
(2004) 03 KAR CK 0039
In the Karnataka High Court
Case No : Sales Tax Appeal No. 6 of 2004

MMT (India) Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 24 A, 4, 5 B

Citation : (2004) 2 KCCR 179 SN : (2004) 137 STC 257

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : Kamath and Kamath, K. Aravind Kamath and S. Koushik, for the Appellant; B. Anand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. Sri B. Anand, learned Government Advocate is directed to take notice for the respondent.

2. This is an appeal u/s 24-A of the Karnataka Sales Tax Act, 1957 ("the Act" for short) filed against the clarification/ advance ruling order dated December 22, 2003 in case No. CLR.CR. 106/03-04 passed by the Authority for Clarification and Advance Ruling constituted u/s 4 of the Act.

3. The appellant is a registered dealer under the Act engaged in the business of digital printing. The appellant filed an application seeking advance ruling in regard to exigibility of digital printing to sales tax. The appellant submitted that process of digital printing is a skilled job of printing which does not involve any transfer of property in goods as a consequence of any contract of sales; that the customers provide the art works and designs in the form of computer files stored in floppy/compact discs; and that the assessee uses such art works and designs to produce full size pictures as per the specifications of the customers and the pictures are thereafter printed on vinyl film. It is submitted that the dominant intention of a contract relating to digital printing, is the process of digital

printing. It is contended that the use of vinyl film is only incidental to the work of digital printing. The appellant submitted that the activity of digital printing is akin to the activity of printing of photographs ; that in a photo printing the customer provides the exposed film and prints are made on photo paper, whereas in a digital printing, the pictures/ images are provided on a floppy/compact disc which are printed on a vinyl film. Reliance is placed on the following observations of the Supreme Court in *Rainbow Colour Lab v. State of Madhya Pradesh* [2000] 118 STC 9 wherein the Supreme Court held that processing and making photo prints is a service contract and not works contract:

"All that has happened in law after the 46th Amendment and the judgment of this Court in *Builders*" case [1989] 73 STC 370 is that it is now open to the States to divide the works contract into two separate contracts by a legal fiction (i) contract for sale of goods involved in the said works contract and (ii) for supply of labour and service. This division of contract under the amended law can be made only if the works contract involved a dominant intention to transfer the property in goods and not in contracts where the transfer in property takes place as an incident of contract of service. The amendment, referred to above, has not empowered the State to indulge in microscopic division of contracts involving the value of materials used incidentally in such contracts. What is pertinent to ascertain in this connection is what was the dominant intention of the contract. Every contract, be it a service contract or otherwise, may involve the use of some material or the other in execution of the said contract. State is not empowered by the amended law to impose sales tax on such incidental materials used in such contracts." (emphasis *supplied)

4. The authority however ruled that digital printing is a works contract liable to tax u/s 5-B of the Act, under entry 43 of Sixth Schedule to the Act, by relying on the following observations of the Supreme Court in *Associated Cement Companies Ltd. v. Commissioner of Customs* [2001] 124 STC 59 :

"The Forty-sixth Amendment was made precisely with a view to empower the State to bifurcate the contract and to levy sales tax on the value of the material involved in the execution of the works contract, notwithstanding that the value may represent a small percentage of the amount paid for the execution of the works contract. Even if the dominant intention of the contract is the rendering of a service, which will amount to a works contract, after the Forty-sixth Amendment the State would now be empowered to levy sales tax on the material used in such contract. The conclusion arrived at in *M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others* [OVERRULED], , in our opinion, runs counter to the express provision contained in Article 366(29A) as also of the Constitution Bench decision of this Court in *Builders Association of India and Others Vs. Union of India (UOI) and Others*, ." (emphasis *supplied)

5. The said order of the authority is challenged in this appeal. The appellant contends that the authority committed an error in holding that digital printing does not require technical expertise and that it is not a work of art. It is

contended that the process of digital printing is similar to processing and printing photo-prints ; and as photo printing has been held to be a non-taxable works contract in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], , digital printing should also be held to be a non-taxable service contract.

6. We find that the appellant's contention is based on an erroneous premises that processing and printing of photo-prints is a non-taxable service contract. It is true that in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], , the Supreme Court held that no part of the turnover of a photographer relating to the work of developing negatives and supplying positive prints would be exigible to tax. It is also true that a similar view of this Court in Keshoram Surindranath Photo-Mag (P) Ltd. v. Assistant Commissioner of Commercial Taxes [2001] 121 STC 175 was affirmed by the Supreme Court by order dated 20-4-2000 in SLP (Civil) Nos. 6136-6163 of 2000 following the decision in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], . But the principle laid down in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, will prevail over the decision in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], and Keshoram Surindranath Photo-Mag (P.) Ltd. and Others Vs. Assistant Commissioner of Commercial Taxes (LR), City Division and Others, . This Court considered this aspect in Golden Colour Lab and Studio and Others Vs. The Commissioner of Commercial Taxes and Others, and held :

" M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], and Keshoram Surindranath Photo-Mag (P.) Ltd. and Others Vs. Assistant Commissioner of Commercial Taxes (LR), City Division and Others, proceeded on the basis that when a photographer takes photographs, develops the negative and supplies the print, it is a service contract and not a works contract ; and photography being a service, the main object is not transfer of property in goods and whatever goods that passes is only incidental to the service contract. It was further held that a works contract can be divided into two separate contracts by a legal fiction (the first for sale of goods involved in the works contract and the second for supply of labour and services), only where the dominant intention is to transfer of property in goods and not where the transfer in property takes place as an incident of service contract; and that the 46th Amendment to the Constitution has not empowered the State to indulge in microscopic division of contracts involving a value of materials used incidentally in such contracts.

Though the decision of the larger Bench in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, did not relate to sales tax, but to customs duty, the question whether there is any sale of goods in a contract for supply of services, was specifically raised for consideration. The said question was specifically considered with reference to several decisions including the decision

in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], , in great detail and categorically held that the principle of dominant intention was no more relevant after the Forty-sixth Amendment; and the said amendment was made precisely to empower the State to bifurcate the contract and to levy sales tax on the material involved in the execution of the works contract, notwithstanding that the value may represent a small percentage of the amount paid for the execution of the works contract. It also in terms stated that the decision in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], required consideration; and that the conclusion arrived in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], runs counter to the express provision contained in Article 366(29A) of the Constitution of India and the decision of the Constitution Bench of the Supreme Court in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs,) is not intended to be a passing comment or casual observation, but the point was specifically raised and decided by the court. The Supreme Court considered the entire case law on the matter. It did not merely raise a question and leave open the matter to be decided in some other case. The Supreme Court made it clear that even though decisions relating to levy of sales tax had no application to the case that was being considered by them (relating to customs duty), they would consider the decision in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], and on such consideration, held that M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], ran counter to Builders Association of India and Others Vs. Union of India (UOI) and Others, and Article 366(29A) and laid down clearly the legal principle as to what the State is empowered to do, after the 46th Amendment. We are therefore of the view that the enunciation of law and pronouncement by the three-Judge Bench of the Supreme Court in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, is law declared under Article 141 and will prevail over the principle laid down in the two-Judge Bench of the Supreme Court in Rainbow [2000] 118 STC 9."

7. In view of the clear enunciation of law in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, , the appellant's contention that in a contract for digital printing, the dominant intention is digital printing, and not transfer of property in goods and therefore no part of the contract price can be subjected to tax, even if the cost of vinyl film (or other suitable material) on which the matter is printed and the cost of the ink used for printing, constitute a part of the contract price, is clearly untenable. The test of dominant intention is no longer relevant. A contract for digital printing is a "works contract" and not a "service contract", even if it involves highly skilled work and professional and technical expertise. Even if the value of material used in such a works contract is a small percentage of the total cost, and even if the service element is the dominant element, having regard to the decisions in Builders Association of India and Others Vs. Union of India (UOI) and Others, ; and M/s. Associated Cement

Companies Ltd. Vs. Commissioner of Customs, , the value of the material used in digital printing contract will be exigible to tax. Further the value of vinyl film and the chemicals/inks used for printing forms not a negligible part, but a perceptible part of the price for the works contract. Be that as it may.

8. The authority has merely followed the principle enunciated in M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, . There is no error in the order of the authority. The appeal is therefore dismissed. Learned Government Advocate is permitted to file memo of appearance within six weeks.