(1969) 12 MAD CK 0015

In the Madras High Court

Case No : T.C. No. 389 of 1969 (Rev. 264)

State of Madras APPELLANT

Vs

Prasad Production Private Ltd., Madras RESPONDENT

Date of Decision : 31-12-1969

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : AIR 1970 Mad 477 : (1970) 25 STC 423

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Advocate : First Asstt. Govt. Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The assessee is a company incorporated under the provisions of the Companies Act, 1956, and is a producer of

films. The assessee was entrusted with the work of producing the Hindi version of a Telugu picture Bharya Bhartalu and such entrustment was

under a written agreement between the assessee and M/s. Papee Films (hereinafter referred to as the producer) dated 4-5-1961. The main

features of the agreement may be noted. The production of the picture being of peculiar nature, under the agreement the rush print of the Telugu

picture Bharya Bharatlu, Terugu scripts, dialogues and songs were to be furnished to the assessee by the producer. The assessee was to engage

the necessary dialogue writers, technicians and other staff and also obtain the necessary raw films for production of the Hindi version of the Telugu

picture. After completion of the production in the manner agreed to, the negatives duly censored, were to be handed over to the producer. Under

the agreement the assessee was to furnish to the producer accounts showing the expenses incurred for production of the picture. In consideration

of the services so rendered by the assessee, a fixed remuneration was to be given by the producer. Such services rendered by the assessee are

attempted to be brought to tax on the ground that the agreement in question is essentially projecting a sale of the finished film to the producer. The

Tribunal came to the conclusion that the contract reflected only a service agreement and not a sale as is popularly understood.

2. It is well known that the insignia of ownership in a censored film fit for exhibition lies in the person who has the right to exploit the, same by

exhibiting it in the usual way. In the instant case, such right in the film vested in the producer at all times. If, therefore, the producer was the owner

of everything concerning the cinematographic film under consideration, the fact that the raw film-was supplied by the assessee and it rendered

services by getting the film shot in its studio and providing other contemporaneous assistance for the production of the picture cannot make the

contract of service entered into one of sale. No element of sale is involved, because there is nothing for the assessee to sell to the producer. The

assessee is only a catalyst between the producer and the finished product and is a person who took all the necessary steps to see that the film in

Hindi version as contemplated has been produced in accordance with the terms of the agreement. The Tribunal, in our view, came to the right

conclusion that in essence the agreement in question reflected only a service agreement between the parties. It is common ground that the

agreement is genuine. In these circumstances, we are unable to agree with the contention of the learned Assistant Government Pleader that the

agreement in question effectively projects a sale within the meaning of Section 2 of the Madras General Sales Tax Act. The tax case fails and is

dismissed,