

State of Tamil Nadu

Vs

Thiru Murugan Brothers

Civil Appeal No. 408 of 1975

(Ranganath Misra, G. L. Oza JJ)

02.12.1987

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by special leave is directed against the judgment of a Division Bench of the Madras High Court in Tax Case No. 72 of 1968.

2. Respondent, a firm, is a registered dealer under the Madras General Sales Tax Act, 1959 (hereafter 'Act' for short). The Deputy Commercial Tax Officer completed the assessment for the year 1962-63 by his order dated August 6, 1973. While examining to accounts of the subsequent year, the Assessing Officer discovered a transaction relating to sale of a film named "Nanum Oru Penn" to M/s A.V.M. Productions for a consideration of Rs. 1,91,903.57 on March 30, 1963. As the transaction related to the year 1962-63, the Assessing Officer reopened the assessment for the previous year and included the sale price in the turnover, and raised the demand along with penalty. The reassessment was unsuccessfully challenged in appeal before the Appellate Assistant Commissioner. Before the Tribunal in second appeal the question as to whether sale of the incomplete film was goods, as contemplated under the Act, was raised. The Tribunal took into account the definition of the word "goods" in the Act and kept in view the ratio of the decision of the Madras High Court in the case of Meiyappan v. Commissioner of Commercial Taxes [(1967) 20 STC 115 (Mad HC)] and held that the transaction did not amount to sale. The revenue carried the matter to the High Court. The High Court held :

Under the terms of the agreement, the sum of Rs. 1,91,903.57 paisa is paid to the assessee by the transferee under heads and it cannot be equated to the actual value of the unfinished film for the unfinished film may not have any value at all unless the picture is completed. That is why the transferees had specifically bargained for the transfer of all the rights in the picture. Therefore, we are inclined to construe the agreement as one enabling the transferee to complete the unfinished picture at its cost on condition of its paying all the expenses incurred so far by the assessee as a transferor for producing the unfinished film. It is not possible to construe this agreement as a pure sale of the unfinished film. We therefore agree with the conclusion of the Tribunal that the agreement cannot be construed as a sale of goods, though for a different reason.

The High Court, however, took the view that the value of the settings and the value of costumes were liable to tax as it constitutes sale of tangible articles. The decision of the High Court is under challenge.

3. The Madras Act defines goods thus in Section 2(j) :

all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities, and articles (including those to be used in the fitting out, improvement or repair of movable property); and all growing crops, grass or things attached to, or forming part of, the land which are agreed to be severed before the sale or under the contract of sale.

The agreement under which the sale took place is on record. It is not disputed that apart from the two items which the High Court has held to be taxable, there were other movable items which were also sold. There was transfer of title therein and the respondent parted with the same in favour of the purchaser. The argument adopted by the respondent on the basis of the Copyright Act is totally misconceived. Provisions of the Copyright Act are not relevant for the determination of the question whether the transaction constitutes 'sale of goods' for giving rise to tax liability under the Act. An incomplete film is certainly goods for the purpose of the Act in terms of the definition of the word occurring in the Act. And whether copyright is acquired in respect of an incomplete film is not the appropriate basis to resolve this dispute. The Tribunal as also the High Court were wrong in adopting the contrary approach.

4. There is, however, another aspect which though not raised cannot be overlooked. Since a revision lay to the High Court against the Tribunal's decision and all legal questions were tenable, we are prepared to entertain the argument in this appeal before us raising the other question on the facts found. The respondent was a dealer in publicity material, the original order of assessment clearly shows that. In the revised order, the Assessing Officer has described the respondent's business to be film production, obviously to suit his finding that he had during the year sold an incomplete film to an outsider. The record clearly shows that this was the single transaction of the type. The assessee's business does not appear to be film production. At least that is not the business for which he has been registered as a dealer. The definition of "business" during the year of assessment was not of the extended type. There is no finding that the sale was in course of business with profit motive. On the other hand, the agreement of sale which is on record shows the adverse circumstances in which respondent was obliged to part with the incomplete film. In such circumstances, it is difficult to hold that the sale of the film was a part of the business of the respondent and the sale in respect of this solitary transaction would be exigible to tax.

5. We dismiss the appeal though on grounds different from what had been adopted by the High Court. Parties are directed to bear their respective costs.

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