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The State of Madras Vs. Bomas Limited

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Court : Chennai

Decided On : Aug-05-1964

Reported in : [1965]16STC819(Mad)

Judge : Ramakrishnan and ;Ramamurti, JJ.

Appeal No. : Tax Case No. 149 of 1963 (Revision No. 101)

Appellant : The State of Madras

Respondent : Bomas Limited

Advocate for Def. : C.S. Chandrasekhara Sastri, Adv.

Advocate for Pet/Ap. : G. Ramanujam, Adv. for the ;Government Pleader

Disposition : Petition dismissed

Judgement :

Ramakrishnan, J.

1. The assessee Messrs Bomas Limited are a firm of advertising agents. The Joint Commercial Tax Officer, Mount Road, Madras, assessed them for the year 1959-60. The assessee appealed to the Appellate Assistant Commissioner in regard to a part of the turnover. While disposing of the appeal, the Appellate Assistant Commissioner enhanced the turnover by a certain amount, and included therein

what the assessee had described in their bills as art charges and translation charges'. The amount so added came to Rs. 14,650-92. The assessee appealed to the Sales Tax Appellate Tribunal, Madras, disputing this addition. His contention was that for the customers, who came to him for advice in the matter of advertisement, he supplied ideas and sketches and also words to be used for advertisement purposes. Thereafter the nature of the design of the advertisement was settled between the customer and the assessee. If the customer so required, the assessee also placed an order in accordance with the design with the block-maker on the agreement that the price charged by the block-maker for making the block would be passed on to the customer together with a commission of 15 per cent. It was in the course of such a transaction that the assessee had come to charge in the bills supplied to his customers an item under ' art charges and translation charges' separately from the amount due for the actual making of the block together with 15 per cent, commission thereon. The Tribunal upheld the assessee's contention and held that the amounts described as art charges and translation charges formed no part of the taxable turnover and should not have been assessed. The State of Madras has filed this revision case against the said order.

2. We will refer to the order of the Sales Tax Appellate Tribunal for the nature of the contract entered into between the customer and the assessee in this case :

The appellants in consultation with the customers prepare the drawing or photograph and their art department prepares the design for advertisement. We have been shown such products. It would appear that after approval thereof by the customer, it is entrusted to the block-makers. It is stated by the appellants that the photography is done by others and that the block is done elsewhere. The appellants charge the cost of art work separately from the charges for block-making.... They procure the photograph suitable to their idea to make the block and for that, they charge as art charges.

3. The view of the department which has been pressed on us by the Government Pleader, is that the charges for art and translation should form part of the turnover of the assessee because they are integrated with the price of the block. The

learned Government Pleader also draws our attention to a decision of this Court reported in T.V.S. Sarma Studio v. State of Madras [1963] 14 S.T.G. 784. In that case a firm of advertisers supplied designs to the customers and charged them for such designs. The customers did not entrust the making of blocks to the advertisers but took back the designs and made their own arrangements for the making of the blocks. A Bench of this Court held that charges for making such designs for advertisement purposes should not be assessed to sales tax. The learned Government Pleader seeks to make a distinction in this case in so far as the assessee himself arranged for the making of the blocks. The learned counsel appearing for the respondent mentioned to us in the course of the arguments that even in the present case there were instances where the customers had not entrusted the making of the blocks to the assessee but took the designs away with them for getting the blocks made elsewhere. But this distinction has not been noted by the lower authorities when they examined the facts of this case. But, according to the learned counsel for the respondent, this distinction would not make any difference to the present case. The customer at the time he entered into a bargain with the assessee knew that the assessee had first of all to prepare a design for advertisement purposes including a special photograph and the proper arrangement of the photograph and words to get the maximum advertisement value. In that process, art and skill, in which the assessee was an expert, was certainly called into play. Then came the stage when the design was approved by the customer. The making of a block according to the design occurs only after this stage. For this purpose the assessee agreed with the customer to arrange for the making of the block on behalf of the customer, subject to the condition that the assessee gets a commission of 15 per cent, on the block-maker's bill. The facts of the case thus stated clearly enable a distinction to be made between a portion of the contract that dealt with the preparation of the design, the approval of it and consequently a charge for the skill and labour bestowed for the purposes, and the agreement to get the block itself made by the assessee on behalf of the customer to save further trouble to the customer to select a block-maker himself. That the assessee was prepared to do this extra service for the customer, instead of leaving it to him to get the block prepared on the basis of the design should, in our opinion, not make any difference. It would also not justify the integration of the two

contracts into a single contract for the value of goods supplied. It is also not proper to deal with the advertisement and translation charges as pre-sale charges, which was the view which the department chose to accept. In our opinion, the circumstances clearly make out a contract for art and translation charges distinct from the contract for the sale of the block, and therefore the Tribunal's order was correct in excluding the charges made for the former service from the assessable turnover. The petition is dismissed but without any, order as to costs.

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