

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
&
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

T.R.C.Nos.134, 138 & 154 OF 2002

COMMON ORDER: (per GC,J)

Heard Sri B. Srinivas, learned counsel for the respondent and Sri Shaik Jeelani Basha, learned Special Standing Counsel for C.T-A.P.

The issue involved in these cases is that whether taking of photographs, processing the negatives and thereafter printing them and supplying posters to the customers would come under the purview of 'works contract' exigible to tax under Section 5F of the A.P.G.S.T Act (for short, "the Act). The Assessing Officer following the case of **Rainbow Colour Lab and another vs. State of Madhya Pradesh and others**^[1] had held that essentially taking of photographs and printing the same is a case of exercising the skill and personal service and as such the same does not fall within the purview of the "works contract". However, the Deputy Commissioner in exercise of the revisional powers had revised the assessment order and held that the transaction involved subsequently would fall within the scope of "works contract". Tribunal reversed the said judgment by placing reliance on the judgment of the Supreme Court in **Rainbow Colour Lab** (1 supra). Subsequently, the judgment of **Rainbow Colour Lab** stands reversed by the Supreme Court in the case of **State of Karnataka vs. Prolab and others**^[2].

Adverting to this aspect of the matter, the Supreme Court in **State of Karnataka** (2 supra) had held:

"21. To sum up, it follows from the reading of the aforesaid judgment that after insertion of clause (29A) in article 366, the works contract which was indivisible one by legal fiction,

altered into a contract, is permitted to be bifurcated into two: one for “sale of goods” and other for “services”, thereby making goods component of the contract exigible to sales tax. Further, while going into this exercise of divisibility, dominant intention behind such a contract, namely, whether it was for sale of goods or for services, is rendered otiose or immaterial. It follows, as a sequitur, that by virtue of clause (29A) of article 366, the State Legislature is now empowered to segregate the goods part of the works contract and impose sales tax thereupon. It may be noted that entry 54, List II of the Constitution of India empowers the State Legislature to enact a law taxing sale of goods. Sales tax, being a subject-matter into the State List, the State Legislature has the competency to legislate over the subject.

22. Keeping in mind the aforesaid principle of law, the obvious conclusion would be that entry 25 of Schedule VI to the Act which makes that part of processing and supplying of photographs, photo prints and photo negatives, which have “goods” component exigible to sales tax is constitutionally valid. Mr. Patil and Mr. Salman Khurshid, learned senior counsel who argued for these assesses/respondents, made vehement plea to the effect that the processing of photographs, etc., was essentially a service, wherein the cost of paper, chemical or other material used in processing and developing photographs, photo prints, etc., was negligible. This argument, however, is founded on dominant intention theory which has been repeatedly rejected by this Court as no more valid in view of the 46th Amendment to the Constitution.”

In the light of the authoritative pronouncements of this Court, all the T.R.Cs are required to be allowed.

Accordingly, all the T.R.Cs are allowed remanding them back to the Assessing Authority with a direction to make a fresh assessment by treating the entire work as “works contract”. No order as to costs.

Miscellaneous Petitions, if any pending in these T.R.Cs, shall stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM,J

Date:30.06.2015.

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[\[1\]](#) (2000) 118 STC 9

[\[2\]](#) (2015) 78 VST 451 (SC)