(1981) 05 KAPT CK 0018

In the Karnataka Appellate Tribunal

Case No : STA 648 of 79 & 422 of 80

B. Girija APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 28-05-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5(1)

Citation : (1981) 1 KarLJ 101

Hon'ble Judges : T. Balachandran, Member;C. K. Mallikarjuna, J

Judgement

T. Balachandran, M.-STA 648/79 has arisen from the order passed by the Assistant Commissioner of Commercial Taxes (Appeals). City Division, Bangalore in AP. No. 324/77-78 dated 31-12-1977 dismissing the appeal filed against the assessment order passed by the Assistant Commercial Tax Officer, V(3) Circle, Bangalore on 1-6-1977 for the period 1-7-1975 to 30-6-1976 under the Karnataka Sales Tax Act, 1957 (hereinafter called the Act) holding the supply of photo-stat copies as sale liable to tax under Section 5(1) of the Act.

2. STA 422/80 has arisen from the order passed by the Addl. Deputy Commissioner of Commercial Taxes (Appeals), City Division, Bangalore in AD/ AP-126/ 79-80 dated 19-2-1980 dismissing the appeal filed against the assessment order passed by the Addl. Commercial Tax Officer, X Circle, Bangalore on 30-11-1979 for the period 1-7-1977 to 30-6-1978 under the Act holding the supply of photo-stat copies as sale liable to tax under Section 5(1) of the Act and also the levy of penalty of Rs. 200/- under Section 12-B(2) of the Act.

3. Since these two appeals involve purely a question of law as to whether the supply of photo-stat copies of documents, etc., by the process of xerography is to be held as sale under the sales tax law, the same are clubbed, heard together and disposed of by this common order.

4. Sri M.M. Bhatia, the learned counsel for the appellants advanced common arguments in both the cases. It is contended by him that the entire turnover of the appellants relating to the supply of photostat copies are exempt from tax

under the Act as the same does not constitute sale. The appellants are using their skill and labour to make photo-stat copies by xerox process and therefore the sale proceeds of the same cannot be subjected to tax under Act. Further, these photo-stat copies are not marketable commodities. The learned counsel relied upon the decision of the Supreme Court of India in the case of Assistant Sales Tax Officer v. B.C. Kame, (1977) 39 STC 237. He has also relied upon a decision of the Sales Tax Appellate Tribunal, Maharastra in the case of Central Photo Studio v. State of Maharastra, All India Tri. Judges (1977), 1197, in support of his contention.

5. The learned State Representative argued that the photo-stat copy obtained by the operation of xerox machine cannot be considered as or equated with a piece of art as in the case of photography. Photographer is equated to an artist, but a xerographer can only be equated with a printer. The skill and labour involved is the same as or even much less than that of the printer. Even in the case of photography, the sales of printed photographs or enlarged photographs are liable to tax under the sales tax law. If the customer wants his photograph and in the process the photographer develops the negative and does other photographic work by using his skill and labour, the transaction effected therein is a works contract. Thus the learned State Representative stressed that the decision in S.C. Kame''s case is not applicable to the facts of these cases. The photo-stat copies can at best be considered as goods made to order. Xerox copying is similar to printing in taking manifold copies. Thus he submitted that the supply of photo-stat copies is sale under the Act and therefore, the appeals may be dismissed as devoid of merits.

6. We have considered the arguments for both the parties and perused the records. The appellants are engaged in in the business of taking duplicate copies of documents by xerox process. In this process the appellants used their own paper and chemicals and also the help of xerox machines. The point for consideration is:

Whether the supply of such photostat copies obtained by xerox process is a sale under the Act?

7. We are in full agreement with the views expressed by the learned State Representative, that the supply of photostat copies amounts to sale under the sales tax law. The learned counsel for the appellants has placed much reliance on the decision of the Supreme Court of India in Assistant Sales Tax Officer and Others v. B.C. Kame, (1977) 39 STC 237. But the facts in that case are totally different from those of the present cases before us. That case relates to a professional photographer who uses his skill and labour to take a good photograph of the customer for his personal use. Whereas in xerography it is only a mechanical process which does not require much skill and labour. The processing technique and other ingredients in xerography are different from those of photography. The skill and labour involved in xerography are similar to those in printing press. Photo-stat copies are taxable as printed materials. If

supply of cinema tickets printed as per specification of the customers could be held as sale as decided by the High Court of Andhra Pradesh in S.R.P. Works and Ruby Press v. State of Andhra Pradesh, (1972) 30 STC 195.

the supply of photostat copies also could be held as sale under the Act. The customers have placed orders for the supply of finished goods in the form of photo-stat copies and paid a price thereof and consequently the transactions of the appellants are sales under the sales tax law and not works contract.

8. In this view of the matter, we have to differ, with respect, from the reasoning of the Sales Tax Appellate Tribunal, Maharashtra. To come to the conclusion that the transaction is a contract of service the Sales Tax Appellate Tribunal Maharashtra has taken into consideration the dominent intention of the parties in regard to the transaction as to obtain the services of the xerographer in getting a quick and exact duplicates of the documents supplied. On this basis, the Tribunal held that the transaction is to get a service done and even if in the process the property in the paper passes to the customer, it is incidental to the contract of service and not a sale.

9. Though the appellants supplied duplicate copies of the documents by xerox process the same cannot be equated with photography where specalised skill and labour are involved. The quickness with which the work is done should not influence the nature of transaction. With the advancement of science, sophisticated machines are developed resulting in production of finished products quickly. As long as the main object of the contract is the transfer of property in and delivery of possession of a chattel as a chattel to the buyer, the transaction is a sale. The dominent intention of the patties in xerography is also the same. Thus we do not find any reason to interfere with the orders passed by the lower autholities.

10. As regards the penalty levied under Section 12-B(2) of the Act in STA. 422/80, we are not inclined to give a decision as no separate appeal is filed against such imposition of penalty and the matter was also not pressed before us at the time of arguments.

11. Thus we pass the following order:

Both the appeals are hereby dismissed and the orders of the lower authorities are hereby confirmed.

