562913 - Is it permissible for the trader to take part of the price for the item, then ask a third party to make it?

the question

My mother (may Allah preserve her) works with the owner of a sweet shop. The owner of the shop receives orders over and takes a deposit, then she tells my mother, who prepares the sweets then sells them to the shop owner, who then resells them to the one who placed the order. The shop owner usually takes a deposit every time of no more than half of the cost of preparing the sweets, as a guarantee that the individual will actually buy the sweets, because there are a lot of cancellations for no valid reason, in which case my mother would lose the cost of the ingredients of the sweets.

The woman takes the deposit before buying the sweets from my mother. Please note that it is the customers who choose the type of sweets they want; in other words, it is not something unknown, and the shop owner does not give the deposit to my mother. Is the shop owner regarded as selling something that she does not have? If the answer is yes, does my mother have to stop dealing with her? Please note that she only works because she loves to do that, and not because she is compelled to work. Also is the process of buying and selling between her and the shop owner valid?

Detailed answer

Praise be to Allah.

I.

There is nothing wrong with the owner of the sweet shop selling the sweets before they are made, or before she takes possession of them, or taking part of the price as a deposit, because this is a contract of istisna`(asking for something to be produced to certain specifications, or a contract for

manufacturing) and it is like a payment in advance (salam transaction); it is exempted from the prohibition on selling what one does not possess.

In a contract for manufacturing (istisna`), it is permissible for the price to be paid later on, or in instalments, in contrast to payment in advance (salam transaction), in which it is stipulated that the price must be paid in full at the time of drawing up the contract.

It says in *Kashshaf al-Qina`* (3/158): It is not valid to sell a specific item that one does not own so that he can then go and buy it and deliver it, because of the hadith of Hakim quoted above.

But it is permissible to sell an item with sufficient description in the case of a salam transaction (payment in advance) – not a specific item – even if the seller does not have something like it in his possession, on condition that the purchaser takes possession of it at the time of drawing up the contract, or the seller receives its price at the time of drawing up the contract, otherwise payment in advance (salam transaction) is not valid. End quote.

In order for a contract for manufacturing to be valid, there must be a clear description of the item that is to be made, the quantity of said item, and a set time for delivery. So the type of sweets and the amount required must be described, and a time must be set for delivery.

It says in a statement of the Islamic Fiqh Council no. 65 (3/7) regarding the contract of manufacturing of a certain thing:

1. The contract for manufacturing – which is a contract that is applicable to both the work involved and the item to be delivered – is binding upon both parties if the essential parts and conditions of the contract are met.
2. In the contract for manufacturing , the following things are stipulated:
3. What the item to be made is, its type, its quantity, and its required specifications.
4. The time of delivery.
5. In the contract for manufacturing, it is permissible to defer the entire payment, or pay it in specific instalments according to a specific timescale.
6. It is permissible for the contract for manufacturing to include a penalty clause, based on

what the parties agree to, so long as there are no unforeseen circumstances beyond their control.

End quote from *Majallat al-Majma`* (issue no. 7, vol. 2, o. 223).

The shop's dealings with your mother are also based on a contract for manufacturing, so it is permissible to pay immediately or defer payment, and it is stipulated that the description and quantity of the sweets, and the time of delivery, must be clearly stated.

In this case, there are two contracts of manufacturing, or what are called parallel contracts.

In *Al-Ma`ayir ash-Shar`iyyah*, p. 190, it says: The type of contract that is called nowadays a parallel contract of manufacturing involves two separate contracts, one of which is a contract with the customer in which the Islamic financial institution is responsible for the production of the items in question, and the other contract is between the financial institution and the manufacturers or contractors, in which the financial institution is the one who asks for the product to be made, and the profit for the financial institution is achieved through differences in pricing between the two contracts. Usually in one of the contracts payment is made immediately (and this is the contract with the manufacturers or contractors), and in the other payment is deferred (and this is what the customer pays to the financial institution). End quote.

It also says (p. 182):

7… Parallel contracts of manufacturing

7/2 … It is permissible for a financial institution, as the party that is responsible for the production of the items in question, to make a contract with a customer on the basis that payment will be made later, and to make a contract with a manufacturer or contractor to make a purchase from him on the basis of a parallel contract for manufactured items or buildings meeting the specifications required by the customer, to be paid for upfront, provided that there is no connection between the two contracts.

7/3… The financial institution must be responsible for the product because it made a contract for

manufacturing with the customer, as it is regarded as the manufacturer and is responsible towards the customer, and is liable for maintenance costs, insurance and so on before delivery is made to the customer. It does not have the right to transfer its commitments with the customer to the manufacturer in a parallel contract for manufacturing.

7/4… It is not permissible to make a connection between the contract with the customer and the parallel contract with the manufacturer, and it is not permissible for one party to excuse itself from delivering because the other party did not deliver to them. The same applies in the case of one party delaying or wanting to increase the charges. There is nothing to prevent the financial institution stipulating other conditions in the parallel contract (including penalty conditions) that are similar to or different from the conditions to which it committed itself in the first contract with the customer. End quote.

The deal between this shop and your mother does not have to be on the basis of a contract for manufacturing. Rather the sale may be made after she has prepared the sweets, but in that case she may lose her efforts and whatever she spent [on ingredients] if the shop owner changes her mind about purchasing the sweets.

Conclusion: it is permissible to do business in the way described in the question.

And Allah knows best.