(1981) 05 KAPT CK 0015

In the Karnataka Appellate Tribunal

Case No : STA. 926/79

H. Pankaj and Co. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 27-05-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2(1)(T)

Citation : (1982) 1 KarLJ 3

Hon'ble Judges : B. B. Nayak, Member;S. R. Puranik, J

Judgement

Per S.R. Puranik, M.-This is an appeal against the order of the Assistant Commissioner of Commercial Taxes (Appeals), Bangalore City Division, Bangalore. The assessment year is from 12-11-1977 to 31-10-1978. The assessee is a registered dealer under K.S.T. and C.S.T. Act. He deals in photographic goods, photo frame, photo corners etc. He filed the final returns for the Deepavali year ending 31-10-1978 declaring a gross and net turnover of Rs. 69,551-84 Ps. and Rs. 8,146-70 Ps. respectively. In response to call notice, the Chartered Accountant appeared before the A.C.T.O., Bangalore and produced the books of accounts for Verification. After verification the A.C.T.O. found that the assessee purchased photostat copying machine worth Rs. 22,115-60 Ps. The assessee claimed exemption on the gales of photostat copies to the tune of Rs 59,433-21 Ps. But the A.C.T.O. did not accept this claim for the reason that the sale turnover of photostat copies was taxable under section 5(1) of the K.S.T. Act as the materials like paper, ink etc. was supplied by him only. Thereafter proposition notice was issued to the assessee and objections were called for. The assessee in his objections dated 24-1-79 stated that it is a well known fact that for Zerox work, it requires paper and ink and the assessee purchased the same locally. For doing this work labour is required and therefore it did not come under S. 5(1) of the K.S.T. Act. But the A.C.T.O. did not accept the objections and finally confirmed the assessment and levied the tax. Further under S. 12(B)(2) of the K.S.T. Act he levied penalty of Rs. 100, because the assessed tax exceeded 15% of the admitted tax.

2. Before the first appellate authority the appellant raised two contentions. Firstly, he contended that the sale of photostat copies did not form the turnover at all, because it was charges for job work. He relied upon a decision of the Supreme Court in B.C. Kame''s case, 39 STC 237 SC. Secondly he contended that the levy of penalty under S. 12(B)(2) was illegal. The Assistant Commissioner answered both these points thus: In his opinion Kame''s case was not applicable, photography involved art and skill in taking photos, but taking photostat copy is no art or skill. Therefore he held that supply of photostat copies to the customers was essentially a contract of sale and was taxable under S. 5(1) of the K.S.T. Act Regarding the second contention the Assistant Commissioner held that admittedly the assessed tax exceeded 15% of the admitted tax (than what was paid) and the A.C.T.O. has taken a lenient view by imposing only nominal penalty of Rs. 100. The A.C.T.O. also conceded that the assessee was under bonafide impression that the turnover regarding the photostat copies was exempted.

3. In the second appeal before us the grounds raised are these. The authority below erred in holding that Kame''s case was not applicable to the present case. The authorities below failed to appreciate that the appellant has done only labour work and collected labour charges and no sale was involved in the transaction.

4. Heard arguments of the advocate for the appellant and the learned State Representative.

5. The definition of ''sale'' in S. 2(1)(t) of the K.S.T. Act says that with all its gramatical variation and cognate expression sale means every transfer of property in goods by one person to another in the course of business for cash or deferred payment or other valuable consideration. The counsel for the appellant relied upon State of Madras v. Prasad Productions Private Ltd., 25 STC 423. In that case the assessee entered into an agreement with a producer to produce the Hindi version of a Telugu picture. The assessee was to obtain the raw films necessary for the production and hand over the negatives of the picture after having them duly censored. The assessee was to furnish accounts to the producer showing the expenses incurred for the production of the picture. The Sales Tax Department held that it was an agreement as projecting a sale of the finished film. But the High Court held that the assessee was only a catalyst between the producer and the finished product and no element of sale was involved. It may be noted that in the present case no such agreement is forthcoming.

6. In another decision reported in State of Madras v. A.L.S. Productions, 33 STC 335, the question was, production of advertising films under instructions of advertiser-whether works contract or sale of finished product. On the facts of that case it was held that under the provisions of the Copyright Act, the right to exploit the film was only with the person at whose instance the film was made or produced. Even granting that the assessees were the owners of the raw films, the ownership and the right of exploitation of the finished product could not be

said to be with them as they had no copyright in the ultimate product. Hence the transaction was only a works contract and not sale. The present case can be easily distinguished from the facts of the above case.

7. On behalf of the assessee a decision of the Maharashtra S.T.A.T. was brought to our notice which is reported in the case of General Photo Studio v. State of Maharashtra, (1977)4 Tax Tribunal Judgments 1197. The Sales Tax Appellate Tribunal of Maharashtra stated in their order that the same tribunal in an earlier case of R.K. Printers had held that Zerography involved sale and not works or service contract. But in the above noted case Maharashtra STAT held that the dominant intention of the parties in regard to the zerography is to obtain the service of the dealer in getting a quick and exact duplicate of the documents. Therefore on this basis they held that the transaction is to get a service done and even if in the process the property in the paper of the dealer passes to the customers it is incidental to the contract of service and there was no sale.

8. In B.C. Kame''s case (supra) the Supreme Court has held that when a photographer uadertakes to take a 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. On the contrary, the contract is for use of skill and labour by the photographer to bring about a desired result. 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 most cases a good photograph is indeed a thing of beauty. But in the present case what we find is that a customer goes to the assessee and asks him to have duplication in the photostat machine and he may ask for any number of copies and when he receives the same he pays the charges to him. Therefore here no skill is involved. It is a matter of routine. In such cases the intention of the contracted party is in substance for one of the sale of supplying the duplicate copies taken in photostat machine. The amount paid by the customer by way of charges includes the price of materials used by the dealer in taking out the photostat copy. So in these circumstances it cannot be said that it is a contract for pure work, labour or service and not for sale. Simply because the document given by the customers along with the sheets possessed by the dealers are placed in the photostat machine and in a matter of 15 minutes duplicate copies are taken, by no stretch of imagination it may be said to amount to contract for labour or service. The contention of the appellant that the documents and the copies thereof relate to him only and the same cannot be sold is also of no avail, because the printing machine is also used to print invitation cards or other cards. Hence in our view the opinion of the Maharashtra STAT, that only on the ground that the dominant intention is to take services of the photostat machine owner and therefore it is service cannot be held as correct. We agree with the findings given by the lower authorities that such a transaction involves an element of sale. We see no substance in the other contentions raised by the appellant and accordingly we dismiss the appeal. Regarding penalty, we affirm the order of the authorities below.

