(1977) 03 AHC CK 0032

In the Allahabad High Court

Case No : Sales Tax Reference No. 653 of 1972

Commissioner, Sales Tax — APPELLANT

Vs

Popular Photo Company — RESPONDENT

Date of Decision : 31-03-1977

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1977) 40 STC 171

Hon'ble Judges : C.S.P. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : S.N. Kacker, R.N. Bhalla and R.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The Additional Judge (Revisions), Sales Tax, Meerut, referred the following question to this court u/s 11(3) of the U. P. Sales Tax Act:

Whether, in the facts and circumstances of the case, the turnover in respect of photographs taken and supplied by the assessee are works contract ?

2. When the matter came up before this court on an earlier occasion a supplementary statement of the case was called for. This has now been done. From the statement of the case as now completed, it appears that the assessee deals in photographic material and also prepares photographs for his customers. For the year 1968-69, the assessee disclosed a gross turnover of Rs. 29,788.42 and a net turnover of sales of Rs. 5,756.57. This consisted, inter alia, of an amount of Rs. 4,205.07 as representing sale of photographic goods, Rs. 24,031.85 representing sale of photographic prints and Rs. 1,551.50 representing sales of albums. The Sales Tax Officer did not accept the turnover as disclosed by the assessee and estimated ex U. P. photographic goods sales at Rs. 24,000 and imposed tax at the rate of ten per cent. As respects sales of photographs and albums he estimated the amount at Rs. 52,000 and imposed tax at the rate of two per cent. On appeal the taxable turnover of prints and

albums was reduced from Rs. 52,000 to Rs. 40,000. The appellate authority, however, did not specify the break up of the extent of sales relating to photographs and those relating to albums. A revision was filed by the assessee against the appellate order and the revising authority estimated the sales of photographs at Rs. 38,000 and that of albums and corners thereof at Rs. 2,000. In respect of the sales of photographs the revising authority held that the sale of photographs to customers were works contract and, as such, not sales in the eye of law and not liable to tax. The present reference arises out of this order. From the statement of the case it appears that the assessee used to receive a lump sum amount from his customers for the preparation of photographs and this amount included the cost of labour as well as material used for the preparation of such prints.

3. The question that arises for our decision is as to whether the view taken by the revising authority is justified in law. The revising authority took the view that the transaction in question was a works contract on the basis of a decision of the Madhya Pradesh High Court in the case of B.C. Kame v. Assistant Sales Tax Officer [1971] 28 S.T.C. 1 . That decision now stands approved by the Supreme Court on appeal: see The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, . It has been held by their Lordships of the Supreme Court that when a photographer undertakes to take a photograph, develop the negative, or do other photographic work and thereafter supply the prints to his clients, 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 the desired result. It also held that the occupation of a photographer, except in so far as he sells the goods purchased by him is essentially one of skill and labour. In view of this pronouncement of the Supreme Court, the transaction in question, i. e., preparation of photographs and subsequent sales thereof of the prints are works contracts and not sales so as to attract liability to tax under the Act.

4. In view of our above conclusion, we answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to his costs which we assess at Rs. 100.