(1984) 06 KAR CK 0031

In the Karnataka High Court

Case No : S.T.R.P. No''s. 42 and 44 of 1983

B. Girija and Another — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 01-06-1984

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 B (2)

Citation : (1984) 56 STC 297

Hon'ble Judges : S.A. Hakeem, J;Jagannatha Shetty, J

Bench : Division Bench

Advocate : C. Srinivasa Iyengar, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—These two revision petitions raise a short but interesting question, namely, whether the photostat copies taken from the xerox machine and supplied by the petitioner to the customers would amount to sale under the Karnataka Sales Tax Act, 1957.

2. All the authorities below have held that the supply of photostat copies amounts to sale. The unreasonableness, if not the absurdity, of this view could be well presented by a mere narration of the facts.

Smt. B. Girija, the petitioner, is the owner of a xerox machine with the establishment called "Speed-O-Prints". She takes out and gives copies of documents from the said machine to those who need it on payment of some charges. For the assessment years 1975-76 and 1977-78, the petitioner declared certain turnover, but said that that turnover was not taxable since it did not represent sale transactions. The Commercial Tax Officer, however, assessed the turnover to tax and also levied penalty u/s 12-B(2) of the Act on the ground that the tax along with the monthly statements in form No. 3 has not been regularly paid.

The appeals preferred against that order have been dismissed by the Additional

Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City, and so too the further appeals preferred before the Appellate Tribunal.

3. From the records, it will be seen that the turnover of the petitioner is made up of the amounts collected from the customers as labour charges towards developing and printing of photostat copies and the cost of the material used for taking such copies. It is a matter of common experience that persons go to the xerox establishment not with a view to buy duplicate of their documents but get copies made of their documents. It is no less true in the case of the petitioner. The petitioner utilises her own papers and ink and by the use of the xerox machine, she turns out copies of the documents brought to her. She charges for all the service rendered in addition to the cost of the material used.

On these facts, we have to find out what is the primary object of the transaction and the intention of the parties, whether it is a contract purely of work or service, or contract for sale.

In Hindustan Aeronautics Ltd. v. State of Karnataka [1984] 55 STC 314, Supreme Court has observed :

".... Mere passing of property in an article or commodity during the course of performance of the transaction in question does not render the transaction to be transaction of sale. Even in a contract purely of work or service, it is possible that articles may have to be used by the person executing the work, and property in such articles or materials may pass to the other party. That would not necessarily convert the contract into one of sale of those materials. In every case, the court would have to find out what was the primary object of the transaction and the intention of the parties while entering into it ..."

In the instant case, as we have earlier noticed, no person goes to the petitioner for buying duplicates of his documents. Any person going there will ask whether he could get the xerox copies of his documents made. If so, he will ask the petitioner to get the documents duplicated. The petitioner would undertake that work and collect certain charges. This, is our opinion, is essentially a contract of work and labour or service and not a contract for sale. The distinction between the two types of transactions has been explained by the Supreme Court in Hindustan Aeronautics Ltd. v. State of Karnataka [1984] 55 STC 314 as follows :

".... A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where however the main object of work undertaken by the payee of the price was not the transfer of chattel quo chattel, the contract is one of work and labour. The test is, whether or not the work and labour bestowed end 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 was in substance one for work and labour and one for the sale of a chattel."

In the light of these principles, we do not think that the authorities below were justified in holding that the transaction in question is a contract for sale.

The decision of the Andhra Pradesh High Court in S.R.P. Works and Ruby Press v. State of Andhra Pradesh [1972] 30 STC 195 AP on which Sri Babu relied upon, is quite distinguishable. Therein the customers obtained samples from the petitioner and then placed orders giving specifications and got printed cinema tickets in different colours. On the facts found in that case, the Andhra Pradesh High Court came to the conclusion that the orders were specifically for printing and supplying of tickets and the contract was, therefore, for the purchase of tickets printed in the assessee''s press. In our opinion, this case stands entirely on a different footing and has no relevance to the facts of the case before us.

4. In the result, we allow these revision petitions and set aside the orders of all the authorities below. In the circumstances of the case, we make no order as to costs.

