earlier law**, no such question shall be entertained for determination. The Tribunal has decided the classification under an **earlier law** and therefore the question becomes non maintainable. However, the applicant has argued that Tribunal has not made any observation as to the classification to the stamps for the simple reason that the question was not before them for determination. I would therefore now decide the classification of the product for which the applicant has canvassed the proposition that stamp could be covered by schedule entry C-76 of the MVAT Act. The Schedule Entry C-76 is reproduced as under:

Schedule Entry	***Description***	***Rate of tax***	***Date of effect***
C-76	Printed material including annual reports, application forms, account books, calendars, diaries, catalogues, race cards and publications which mainly publicised goods, services and articles for commercial purposes.	4%	1.4.2005 till date.

Can stamps be called as 'printed material'? is a question that has to be decided. Stamps are printed and are the products of the printing industry. It is seen that the Central Excise has classified the products of the printing industry under Chapter 49 of the Central Excise Tariff Act.

Under Chapter 49, sub heading 4907 covers unused printed stamps, stamp envelopes, letter cards, postcards, bank note, cheque forms etc. All these products are products of the printing industry. The schedule entry under the VAT Act is for printed material i.e. material which is printed. The printed material is expressly included in the schedule entry are annual reports, application forms, calendars, diaries, catalogues, race cards, etc. The same are also printed by the appellant and would therefore be included in the category of printed material and will be taxable @ 4%.

Now we come to product at Sr. No.3, 4,5, & 6 which are the 'Six years NSC Issue", Treasury Cheques and India International Passport Booklets. According to the applicant, the 'Six years NSC Issue' are stock transferred to the Central Government. In the MSTT decision in the case of the appellant, the Tribunal had also decided whether supply of State Government Cheques, Stock Certificates, Border Form/Bonds, C/H/D/F Declaration Form and I-cards for Jammu & Kashmir are sale under the BST Act or could be held as contract of works. The MSTT has observed the following:

> ….''So far as the other non postal items are concerned we feel that the appellate Dy. Commissioner is not justified in holding them to be freely salable in the market. The declaration in form C/H/F cannot be sold in the market. They are supplied by the Sales Tax Department to its' assessee under the Sales Tax Law who desire to avail of tax concession in the context of interstate transaction. These declarations are supplied on free of cost though on the application thereof court fee stamp of certain specified value has to be affixed as a consideration towards processing fee. In any case, there is no sale whatsoever of these declarations either by the Sales Tax Department or by any other person. In fact, the unused declarations are also required to be destroyed in order to avoid any probable misuse. Considering these circumstances, we decline to approve Dy. Commissioner's view that the declarations are freely marketable and that they are standard printed articles. Same is the position so far as the other items like Bank cheques, Identity cards are concerned. None of these items are freely marketable and cannot be considered as standard printed articles. That in the decision the supplies thereof would constitute works contract transaction not liable to tax under the BST Act and Central Act.

The MSTT while deciding the above held that the sale of stamps is a transaction of 'sale' on the basis of the following:

- The declaration in form C/H/F cannot be sold in the market.
- There is no sale whatsoever of these declarations either by the Sales Tax Department or by any other person.

- None of these items are freely marketable and cannot be considered as standard printed articles

In view of the decision of the MSTT on whether the supply of 'cheques' and 'certificates' is a sale or works contract, the matter as regards items no 3. –NSC issue and item no.4. Non-MICR Treasury cheques has already been decided by the MSTT and therefore the issue becomes non-maintainable in view of section 56(4) of the MVAT Act. The MSTT has held that the transaction of supply of these items is a works contract. The other transactions are supply of 'Six Year N.S.C. VIII Issue, Ordinary Rectangular Envelopes and India International Passport Booklets. The applicant in the present application has contended that all these products are inter departmental stock transfers to the Central Government and therefore they are not exigible to tax.

Now, what remains to be decided is whether supply of India International Passport Booklets to the Ministry of External Affairs and Rectangular Envelopes to the Post Master General is a transaction of 'sale' or a transaction of 'works contract'.

Let me deal with the first argument of the applicant that the transactions cannot be held as that 'sale' as they are inter-departmental transfers. It is true that the envelopes and the passport booklets are sold to the Post Master General and the Ministry of External Affairs respectively. I have also seen the sale invoices issued by the applicant to these authorities to show the description of the sale effected. With regard to the envelopes, it is seen that the bill amount raised is Rs.7917/-. The bill also carries the following note.

1. The duplicate copy of the bill is returned to the Deputy Controller of the Stamp, Central Stamp Depot, Nashik.
2. Please submit the forms immediately along with the duplicate copy of the bill.
3. If the amount of the bill is not paid within three months interest @ 12% will be charged.

I see that the transaction is like any other sale transaction conducted between two parties and having all the characteristics that define a 'sale'. A sale is a sale when it is effected between two parties for a consideration and where there is a transfer of property. In the present case, the sale is effected by the applicant to the Post Master general and it is for a consideration of Rs.7419/-and consequently property in the envelopes and as also the booklets is passed to the buyers. There is no indication whatsoever of it being an inter-stock transfer between two departments. On the other hand, the transaction is a commercial transaction of sale where the Central Government bodies are also requested to effect the purchases on 'D' forms. Just because the transaction takes place between two government bodies does not take away the character of 'sale' from the transaction. Also, no document has been placed on record to prove that the transaction is an 'inter-stock' transfer. As per the VAT Act, the definition of 'dealer' includes departments of Union Government and any department of any State Government and such departments are deemed dealers under the Act. Therefore, this is like an ordinary transaction where the different Central Government bodies had placed their requirements and specifications before India Security Press, which incidentally is also a dealer and the applicant accordingly has submitted the goods as per the requirements for a consideration.

The Supreme Court of India had an occasion to decided an issue in the case of Union of India and others vs. Commercial Tax Officer, West Bengal (7 STC 113). In the said case, sale was effected by a mill to the Ministry of Industry and Supplies. The Bengal Sales tax Act exempted sales effected to the Indian Stores Department and the Supply Department of the Government of India. On an appeal to the Supreme Court as to whether the exemption granted on sales to the Indian Stores Department and the Supply Department of the Government of India implies exemption to the Ministry of Industry and Supplies , it was observed by the Supreme Court,;;

.'' in this case that Ministry of Industry and Supplies was a new designation of the Department of Industries and Supplies, the Department of Industries and Supplies was created in place of the Indian Stores Department and the Supply Department of the Government of India.. The newly created department of Industries and Supplies had wider power and was a new department altogether. The exemption granted was only given to Indian Stores Department and the Supply department of the Government of India. It was not given to the sales to the Government of India in all its departments. It is true that the Indian Stores Department and the Supply Department of the Government of India were not corporate bodies but they were well defined organisation to be referred to as 'entities'.

Therefore, the Court concluded that sales to these two departments does not mean sales to all departments of the Government of India. These bodies though part of the Government are separate entities and cannot be equated to the Government of India. In the present case, though the India Security Press is a Government undertaking it has a different entity and is created for an express purpose.

2] Now, I come to the proposition of the applicant that the transaction of supplying Ordinary Rectangular Envelopes and India International Passport Booklets is a contract of sale or a contract of work.

In this regard, reliance has been placed by them on the judgment of the tribunal in the case of applicant himself. In the said judgment, the Tribunal has held that the printing of cheques, certificate etc. by the press for the Government Department is not a sale under the BST Act but sale under the Works Contract Act. While holding so, the Tribunal has mainly canvassed the proposition that the contract is a contract of work because the goods are not freely marketable in the sense that the person for whom the work is done constitute the market for the goods. The articles are not standard printed articles and the element of confidentiality is also involved.

Before dealing with the question as to whether transaction is a transaction of sale or a contract of work, I would like to make the address the issue of the applicant that the products are not goods. The test of marketability to decide whether the products are goods or not is no longer a reliable test. In the Supreme Court judgment in the case of APSEB vs. Collector of Central Excise (95 STC 595), APSEB manufactured cement concrete poles of different sizes and strength and the manufacturing work is actually done by the contractor under the direct supervision of the board. It was the board which supplied the requisite material like cement concrete and steel. It was contended by the appellant that all the poles manufactured by the board were utilised for its' own purpose and they were not sold in the market and if fact, they had no market or were not known in the market. It was held by the Supreme Court that the marketability is a question of fact to be decided in the facts of each case. There can be no generalization. The fact that the goods are not in fact marketed is of no relevance. It is also not necessary that the goods should be generally available in the market. Even if there is only one purchaser of these articles had still must be said that there is a market for this articles. The marketability of articles does not depend upon the number of purchasers nor is the market confined to the territorial limits of this country. Thus, the test of marketability cannot be a deciding factor. The products may not be available for sale to the public but the Postal Dept or the Small savings Dept constitute the market for the product and that seems to be more than an adequate market. Why the emphasis on general marketability? What seems here to be the decisive test is that the goods have a market in the form of the departments who have placed the purchase orders. In view of the above, I should think that the products are very much "goods". It is a chattel so to say. It is made from material procured by the appellants themselves and when they convey it to its customers the property therein comprised "goes" to the said customer and quite obviously for a price. That is not in dispute.

In the MSTT decision in the case of M/s Modern Pattern Works V. The State Of Maharashtra (Appeal No. 59 of 1993, decided on November 9, 2001) the question was as to whether the supply to the customers by the Appellants of Wooden as well as the Metallic Patterns manufactured by them as per the Drawing and Specification furnished by the said customers amounted to sale as contemplated by Section 2(28) of the Bombay Sales Tax Act, 1959 (B.S.T.)The appellant had emphasized the peculiarity of the Pattern per se in the context of it being a single transaction and marketability or rather the lack of it except to the particular customer. The appellant has also stressed that there was an element of confidentiality involved in the transaction and unless they committed a breach thereof they could not make a similar pattern for any other customer nor could they sell a pattern made for 'A' to 'B'. If 'A' rejected it then the pattern would be a mere "Waste" a useless one at that. Thus, it is a product which is "a customer specific" one and therefore not marketable as such as the term is commonly understood in the field relevant hereto. Therefore in as much as the transaction is not sale of good but rendering of service it was not exigible to tax.

The Tribunal held that the supply of patterns to a single customer is a sale and not a contract of work. While doing so, it referred to the SC judgment in the case of AP Electricity Board(cites supra) and it further observed that though the judgement is under the Excise Act, the differential is hardly material.

The Tribunal observed:

> …….''The case (AP Electricity Board) arose out of the provisions of Central Excise and Salt Act, 1944. In the context of Excise Act the concept of marketability was dealt with. Now we have already mentioned above in the light of ACC (supra) as to how there has to be some distinction between Sales Tax Act and other enactments. There in A.P. State (supra) in the context of Excise Act it has been held that the factor of "marketability" is essentially a question of fact. What is significant is not whether actual marketing has taken place but as to whether they are marketable. It is not necessary that the goods should be generally available. Even if there is only one source thereof the levy could be attracted. That would be so even if there was only one purchaser. Under the Excise Act once the goods are manufactured the levy arises. The word "goods" has not been defined there.

It was argued before the Supreme Court that the goods that were marketable were the goods liable to be levied under the Act. It was in this background that the question of marketability of goods arose for consideration. It was clearly observed that the requirement of marketability had been evolved by a process of judicial interpretation. Here on present facts one of the chief planks which the Appellants rest their case on is that the Appellants "serve" only one customer and it is not as if the Pattern has any general market. There is nothing repugnant to the reference or context as between Excise Act and B.S.T. in this behalf. Under B.S.T. also taxable event occurs when there are goods and they are sold or purchased. **Further as mentioned just now the concept of marketability has been evolved by judicial decisions and therefore even remaining within the guidelines of ACC (supra) we think we can seek necessary guidance from the Supreme Court judgment in A.P.S.E.B. (supra).** …..Further whatever may have been argued before the Supreme Court the decision was that there can be a single source purchase and there can be a one transaction sale. That we should think supports the view that we are inclined to adopt.

In a latest MSTT judgement in the case of M/s Kareegar Enterprises (Appeal No. 50 of 2000 dt. 14.3.2008) the MSTT conclusively decided that whether there is one customer or more customers is not a decisive test to decide whether the impugned item can be termed as goods. In the said case, the MSTT had to decide whether producing items like 'waterfall', 'cactus lamp' and 'pedestal' as per specific orders is a contract of work or sale. The MSTT held that that it is neither a work of art or skill and the 'marketability' to one person is enough to bring it within the purview of 'goods'. I must however clarify that I do not base myself only on this aspect of the matter. It is also seen that the whole action of the applicant in making the products is also not marked by any art or skill. A reasonable amount of skill is required for all trades and works and the printing of booklets, receipts and envelopes does not demand any high degree of dexterity. Therefore there is no skill of the applicant involved in making the product except by a mechanical process which will be nothing unusual at least not to an extent where it becomes decisive of the matter in determination of the animus.

What the buyer does further with the impugned products- whether he sells them freely or not- is hardly a decisive factor. The applicant has sold the chattel to the purchaser and the goods are per general specifications. **The printing does not involve any art or skill.** I agree that the purchaser has to get the goods printed only from the applicant which is an administrative compulsion. But there are also trades where due to long standing practice and relations and the elements of confidentiality gradually becoming a part of the whole process, the buyer buys the goods only from one seller for reasons of security. Would this make the transaction a transaction of sale?

While deciding the issue,, I will have to examine the judgements cited by the MSTT in its decision cited above that the supply of ‘cheques’ and ‘declarations’ is a contract of work. The MSTT have relied upon the judgement in the case of M/s Thomson Press (India)(100-STC -0417 -P&H) which in turn is based upon the SC judgement in the case of Sarvodaya Printing Press(114 STC 242). The Supreme Court judgement confirmed the Bombay High Court judgement (93 STC 387)In the case of Sarvodaya Printing Press vs. State of Maharashtra, the Supreme Court held that printing of receipt books for the Madhya Pradesh Electricity Board is a contract of work and not ‘sale’. The printed material in question were the multi clear triplicate receipt books especially designed, printed and prepared for and as per specification of the Madhya pradesh Electricity Board. It was held by the Commissioner of Sales Tax in a determination order passed by him that the supplies amounted to goods. The Tribunal up-held the view of the Commissioner and the applicant made a reference to the High Court. It was held by the High Court that the supplies do not represent a transaction of sale but represent a contract of work. It laid down the following tests:

- The principal object of the MPEB must be to get the material printed and not to purchase the printed material.
- The books was especially designed for MPEB as per its specification as to size, type, clear background etc.
- Under the contract the applicant could not retain or use the printed books and the excess had to be destroyed.
- The work done was composite or in divisible.
- The applicant was prohibited from selling the books to anyone else or use them to any purpose.
- The element of heavy responsibility was also involved. In any case, they were not standard goods and were not capable of use to anyone else or these had no commercial value.

The Judgement of the High Court in the case of M/s Sarvodaya Printing Press was delivered before the Supreme Court judgement in the case of M/s Andhra Pradesh State Electricity Board. Also, the Supreme Court in the case of M/s Sarvodaya Printing Press had no occasion to deal with the M/s Andhra Pradesh State Electricity Board simply because it was not brought forth for their consideration. The principle of marketability is no longer relevant and this is the prime test on which the judgement in the case of M/s Sarvodaya as well as in M/s Thomson was based. Therefore, it gives me adequate reason to apply different criteria on which to base my decision.

It would be indeed worthwhile to refer to Halsbury's Laws of England where in the distinction between the contract of sales and contract of work and labour has been brought out very clearly. And in most of the Supreme Court decisions this test has been referred to:-

> A contract of sale of goods must be distinguished from a contract for work and labour. The distinction is often fine one. A contract of sale is a contract whose main object is the transfer of the property and delivery of the 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 and in anything that can properly become the subject of sale, neither the ownership of 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 of work and labour or one for the sale of a chattel.

In the present case, the delivery of the passport booklets and the envelopes are a transfer of chattel qua chattel. There is no transfer through accretion or accession which is the elementary factor in a contract of work. The buyer places an order for a booklet- the printer prints it for the buyer. He uses his own material- paper, ink etc for it, prints the book and delivers it. The fact that he cannot use the scrap and the booklets cannot be used by anyone else is of no consequence. The booklets can be used by the Ministry of External Affairs which suffices adequately. General marketability of a product no longer defines a contract of work.

Further I would refer to the tests laid down by the Supreme Court in M/s. Sentinel R.S. & E. Co. (P) Ltd. v. Commissioner of Sales Tax, (42 STC 409) in which it 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:

(1) 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 (2) it maybe a contract for work in which the use of materials is accessory or incidental to the execution of the work or (3) 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 labor. The second type of contract is

clearly a contract for work and labor not involving sale of goods, while third type is a contract for sale where the goods are sold as chattel and some work is undoubtedly done, but is done only as incidental to the sale.

There is also a Bombay High Court judgment in the case of Saraswati Printing Press (10 STC 286) . In this case, the press supplies printing stationery to customers. The issue before the court was whether it is a contract of work or sale. The Court observed the following ,''

..''It is no doubt true that upon stationery supplies by the press to its constituents a certain amount of printing work is done by the press. But that is not the essential character of the business done by the press. It cannot be disputed that the petitioner's press brings into existence printed stationery according to the orders of the individual customers and when the press brings into existence such stationery it produces a commercial commodity which is capable of being sold or supplied. Therefore, when the press sales printed material to its constituents, it sells goods to the constituents upon which sales tax is leviable.

......In our opinion, there can be no doubt that the substance of the transaction which the petitioner enters into with its constituents is the production of something to be sold to the constituents. It is no doubt true that a certain amount of printing work which requires skill and labour is done on the stationery. But unless there is the base of the stationery itself there could be nothing upon which the skill of the petitioner's press could be used. It would have been different matter if the stationery were to be supplied by the constituents to the press. But this is not the case here. It is a conceded position that the petitioner's press itself purchase a stationery and thus printing work done upon it. In these circumstances, the essential character of the business done by the petitioner's press is the supply of the stationery itself to the constituents with the printing work done upon that stationery. Therefore, we have no doubt that this is a case for which a commercial commodity, which is a finished product VIZ the printed stationery etc. is sold by the press to its constituents.''

Applying the aforesaid observations in the present case, the Ordinary Rectangular Envelopes and India International Passport Booklets are chattel where the intention is to buy and sell the products by themselves. The contract is undoubtedly not covered by the first eventuality. It is also not covered by the second eventuality as the use of materials is not incidental or ancillary to the contract. There is every intention to take the product as a whole. The buyer is not just interested in the printed matter- he wants the envelopes and the booklets as a whole, as a chattel. Obviously, the order is for the printed material. The contract is covered by the third eventuality where the goods are sold as chattel and the printing is incidental to the sale. A contract of work happens only by accession or accretion- when a good is supplied it cannot become a contract of work.

The contract is a contract of sale. Only because some element of confidentiality is involved and the parties happen to be Central Government bodies would not sway or change the general character of the transaction. While deciding whether the transaction is a contract of sale or of work the fact that some of the elements defining a contract of work –like confidentiality, skill etc are present in a contract would not make it a contract of work. A contract may inherently possess the characteristics of a sale and it may happen that some criteria laid down by courts to define a contract for work might have found their way here. But it is not for us to look at the characteristics, weigh them, sort them and then decide whether it is a sale or a works contract. The decision hinges upon the nature of transaction as a whole and if it is predominantly then it is a sale then it may be vitiated by nothing.

06. In view of the above deliberations I pass the following order.

O R D E R

(Under Section 56 of the MVAT Act, 2002.)

No.DDQ/11-2008/Adm.3/25/B - 2 Mumbai, dt.09.03.2009

The items posed for determination as per the chart given below are answered as per coloum No.6 stated herein as under:

Sr.No.	*Name of the party & Address*	*Description of Invoice*	*Invoice No.*	*Date*	*Remarks*
1.	*2.*	*3.*	*4.*	*5.*	*6.*
1.	The Superintendent of Stamps, Town Hall No.1, General Stamp Office, Fort Mumbai.	India Adhesive Court Fee Stamp. @ Rs.7.50/1 sheets.	350050101	12.5.2005	1.The question whether the transaction of supply of the India Adhesive Court Fee Stamp is sale or a contract of work or not is held as non-maintainable. 2. The sale of the product is covered by Schedule Entry C-II-76 of the MVAT Act, 2002.
2.	--"--	Non Judicial Stamps @ Rs.3506/1000 sheets.	350050106	12.5.2005	------do------------.

3.	Joint National Saving Commissioner, 12, Seminery Hills, Nagpur.	Six Year N.S.C. VIII Issue. @ Rs.598.00/1000 Certfs.	800050101	12.5.2005	The question whether the transaction of supply of the Six Year N.S.C. VIII Issue.is sale or a contract of work or not is held as non-maintainable.
4.	Director of Printing & Stationery, 21-A, Netaji Subhash Road, Mumbai-04.	Govt. of Maharashtra Non MICR Treasury Cheques in MICR format in continuous stationery. Service charge @ Rs.258/100.	C-198	3.8.2005	The question whether the transaction of supply of the Non MICR Treasury Cheques in MICR format in continuous stationery Issue. is sale or a contract of work or not is held as non-maintainable.
5.	The Post Master General, Mumbai Circle, GPO Buldg., 2nd Floor, Mumbai.	Ordinary Rectangular Envelopes with APD @ Rs.382.35/1000.	030050120	3.12.2005	The supply of Ordinary Rectangular Envelopes with APD is a transaction of sale and is not a contract of work.
6.	The Under Secretary (PVS), Ministry of External Affairs, CPV Division, PV-II Sec., Patiala House, Tilak Marg, New delhi-1.	India International Passport Booklets. @ Rs.136.00/1 Booklets.	900050130	6.1.2006	The supply of India International Passport Booklets. is a transaction of sale and is not a contract of work.

(Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.