(2010) 07 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3932 of 1992

Amar Kumar Birley APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:
Constitution of India, 1950 — Article 366(29A)(b)

Citation : (2012) 48 VST 151

Hon'ble Judges : S.K. Katriar, J;Jayanandan Singh, J

Bench : Division Bench

Advocate : D.V. Pathy, for the Appellant; S.K. Jha, AC to AAG-7, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is directed against three orders of the learned assessing officer and the consequent demand notices for the periods 1986-87, 1989-90 and 1990-91, whereby the photographs taken by the petitioner of various customers on payment as a commercial artist in his studio in the township of Patna were treated to be works contract within the meaning of section 3 of the Bihar Finance Act, 1981 (hereinafter referred to as, "the Act"). A brief statement of facts essential for the disposal of the case may be indicated. The petitioner is engaged in the business of sale of photographic materials, and also photographs. He has a studio-cum-shop in the township of Patna. He submitted returns for the period 1986-87. In the returns, gross figure of Rs. 2,83,413.47 is mentioned. The learned Assistant Collector of Commercial Taxes, Patna, being the assessing officer, passed the order of assessment dated April 4, 1988, annexure 2 series, wherein he found the following figures :

2. The petitioner raises a grievance before this Court that the sum of Rs. 29,844.05, being the returned figures for the job of photography done by him is not works contract and is, therefore, not exigible to sales tax within the meaning of the Act. He relies upon the judgment of the Supreme Court in M/s. Rainbow

Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], .

3. The petitioner had also submitted returns for the period 1989-90, and the following figures were determined by the learned assessing officer :

4. The petitioner raises a grievance before this Court that his commercial activity as a photographer taking photographs of the customer and its sale to him (the customer) is not liable to tax.

5. The petitioner had similarly submits returns for the period 1990-91. The learned assessing officer determined the sum of the gross figures of Rs. 88,013, being the gross figure for photography activity. The petitioner raises an identical grievance with respect to the same item this year also.

6. We have perused the materials on record and considered the submissions of Learned Counsel for the parties. The Learned Counsel for the petitioner does not challenge the determination of the taxable turnover. He only challenges levy of tax his business with respect to photographic activities of the petitioner. He has rightly relied upon the judgment of the Supreme Court in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], , wherein it has been held that the job of photography cannot be taxed as a works contract. Property being passed on to the customer in the form of photography paper, use of chemicals, etc., is incidental and, therefore, is not liable to tax as a works contract. The following portion of the judgment states the law laid down by the Supreme Court in paragraph 13 of the judgment :

Thus, it is clear that unless there is sale and purchase of goods, either in fact or deemed, and which sale is primarily intended and not incidental to the contract, the State cannot impose sales tax on a works contract simpliciter in the guise of the expanded definition found in article 366(29A)(b) read with section 2(n) of the State Act. On facts as we have noticed that the work done by the photographer which, as held by this Court in Kame''s case (1977) 39 STC 237, is only in the nature of a service contract not involving any sale of goods, we are of the opinion that the stand taken by the respondent-State cannot be sustained.

7. We are, therefore, of the view that the learned assessing officer committed an error of law manifest on the face of it by levying sales tax on the contracts of photography done by the petitioner for the three periods in question. In the result, we allow this writ petition, and set aside the portion of the orders of the learned assessing officer of the three periods in question impugned before us, whereby the learned assessing officer has imposed sales tax on the contracts for photography.

