

PETITIONER:
M/S EVEREST COPIERSTHROUGH R.A. PARTNER

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 25/07/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
THOMAS K.T. (J)

CITATION:
JT 1996 (7) 40 1996 SCALE (5)535

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO. 5339 OF 1992
O R D E R

The appellant runs a photocopying business. It has been assessed to sales tax for the Assessment Year 1978-79 (in Civil Appeal No. 5339/92) and the Assessment Year 1979-80 (in Civil Appeal No. 2672/92) on the basis that there was sale by it of the photocopied or xeroxed document to the customer. The question that we are concerned with, therefore, is whether the making of photostat copies with the use of a xerox or other machine and delivering the copies so taken to the customer on receipt or payment amounts to a sale of goods exigible to tax under the Tamil Nadu General Sale Tax Act, 1959.

Section 2(n) of the Tamil Nadu General Sales Tax Act, 1959 read as under at the relevant time:

" 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, Hypothecation, charge on pledge."

It is the case of the appellant that no sale tax is involved in that the contract that he enters into with the customer is only a works contract. It is the case of the respondents that the contract is of sale of the photocopies.

The Karnataka High Court, In B. Girija and Anr. Vs. Sate of Karnataka, (1984) 56 STC 297, considered the question that arises in these appeals and observed that the turnover of the assessee was made up of amounts collected from customers as labour charges towards developing and printing of photostat copies and the cost of the material used for taking such copies. It was matter of common

experience that persons went to a xerox establishment not with a view to by supPLICates of their documents but to get copies made of their documents. It was no less true in the case of the assessee. The assessee utilised her own paper and ink and, by the use of the xerox machine, turned out copies of documents brought to her. The assessee charged for the service rendered in addition to the cost of the material used. On these facts, it had to be found what the primary object of the transaction was and the intention of the parties, namely, whether it was a contract purely of work or service or a contract of sale. The High Court noticed the decision of this Court in Hindustan Aeronautics Ltd. Vs, Tate of karnataka, (1984) 55 STC 314 =(1984) 2 SCR 248, wherein it was held:-

".....Mere passing of property in an article or commodity during the course of performance of the transaction in question does not render the transaction to be transaction of sale. Even in a contract purely of work or service, it is possible that articles may have to be used by the parson executing the work, and property in such articles or materials may pass to the other party. That would not necessarily convert the contract into one of sale of those materials. In every case, The would have to find out what was the primary object of the transaction and the intention of the parties while entering into it....."

As has been noticed, the High Court stated that no person went to the assessee for buying duplicates of his documents. He went to ask whether the could get xerox copies of his documents. The assessee undertook to get the documents duplicated and collected a certain charge. This was essentially a contract of work or labour or service and not a contract of sale. The distinction had been explained in the Hindustan Aeronautics's case (supra) thus:-

".....A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as a chattel to the Buyer. Where however the main object of work under taken by the payee of the price was not the transfer of chattel qua chattel, the contract is one of work and labour,. The test is, whether or not the work and labour bestowed and in anything that can properly become the subject of sale; neither the ownership of the materials, nor the value of the skill and labour as compared with the value of the materials, is conclusive, although such matters may be taken into consideration in determining, in the circumstances of a particular case where the contract was in substance one for work and labour and one for the sale of a chattel".

The High Court, therefore, held that what was involved was not a contract of sale, but a contract of work or service.

The principles enunciated in Hindusan Aeronautics case (supra), quoted by the High Court, also find expression in the earlier decision of this Court in Assistant Sales Tax Officer & Ors., vs. B.C. Kame. (1977) 39 STC 237 = (1977) 2 SCR 435. In Kame's case the respondent carried on the business of supplying Photographs to those who got themselves photographed at his studios. It was held that he did not enter into a contract of Sale.

The judgment of the Karnataka High Court was cited before the Division Bench that wrote the Judgment and order under appeal (reported in 83 STC 420). It was distinguished on the ground that it "Proceeded upon an erroneous understanding of the nature of the transaction and was apparently carried away by the corporeal rights over the contents or subject-matter of the copies with the material turned out, namely, the duplicate copies made. If an author or a publisher of a text orders for the printing and supply of a specified number of copies of the literature concerned, it could not be said that the work merely is a contract for work and labour or service and not a contract for sale. Duplication or making out copies does not get its character altered merely on account of the proprietary ownership of the material which was sought to be duplicated or Multiplied". The Division Bench held that the supply of a xerox copy manufactured by the use of a xerox machine for a price consisted of an indivisible contract of sale and, consequently, the turnover relating to the same had rightly been subjected to tax by the assessing authority.

As we see it, the view taken by the Karnataka High Court is right and is based upon the decisions of this Court. Where the main subject of the work undertaken by the person to whom the price is paid is not the transfer of a chattel as a chattel, the contract is one of work and labour. The main object of the work undertaken by the operator of the photocopier or xerox machine is not the transfer of paper upon which the copy is produced; it is to duplicate or the price wants duplicated. The paper upon which the Duplication takes place is only incidental to this transaction. The object of the payment of the price is to get the document duplicated, not to receive the paper. The payer of the price has not interest in the bare paper upon which his document is duplicated. He is interested in it only if it bears such Duplication.

The case is very similar to Kame's case. The tests laid down by this Court as aforesaid are satisfied; the contract between the appellant and the payer the price to him is contract of work or service, not a contract of sale upon which sale tax is exigible.

In the result, the appeals are allowed and the judgments and orders under appeal are set aside.

There shall be no order to costs.

The South Indian Photographic
and Allied Trades Association.

V.

The State of Tamil Nadu & ors

O R D E R

Learned counsel for the appellants seeks leave to withdraw these appeals. He states that in an appropriate case where the judgment under appeal is relied upon in assessment proceedings or proceedings subsequent thereto a challenge to the judgment shall be made.

The appeals are dismissed as withdrawn.

CIVIL APPEAL NO. 11903 OF 1995

Learned counsel for the appellant seeks leave to withdraw this appeal. He states that in a appropriate case where the judgment under appeal is relied upon in assessment proceedings or proceedings subsequent thereto, a challenge to the judgment shall be made. Learned counsel adds that in this matter the agreement of inapplicability of the statute to the commodities used by the appellants was urged before the High Court, But was not considered in the judgment.

Appeal is dismissed as withdrawn.

CIVIL APPEAL NO 11294 OF 1995:

Learned counsel for the appellant sees leave to withdraw this appeal. He states that in an appropriate case where the judgment under appeal is relied upon in assessment proceedings or proceedings subsequent thereto, a challenge to the judgment shall be made. The appeal is dismissed as withdrawn.

