(1971) 06 BOM CK 0006

In the Bombay High Court

Case No : Sales Tax Application No. 21 of 1970

Commissioner of Sales Tax APPELLANT

Vs

Patel India Pvt. Ltd. RESPONDENT

Date of Decision : 30-06-1971

Acts Referred:
Bombay Sales Tax Act, 1953 — Section 34(2)

Citation : (1971) 28 STC 516

Hon'ble Judges : Mody, Acting C.J.;Y.V. Chandrachud, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; R.V. Patel, for the Respondent

Judgement

Mody, A.C.J.

1. In this application, which is u/s 34(2) of the Bombay Sales Tax Act, 1953, the petitioner prays for a direction for having two questions of law referred to this court. The two questions, as framed, are, without a doubt, questions of law as they involve the construction of a contract in writing. Both the questions turn on a determination whether the contract, on its true construction, was a contract for sale of goods or whether it was for a work of art. The contract is entered into between the Central Government and a dealer under which the dealer agreed to shoot, direct, produce, edit, title and in all respects complete a 33 mm. talkie-film on the subject of handloom industry, with background music and commentary in Hindi, of the length of about 2,000 ft. and after completion to deliver to the buyer the original picture negative, sound track, etc., of that film. The contract contains several terms as to what the film was to contain and for checking, supervision, etc. by the Government. The Tribunal has held, on a construction of this contract, that the contract was for a work of art and not for sale of goods. We have gone through the relevant terms of the contract. It is clear to our mind that this is not a contract for sale of goods. The production of the picture stipulated for in the contract was really a production of a work of art which really involved the skill of an artists. Under the circumstances, although

construction of a document would be a question of law, and it would be so in this case also, we are satisfied that, on a construction of the contract, the reasons for holding that the contract was for a work of art are so overwhelming that no useful purpose would be served in directing a reference to be made. It may be stated that an attempt was made before the authorities to split up the price, part being allocable to sale of goods and the rest to be treated as appertaining to the production of a work of art. That attempt failed and that aspect does not survive for consideration nor has it been raised in this petition.

2. We therefore dismiss the petition and discharge the Rule with costs.

3. Petition dismissed.