

# MADHYA PRADESH HIGH COURT

D. Masanda and Co.

Vs.

Commissioner of Sales Tax

Civil Ref. No. 64 of 1955

(Dixit and Samvatsar, JJ.)

09.02.1957

## JUDGMENT

**Dixit, J.**

1. In this case stated by the Commissioner of Sales Tax under section 13 (1) of the Madhya Bharat Sales Tax Act, 1950, the contest is as regards the liability of the Petitioner Messrs. D. Masanda and Co., to pay sales tax in respect of photographic goods and materials imported by him during the year 1952-53 and used by him in his business activities as a photographer. Under Section 3 (1) (a) of the Act and the notification issued by the Government on 22nd May, 1950, in exercise of its powers under section 5 of the Act, sales tax at the rate of Rs. 6-4-0 per cent is payable by importers of "scientific apparatus of every kind, cameras, camera lenses and other photographic material". The relevant entry in the notification prescribing the rate of sales tax reads as follows: During the year 1952-1953, the assesses imported photographic material of the value of Rs. 37,559/-. Of these goods materials of the value of Rs. 11,900/- were, according to the tax-payer, utilized by him in taking photographs and supplying copies thereof to the order of his customers on payment. Before the taxing authority, the assesses contended that he could not be assessed to sales tax on the value of the material used by him in taking photographs as there was no sale of this material when with the aid of that material he took photographs for his customers and supplied to them copies of photographs on payment. This contention was rejected by the taxing authority and the petitioner was assessed to sales tax on the value of photographic material imported by him and utilised by him in his business as a photographer. The assessment made by the Sales Tax Officer was upheld in revision by the Commissioner of Sales Tax, who has now stated this case at the instance of the assesses for the opinion of this Court on the following question :-

"Whether photographic materials consumed in the process of manufacture of the photographic work could be treated as sale under section 2 (o) of the Madhya Bharat Sales Tax Act, and whether the assessee could be said, to be a dealer vis-a-vis such material within the meaning of Section 2 (f) of Madhya Bharat Sales Tax Act"?

2. Mr. Chaphekar, learned counsel appearing for the Petitioner, put his case in two aspects. First it was said that when a client comes to be photographed and orders a certain number of copies of the photograph what is given to the client on payment is the resultant effect of the materials and chemicals used in photography and that there is no sale to him of any of the materials or chemicals used in taking photographs, and that the materials and chemicals used by the assessee are not used for a particular person but are used for taking a number of photographs ordered by various customers. The other way learned counsel submitted his case was that the tax payer's business as a photographer is more in the nature of a service than of a sale : that when a customer comes to the assessee for being photographed and obtains copies thereof, the order placed by him is not a transaction comparable to that of a sale of an article in a shop taut that it is a contract for work and labor done and material supplied within the authority of *Clay v. Yates*,<sup>1</sup>

3. In order to determine the validity of these contentions, it is necessary to see what exactly is the course of business followed by the assesses and what precisely he does when he takes photographs and supplies copies thereof to his customers on payment. The petitioner has not given a statement of the course of his business and the services rendered by him when he takes photographs and gives copies thereof to his customers on payment. But it was not disputed before us that the method, process and Procedure followed by the assesses in taking photographs are no different from those adopted by a portrait photographer. Now, it is well known that photography is the art and science of making light images formed in a camera into a permanent picture. The chief method is based upon the change which occurs in many silver compounds when light falls on them. The various stages in photography are : (i) taking the photograph with the aid of a camera; (ii) developing and fixing negatives; (iii) washing the negatives; (iv) proof-prints; (v) re-touching negatives; (vi) final retouching; (vii) Printing; (viii) development and fixing of prints; (ix) touching of prints; (x) toning of prints; and (xi) mounting of photographs. The necessary materials and equipment consist of the camera and equipment used in connection therewith; films or plates; the chemicals

used in developing and fixing the films or plates; the retouching medium; the equipment and material such as printing paper, chemicals etc. used in the printing process; and the mounts. Leaving aside the skill required in exposure, developing of films and negatives, retouching of negatives and printing, and the manual labor involved in washing the negatives and plates, a photograph is thus essentially the resultant effect of certain chemicals and materials used in a particular manner with the aid of certain equipments. Photographs are thus goods produced from certain materials with the aid of certain instruments and by manual labor. When, therefore, a photographer takes photographs for his customers and supplies as many copies of the photographs as his customers desire on payment, a photographer's business becomes one of production of goods for sale. He then becomes a manufacturer within the meaning of the term given in Section 2 (k) of the Act. The scope and meaning of the word 'manufacturer' has been pointed out in the case of *Messrs. Hiralal Jitmal v. Commissioner of Bales Tax*,<sup>2</sup> and in *North Bengal Stores, Ltd. v. Board of Revenue, Bengal*,<sup>3</sup> Having regard to those decisions, there can be no doubt that the production of photographs and supplying them to the customers for a price constitutes a "Manufacture of goods" within the meaning of Section 2(k). Indeed it cannot be disputed that when a photographer brings into being photographs with the aid of a camera and other equipment and by the action of light on certain materials, he produces a commodity when the question referred to this Court for opinion assumes that photographs are "produced or manufactured" and enquires whether when they are sold there is a sale of photographic material consumed in the process of manufacture and whether the assessee could be said to be a dealer under section 2 (f). Now when the photographs produced or made for an individual are sold to him, there is necessarily a sale of the material utilized for bringing them into existence. For the purposes of Section 3 (1) (a) it is not necessary that the sale of the materials used in taking a photograph should be directly to the customer in the form in which it existed or that the material used should be separable from the finished product. Section 3 (1) (a) Provides for the levy of sales tax on sales as well as supplies of goods imported. The word "supply" indicates that the sale of material need not be direct but can be as Part of other goods contracted to be sold, (see *Banarasi Das v. State of Madhya Pradesh* <sup>4</sup> Mr. Chaphekar, learned counsel suggested that the goods utilized in the course of execution of a contract for the sale of photographs could not be said to be sold when the photographs are sold, as under the definition of 'sale' given in Section 2 (o) 'sale' included a transfer of property in goods made in the course of execution of only that contract which fell within the meaning of Section 2 (e) and that the definition

of 'contract' given in Section 2 (e) did not cover the case of a contract for the sale of moveable goods such as a photograph. There is no substance in this contention. The inclusion in the definition of 'sale' of "a transfer of property in goods made in course of execution of a contract" cannot, however, be read as excluding from the wide words "any transfer of property in goods for cash or deferred payment" occurring in the definition of 'sale' a transfer of property in the component materials which go to make up finished moveable goods. The decision in *Babulal v. D. P. Dube*<sup>5</sup> decided practically the same point as has arisen in the present case. That was a case where the tax-payer dyed yarn for his customers and for this purpose purchased dye-stuff which he used in the Process of dyeing. He was assessed to sales tax on the value of dyes and chemicals utilized by him for dyeing yarn. He contended that the dye-stuffs and chemicals purchased by him were not sold by him to the customers, but that they were utilized for dyeing yarn brought by the customers for which a price was charged without there being a separate price for the dye-stuffs. The contention was rejected by this Court by the observation:

"This argument is similar to the one repelled in (1955) 6 S. T. C. 93 (Nag) (D). If the contract of dyeing yarn involves therein the transfer of property in dye-stuff and the price thereof is included in the price paid for the finished work, there is no reason why the law cannot isolate the transaction of sale involved from other matters and tax it."

Mr. Chaphekar sought to distinguish this case by saying that in that case the tax payer was assessed to sales tax as manufacturer. I do not see any valid distinction in principle between this case and the case of *Babulal*. In that case no doubt the tax-payer was assessed as a manufacturer, but the assessment was on the basis that when the dyed yarn, that is the finished goods, was sold to the customers, there was a transfer of property in the dye-stuffs and chemicals used for dyeing the yarn, and on the basis of the value of the material and chemicals so used. On the authority of (1955) 6 S.T.C. 255 (Nag) (E) it must be held in this case also that when the petitioner sold photographs to his customers there was a sale of the materials and chemicals utilized by him in producing the photographs. It must be stated that the petitioner has been assessed only on the value of the photographic material actually utilized by him in the production of photographs for his various customers on payment. When the material was actually utilized and photographs were sold to the customers, then the question as to how much of that material was utilized in producing photographs for a

Particular individual becomes irrelevant for the purpose of assessment of sales tax. It is not the case of the petitioner that the value of the material on which he has been charged also includes the price of a camera.

4. The contention that a contract for the sale of photographs is a contract for work and labour done cannot, in my opinion, prevail. No doubt a photograph is made or produced for a particular individual and has value for that particular person alone. But the essential feature of the applicant's business as a photographer is the production of goods for sale wherein he does not as does a portrait painter, give his personal services to the production of a work of art.

When a customer comes to a photographer for being photographed and for copies of photographs on payment, the substance of the contract between him and the photographer is not the performance of skilled services but the supply of finished goods. In this contract the bringing into existence of physical things, namely, photographs, is the substance and the materials and chemicals of which photographs are the resultant effect are not merely ancillary to the contract. The decision in (1856) 1 H and N 73 (A) is not in point here as the question there was as to the form of action when goods contracted for had not been produced.

5. In this connection it would be useful to refer to the decision of the High Court of Australia in the *Federal Commissioner of Taxation v. Riley*,<sup>6</sup> in the Australian Statute, which includes "production" where on the definition of 'manufacture', it was held that photographs taken of and supplied to clients for a price in the course of a photographer's business, were 'goods manufactured', and that having regard to the whole of what is done in the production of a photograph, it could not be regarded as being in the nature of an artistic service of a personal character. The decision is of considerable help in answering the question referred to here.

6. For all these reasons, I would answer both the parts of the question stated by the Commissioner for the opinion of this Court in the affirmative. Parties shall bear their own costs of this reference.

**Samvatsar, J.**

I agree.

Answer in the affirmative.

Cases Referred.

1. (1856) 1 H. and N. 73
2. Civil Ref. No. 45 of 1955: AIR 1957 Mad Pra 37
3. 1950-1 STC 157 (Cal)
4. (1955) 6 S. T. C. 93 (Nag)
5. (1955) 6 S. T. C. 255 (Nag)
6. 53 C.L.R 69