(1975) 01 BOM CK 0007

In the Bombay High Court

Case No : Sales Tax Reference No. 16 of 1969

Commissioner of Sales Tax APPELLANT

Vs

Wagh''s Fine Art Studio RESPONDENT

Date of Decision : 13-01-1975

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 2(11), 52, 61(1)

Citation : (1975) 35 STC 527

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : K.S. Cooper and R.A. Dada, for the Appellant; V.H. Patil and I.M. Munim, for the Respondent

Judgement

Madon, J.—The real question which we are called upon to decide in this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, is whether a sculptor who makes statues and busts for persons who commission them is a dealer within the meaning of the said Act.

2. One V. V. Wagh acquired reputation as a sculptor and in recognition of the repute which he was enjoying he was appointed a sculptor to some Viceroys and Governors of Bombay. He died in 1958. Before his death, however, he trained up his son B. V. Wagh to follow in his artistic footsteps and take up the vocation of a sculptor. The son thereafter has been following the calling of a sculptor under the name and style of Messrs. Wagh''s Fine Art Studio, the respondent in this reference.

3. Apprehending that the sales tax authorities might at some stage adopt proceedings against him that he was carrying on the business of a dealer by selling statues and busts, the respondent filed an application u/s 52 of the Bombay Sales Tax Act, 1959, calling upon the Commissioner of Sales Tax to determine the question whether he was a dealer under the said Act. It appears from what he has stated in his said application, and the facts which have not been challenged at any stage, that in execution of specific orders received from

parties the respondent prepared busts and statues in marble and bronze, the work involving artistic skill and ability. He has further stated that the sculpturing of a bust normally took from four to six months and statues one or two years for completion and that these statues and busts were not reproduced for sale to the public. The Deputy Commissioner of Sales Tax held that the respondent was a dealer and carried on the business of purchase and sale of goods. In appeal, the Sales Tax Tribunal reversed the order of the Deputy Commissioner.

4. Arising from the judgment of the Tribunal the following two questions have been referred to us :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the contract in dispute is a contract of work and labour and not a contract of sale of goods ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the respondent was not a dealer within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959 ?"

5. In Commissioner of Sales Tax v. Studio Ratan Batra Private Ltd. [1975] 35 S.T.C. 522 (Sales Tax Reference No. 10 of 1972), which was decided by us today, we have held that the preparation and supply of a design by a commercial artist is a contract of skill and labour and not a contract of sale. We see no difference in principle between the case of a commercial artist, a painter or a sculptor. In each case, for the preparation of the final work what is required is artistic skill; and when a man commissions an artist to paint his portrait or a sculptor to make his statue or bust or a commercial artist to prepare a particular design, the essence of the contract is not the material out of which such painting, sculpture, bust or design is made, irrespective of the fact whether such material is paint, stone, marble or bronze, but the fruits of the artistic skill and ability of the artist concerned. It is not given to everyone to paint a picture or to make a statue or to draw a design or at least a painting, sculpture or design which others would be willing to commission and pay for. A similar question had also arisen before the Madras High Court in D. P. Roy Chowdhury v. State of Madras [1962] 13 S.T.C. 866, where it was held that in making two bronze casts to order, a sculptor was not selling the goods but was executing a contract of skill and labour.

6. In the result, we answer both the questions in the affirmative.

7. The applicant will pay to the respondent the costs of this reference.

8. Reference answered in the affirmative.

