(1977) 12 AHC CK 0003

In the Allahabad High Court

Case No : Misc. S.T.R. No. 847 of 1973

COMMISSIONER OF SALES TAX — APPELLANT

Vs

KRISHNA PHOTO SERVICES. — RESPONDENT

Date of Decision : 15-12-1977

Acts Referred:

Citation : (1978) 7 CTR 61

Hon'ble Judges : Seth, J

Bench : Division Bench

Judgement

Seth, J. - By his order dated 30th November, 1973, the Additional Judge (Revisions), Sales Tax, Agra, has stated the case and referred the following questions for the opinion of this Court.

"Whether on the facts and in the circumstances of the cases, the intention of the parties in respect of the disputed transactions was to enter into three separate and distinct contracts, viz. taking of photograph, developing of film into negative and to sell the prints thereof. If so, whether the turnover of all the three contracts or the turnover of the last contract was taxable."

2. The assessee carries on business as a photographer. In the course of his business he sold certain photo-plates as also entered into transactions which involve the taking the photo in the studio, the developing of films and furnishing of three prints thereof to the customers. In due course, the Sales tax Officer treated the turnover of the assessee involving the taking the photo, developing of films and furnishing of three prints thereof as a turnover of sale of the prints and taxed them accordingly. The assessee went up in appeal. The appellate court also affirmed the decision of the Sales Tax Officer. In revision, Judge (Revision) held that the transaction on in this regard result into sale of goods and excluded the turn over of the assessee. The department contended that as the transaction was resulted into three distinct contracts viz. taking of photograph, developing of films into negatives and thereafter to sell the prints. The Judge (Revisions) has at the instance of the Commissioner of Sales Tax, referred the aforementioned

question for the opinion of this Court.

3. In the case of Asstt. S.T.O., Circle No. 2, Jabalpur & Ors. vs. B. C. Kame, Prop. Kame Photo Studio, Jabalpur the Supreme Court held that when a photographer, like the respondent, undertakes to take photograph, develop the negative, or do other photographic work and thereafter supply the prints to his client, he cannot be said to enter into a contract for sale of goods. The contract on the contrary is for use of skill and labour by the photographer to bring about a desired result. Therefore, it must be held that the respondent undertook the contract of work and labour and did not enter into a sale transaction. As such he was not liable to sales tax.

4. In view of the aforesaid decision of the Supreme Court it is clear that the transaction in question could not be treated as result in into sale of goods and the same could not be taken up into three distinct contracts as claimed by the Commissioner Sales Tax. In the circumstances, the question referred by the Commissioner of Sales Tax is answered as follows :

"On the facts and in the circumstances of the case the intention of the parties in respect of the disputed transactions was to not enter into three separate and distinct contracts, viz. taking of photograph, developing of film into negative and to sell the prints thereof and that the turnover in question was not liable to sales tax".

Parties are directed to bear their own costs.

