(1974) 01 OHC CK 0025

In the Orissa High Court

Case No : S.J.C. No''s. 203 to 208 of 1972

Orient Photo Art Studio APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 18-01-1974

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1975) 35 STC 129

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : S.C. Mohapatra, for the Appellant; The Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—At the instance of the assessee, the Additional Sales Tax Tribunal has stated the cases and referred the following question u/s 24(1) of the Orissa Sales Tax Act of 1947 (hereinafter referred to as the "Act") for determination of this court:

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was right in holding that the supply of photographs to the customers on payment is sale and liable to sales tax under the Orissa Sales Tax Act ?

2. These six references relate to the quarters ending 31st December, 1964, to 31st March, 1966. The assessee is a photographer who takes photographs of customers, develops the films, prints the same and supplies printed copies of the photographs to the customers. He also sells films.

3. There is no dispute regarding liability of sales tax in respect of sale of films. But there is dispute over the exigibility of sales tax over the turnover relating to sale of printed copies of photographs of customers. Before the Sales Tax Tribunal, three decisions were cited-one by the assessee being the case of B.C. Kame v. Assistant Sales Tax Officer [1971] 28 S.T.C. 1 of the Madhya Pradesh

High Court, and two others on behalf of the revenue being the decisions of the Madhya Pradesh and Patna High Courts respectively in the cases of D. Masanda & Co. v. Commissioner of Sales Tax [1957] 8 S.T.C. 370 and M. Ghosh v. State of Bihar [1957] 8 S.T.C. 370. The appellate authority followed the Patna decision and overruled the assessee''s contention. Thereupon these references have been made.

4. There appears to be a sharp division in the judicial opinion on the point regarding liability of the transactions of the type before us to sales tax. The Madhya Pradesh High Court in D. Masanda & Co. v. Commissioner of Sales Tax [1957] 8 S.T.C. 370 took the view that when a customer goes to a photographer for being photographed and for copies of photographs on payment, the substance of the contract between him and the photographer is not the performance of skilled services but the supply of finished goods. The Patna High Court (M. Ghosh v. State of Bihar [1961] 12 S.T.C. 154 took into consideration several English cases as also a decision of the High Court of Australia (Federal Commissioner of Taxation v. Rileys 53 CLR 69 and held that the photographer who took photographs and sold printed copies of them to customers was liable to sales tax under the Bihar Act. The Madras High Court in the case of B.V. Bhatta v. State of Madras [1965] 16 S.T.C. 441 took the view that when a customer goes to a photographer''s studio and engages the photographer''s service to take a picture, he was not bargaining merely for the special skill which the photographer had to produce a negative, but he was really asking for supply from that negative as many copies of the finished positives as the customer required and, therefore, held that the transaction was exigible to sales tax.

The Gujarat High Court in the case of Chelaram Hasomal v. State of Gujarat [1965] 16 S.T.C. 1021 approved the principle indicated in the cases reported in D. Masanda & Co. v. Commissioner of Sales Tax [1957] 8 S.T.C. 370 and M. Ghosh v. State of Bihar [1961] 12 S.T.C. 154. Similarly, the Madras High Court in a later case, Eastern Photo Studio v. State of Madras [1970] 25 S.T.C. 376, approved the principles laid down in the aforesaid Patna decision.

The Bombay High Court in the case of Camera House v. State of Maharashtra [1970] 25 S.T.C. 354, however, differed from the earlier Madhya Pradesh case (D. Masanda & Co. v. Commissioner of Sales Tax [1957] 8 S.T.C. 370, the Patna case (M. Ghosh v. State of Bihar*), as also the Madras decision reported in B.V. Bhatta v. State of Madras [1965] 16 S.T.C. 441 and proceeded to classify the transactions of the photographer into three groups. The Madhya Pradesh decision relied upon on behalf of the assessee before the Tribunal, B.C. Kame v. Assistant Sales Tax Officer [1971] 28 S.T.C. 1, directly supports the view of the assessee that such transactions are not liable to sales tax.

5. The principle upon which the taxability of such a transaction is determined is as to whether it is a contract of work and labour or it is a contract of supply as also work and labour. If it is a composite contract for sale of finished goods (printed copies of photographs) and payment for labour, the transaction would be

exigible to sales tax. Here again, if the price for the supply and the labour charged is separately indicated, it is only the price for the supply of material that would be liable to tax and not the other.

6. This being the real basis for liability, the determination of the question referred to us would ultimately depend upon a determination of the true nature of the transaction involved in a customer coming to a photographer and obtaining printed copies of photographs. In a customer asking for photographs from the photographer, questions like the price of the negative, the expenses of developing, which again involve price of various components necessary for the process, expenses of the printing paper and other break-ups are not separately taken into account. Ordinarily, the photographer quotes a rate for the prints and the customer also is interested to find out how much he has to pay for the finished goods, namely, the photographs. There is no material on record in this case about the details of the transactions. Therefore, it is appropriate to assume that the assessee carried on his transactions in the normal way which would be somewhat akin to the process indicated by us. The assessee had contended before the taxing authorities that the entire payments he had received relating to the sale of photographs was nothing but remuneration towards his skill and labour. The assessing officer took the view that the substance of the contract was not the performance of skilled services, but the supply of finished goods. In our opinion, that is the only possible view which can be taken. We agree with the reasoning adopted by the Patna High Court in M. Ghosh v. State of Bihar [1961] 12 S.T.C. 154, and the series of authorities referred to above which support the said view and do not think it necessary to reproduce the reasonings here to support our conclusion.

7. Our answer to the question referred to us, therefore, shall be that:

The Member, Additional Sales Tax Tribunal, was right in holding that the supply of photographs of customers on payment is a sale exigible to sales tax under the Act.

There shall be no order for costs.

B.K. Ray, J.

8. I agree.

