

Everest Copiers through R.A. Partner

Vs

State of T. N.

Civil Appeals No. 2672 of 1992 With No. 5339 of 1992

(S. P. Bharucha, K. T. Thomas JJ)

25.07.1996

ORDER

1. The appellant runs a photocopying business. It has been assessed to sales tax for the Assessment Year 1978-79 (in Civil Appeal No. 5339 of 1992) and the Assessment Year 1979-80 (in Civil Appeal No. 2672 of 1992) on the basis that there was a 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 of payment amounts to a sale of goods exigible to tax under the Tamil Nadu General Sales Tax Act, 1959.

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

"2.(n) '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 or pledge."

3. It is the case of the appellant that no sales 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.

4. The Karnataka High Court in *B. Girija v. State of Karnataka* [(1984) 56 STC 297 (Kant)] 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 a matter of common experience that persons went to a xerox establishment not with a view to buy duplicates 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 papers 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. v. State of Karnataka* [(1984) 1 SCC 706 : 1984 SCC (Tax) 90 : (1984) 55 STC 314 : (1984) 2 SCR 248] wherein it was held : (SCC pp. 716-17, para 18)

"... 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 works or service, it is possible that articles may have to be used by the person 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 court 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 he 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 case [(1984) 1 SCC 706 : 1984 SCC (Tax) 90 : (1984) 55 STC 314 : (1984) 2 SCR 248] thus : (SCC p. 715, para 16)

"... 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 undertaken 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 end 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, whether the contract was in substance one for work and labour or 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.

5. The principles enunciated in Hindustan Aeronautics case [(1984) 1 SCC 706 : 1984 SCC (Tax) 90 : (1984) 55 STC 314 : (1984) 2 SCR 248] quoted by the High Court, also find expression in the earlier decision of this Court in *STO v. B. C. Kame* [(1977) 1 SCC 634 : 1977 SCC (Tax) 225 : (1977) 39 STC 237 : (1977) 2 SCR 435]. In *Kame* case [(1977) 1 SCC 634 : 1977 SCC (Tax) 225 : (1977) 39 STC 237 : (1977) 2 SCR 435] 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.

6. The judgment of the Karnataka High Court was cited before the Division Bench that wrote the judgment and order under appeal (reported in *State of T.N. v. Everest Copiers* [(1991) 83 STC 420 (Mad)]). It was distinguished on the ground that it

"proceeded upon an erroneous understanding of the nature of the transaction and apparently carried away by the corporeal rights over the contents or subject-matter of the copies with the material turned out, viz., 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 is 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.

7. 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 object 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 the paper upon which the copy is produced; it is to duplicate or make a xerox copy of the document which the payer of 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 no interest in the bare paper upon which his document is duplicated. He is interested in it only if it bears such duplication.

8. The case is very similar to Kame case [(1977) 1 SCC 634 : 1977 SCC (Tax) 225 : (1977) 39 STC 237 : (1977) 2 SCR 435]. The tests laid down by this Court as aforesaid are satisfied; the contract between the appellant and the payer of the price to him is a contract of work or service, not a contract of sale upon which sales tax is exigible.

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

10. There shall be no order as to costs.