(1989) 06 GAU CK 0024

In the Gauhati High Court

Case No : Civil Rule No. 127 of 1982

Studio Sen and Sen APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 10
Tripura Sales Tax Act, 1976 — Section 2, 3

Citation : (1990) 79 STC 168

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Deb and R. Dasgupta, for the Appellant; M. Majumdar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—An important question of law has arisen for determination in this petition as to whether a dealer who purchased photographic materials and used the same in taking photographs and supplying prints thereof to his clients, which did not amount to sale, can be assessed to sales tax under the Tripura Sales Tax Act, 1976, on any supposed sale of the materials so used on the ground that the purchases were made at a concessional rate of tax on the strength of "C" forms issued under the Central Sales Tax Act.

2. The petitioner is proprietor of a photo studio known as Studio Sen & Sen situated at Agartala. He carries on the business of buying and selling photographic goods and also buying photographic materials for use by him in taking photographs and supplying prints thereof to the customers or making enlargement of the photographs or making prints out of negatives supplied by his clients. A consolidated amount depending upon the work involved and the number of prints is charged from the clients as consideration.

3. The petitioner is registered as a dealer under the Tripura Sales Tax Act, 1976, (hereinafter "the Act"). The petitioner submitted his return of the turnover for

the periods ending 31st March, 1977, 31st March, 1978, 31st March, 1979, 31st March, 1980 and 31st March, 1981 showing the turnover of photographic goods sold by him in the State of Tripura. However, in the returns so submitted the amount received by him for taking photographs, developing the negatives or doing other photographic works like, supply of prints, etc., to the clients was not included in the turnover on the ground that there was no contract of sale of any goods and it was pure and simple indivisible works contract. In course of hearing, the petitioner, in support of his action, placed before the Superintendent of Taxes the decision of the Supreme Court in the case of The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, wherein the Supreme Court had held that when a photographer undertakes to take photographs, develop the negatives or to 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 a desired result. It was pointed out that the Supreme Court had in very clear terms 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. It was also submitted that in view of the aforesaid decision of the Supreme Court holding that no sales tax was payable on works of the nature undertaken by the petitioner, there was no scope for levying any sales tax thereon and, as such, the receipts from such works contract were rightly not included by him in the return of turnover.

4. The Superintendent, Taxes, however, did not follow the aforesaid decision of the Supreme Court. He observed that the petitioner could not have the benefit of purchasing any material at a concessional rate if the goods or anything processed out of it was not saleable and on that basis held that there was no justification for leaving an amount of Rs. 1,98,460.44 (representing the value of purchases of materials used in preparation of photographs, etc.) as non-taxable and accordingly, added the estimated sale value thereof in the taxable turnover of the petitioner. The additions made in 5 assessments for the periods ending 31st March, 1977, 31st March, 1978, 31st March, 1979, 31st March, 1980 and 31st March, 1981 were Rs. 12,000, Rs. 10,000, Rs. 50,000, Rs. 64,000 and Rs. 70,000 respectively.

5. The petitioner has challenged the aforesaid orders of assessment passed by the Superintendent of Taxes on the ground that the occupation of the petitioner as a photographer being essentially one of skill and labour, the amount received by him on account of such works not being the amount of considerations for sale of goods, the same cannot be assessed to tax under the Act in view of the decision of the Supreme Court in B.C. Kame [1977] 39 STC 237. The contention of the petitioner is that the Superintendent of Taxes acted illegally in levying sales tax on the estimated value of such works undertaken by him.

6. We have heard Mr. S. Deb, learned counsel for the petitioner and Mr. M. Majumdar, learned Government Advocate, for the respondents, also perused the

impugned assessment orders and the counter filed by the respondents. Though from the assessment order, it is not very clear as to what has been assessed to tax--the estimated value of photographs, etc., supplied to the clients or the estimated value of the materials used in preparation of such photographs. However, from the counter filed on behalf of the respondents it appears that tax has been levied on the estimated sale value of the materials used in preparation of the photographs by assuming that goods imported at concessional rate of tax for resale had been disposed of by the petitioner by way of sale transaction. We have considered the facts of the case and the submissions of the learned counsel for both the parties. It is now well-settled by the decision of the Supreme Court in B.C. Kame [1977] 39 STC 237, 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. The admitted position in the present case is that the petitioner is a photographer by occupation. He also sells certain photographic goods purchased by him and tax has been paid in respect of sales of such goods made by him. No tax has been paid on the amount received in respect of works contract undertaken by him as a photographer. There is also no dispute about the fact that the petitioner did not sell the materials purchased by him from outside the State at concessional rate other than those disclosed in the return. Such materials were used in preparation of photographs, etc., and supply of the same to clients which amounted to works contract. On these admitted facts, the point that arises for our consideration is whether any tax can be levied under the Act on a dealer on the estimated value of materials used by him in indivisible works contract on the ground that the same were purchased at concessional rate of tax on the strength of "C" forms issued under the Central Sales Tax Act and that the same could not be left as non-taxable. In other words, the question for determination is whether sales tax can be levied on any supposed sale of materials used in execution of an indivisible works contract.

7. We have given our careful consideration to the aforesaid point at issue and the stand taken by the Revenue. We are constrained to say that we find it extremely difficult to accept the same. It is well-settled that the statute levying tax or duties upon the citizen cannot be extended by implication beyond the clear import of the language used nor can their operation be enlarged so as to embrace matters not specifically mentioned therein. No tax can be levied on any dealer unless the charging provision clearly imposes the obligation. If a case does not fall within the four corners of the provisions of a taxing statute, no tax can be imposed by inference.

8. In the instant case, apparently, there is no sale either of the materials used in the preparation of photograph or of the photograph itself. What is to be seen is whether in such a situation, there is any provision in the Act which empowers the authorities to levy tax on the assumed sales of certain goods on the ground that the said goods were brought by the dealer from outside the State at concessional rate of tax or free of tax by issue of "C" forms or in other words that the goods brought at concessional rate of tax from outside the State were not used for the

purposes for which they were purchased.

9. We have perused the provisions of the Tripura Sales Tax Act, 1976. Section 3 of the Act, which is the charging section, provides, inter alia, that every dealer in taxable goods shall pay tax on its turnover at the rate specified in column 3 of the Schedule attached to the Act. The expression "turnover" has been defined in Clause (m) of Section 2 of the Act to mean the aggregate of the amount of the sale prices and "sale" and "sale price" have been defined in Clauses (g) and (h) of Section 2 of the Act. On a plain reading of Section 3 and the relevant definitions, it is clear that tax is payable under the Act only on the amounts received or receivable in respect of "sale" of "goods". Unless, there is a "sale" no tax can be levied. It may, however, be apposite to mention here that after the Forty-sixth amendment of the Constitution, the Act has been amended and by the Tripura Sales Tax (Third Amendment) Act, 1984, a new section, namely, Section 3A has been inserted to provide for imposition of tax on transfer of property in goods involved in the execution of works contract. However, as the case in hand relates to periods prior to the coming into force of the said amendment, it is not necessary to go into the effect of the same. In the instant case, admittedly there being no sale of any goods whatsoever, the assessing officer had no authority to levy any tax on the "assumed sale" of the materials purchased by the petitioner and used in the works contract. Such an assumption is not warranted in a taxing statute. If, according to the assessing officer, the goods purchased on the strength of "C" form issued under the Central Sales Tax Act were not used for the purposes for which they were purchased, he could have taken any action against the dealer for such misuse as might be permissible under the said Act. There is a specific provision in Section 10(b) of the Central Sales Tax Act to deal with such a situation. But that cannot be a ground for levying tax under the Tripura Sales Tax Act without there being a sale of such goods in the State of Tripura.

10. In view of what is stated above, we are of the opinion that no tax can be levied under the Tripura Sales Tax Act in respect of materials used by the petitioner as a photographer in the works contract undertaken by him as there is no "sale" of such materials in Tripura within the meaning of Clause (g) of Section 2 of the Act. We think that in the face of the decision of the Supreme Court in The Assistant Sales Tax Officer and Others Vs. B.C. Came, Proprietor Came Photo Studio, the Superintendent of Taxes should not have levied tax in the manner he purported to do. The law laid down by the Supreme Court cannot be flouted or by-passed by drawing distinctions between facts of the case decided by the Supreme Court and the case at hand unless such distinction materially affects the application of the principles laid down by the Supreme Court. It may also be appropriate to mention here that it is also no more res integra that mere passing of property in an article or commodity during the course of performance of a transaction does not render if a transaction of sale. In an indivisible works contract the materials used therein become the property of the other party to the contract only on the theory of accretion and, as such, no sales tax can be levied

on the value of such materials. The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., and Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others, The position, however, has changed since the passing of the Constitution (Forty-sixth Amendment) Act, and consequent amendment of the sales tax law concerned.

11. In view of the aforesaid discussion, we hold that the impugned orders of assessment in so far as those relate to levy of tax on the estimated sale value of materials purchased by the petitioner and used in execution of works contract are not sustainable in law. We accordingly quash the same to that extent and direct the Superintendent of Taxes to delete such amounts from the turnover of the petitioner assessed therein. With the above observations and directions the petition is allowed. The respondents to pay Rs. 500 by way of cost to the petitioner.