

(2006) 11 KAR CK 0110
Karnataka High Court
Case No: STA No. 7 of 2006

Imagic Creative (P)
Ltd.

APPELLANT

Vs

The Commissioner of
Commercial Taxes,
The
Clarifications/Advance
Ruling Committee and
Assistant
Commissioner of
Commercial Taxes
(Intelligence)-II

RESPONDENT

Date of Decision: Nov. 29, 2006

Acts Referred:

- Constitution of India, 1950 - Article 366 (12)
- Karnataka Sales Tax Act, 1957 - Section 29, 4

Citation: (2008) 12 VST 366

Hon'ble Judges: R. Gururajan, J; N. Ananda, J

Bench: Division Bench

Advocate: Nitya, for K.R. Prasad, for the Appellant; S. Sujatha, AGA, for the Respondent

Judgement

This Judgment has been overruled by : [Imagic Creative Pvt. Ltd. Vs. The Commissioner of Commercial Taxes and Others](#), (2008) 2 CLT 735 : (2008) 1 CTC 843 : (2008) 1 JT 496 : (2008) 1 SCALE 356 : (2008) 2 SCC 614 : (2008) 9 STR 337 : (2008) 12 STT 392 : (2008) 12 VST 371 : (2009) AIRSCW 1746 : (2008) AIRSCW 844 : (2008) AIRSCW 4326 : (2008) 4 Supreme 524 : (2008) 8 Supreme 678

1. M/s. Imagic Creative (P) Limited is before us, seeking answers to the following questions of law framed in paragraph 11 of the appeal memo:

1. Whether on the facts and in the circumstances of the case the order of the authority u/s 4 of the Act that the entire value of the consolidated bills are liable to tax under the Act is in accordance with law?

2. Whether on the facts and in the circumstances of the case any part of the consideration as per the consolidated bills consisting of various components ultimately resulting in advertisement material amounts to consideration for "goods" within the meaning of that term under the Act?

3. Without prejudice and in the alternative and on the facts and in the circumstances of the case whether that part of the consideration in the consolidated bill relating to the activities up to the stage of emergence of the prototype/design is liable to tax under the Act?

4. Whether on the facts and in the circumstances of the case the order of the authority in Annexure-A was amenable to rectification?

2. The appellant is an advertising agency engaged in providing its expertise services to the customers. A survey was conducted by the 3rd respondent. The 3rd respondent thereafter issued a notice u/s 29 of the Karnataka Sales Tax Act (for short, "the Act"). A reply was submitted by the appellant and the same was rejected. Thereafter, subsequent to the survey, an application was filed seeking clarification before the Clarification/Advance Ruling Committee for an advance ruling in terms of the Act before the Committee constituted for the said purpose. The Committee, after hearing passed an order in terms of Annexure-A and the authority was of the view that the sale of printed material with a background of providing the concept is an indivisible activity liable to tax at 4% as a whole. Thereafter, the appellant filed an application to reconsider the same. After hearing, a detailed order was passed by the authority. The appellant-assesses is before us, challenging the impugned orders at Annexures-A & H in this appeal.

3. Heard Smt. Nitya, learned Counsel for the appellant. She would say that the authorities are wrong in passing the impugned orders. She says that what is provided by the agency is only service activities and the same do not attract sales tax in terms of the material available on record. Even otherwise, she would say that her applications have not been properly considered or appreciated by the authority. She relies on the latest judgment of the Supreme Court, reported in [Bharat Sanchar Nigam Ltd. and Another Vs. Union of India \(UOI\) and Others](#), .

4. Per contra, Smt. S. Sujatha, learned Additional Government Advocate, appearing for the revenue, after referring to the impugned order, would argue that no case is made out by the appellant. According to her, the matter is covered by three Judgments. She wants (sic) to follow the law laid down by the Supreme Court in the

decisions reported in [M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, :](#) [Tata Consultancy Services Vs. State of Andhra Pradesh,](#) and [Bharat Sanchar Nigam Ltd. and Another Vs. Union of India \(UOI\) and Others,](#) .

5. After hearing, we have carefully perused the material on record.

6. From the material on record, it is seen that the appellant has chosen to enter into contracts with its clients in the matter of providing certain services. It is seen that the appellant was essentially involved in rendering advertisement services. For the said purpose, the appellant requires book lets and not only the print media but also the concept, design etc., in terms of the need of the customers. An application was filed by the appellant and the same was considered and rejected.

7. After hearing, we have seen the case laws in the case on hand.

8. The Apex Court, in a decision reported in [M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs,](#) , has chosen to say that "what the appellants had wanted was technical advise or information technology. Payment was to be made for this intangible asset. But the moment the information or advise is put on a media, whether paper or diskettes or any other thing, then what is supplied becomes chattel. It is in respect of the drawings, designs, etc., which are received that payment is made to the foreign collaborators. It is these papers or diskettes, etc., containing the technological advice, which are paid for and used. The foreign collaborators part with them in lieu of money. It is, therefore, sold by them as chattel for use by the Indian importer. The drawings, designs, manuals, etc., so received are goods on which customs duty could be levied".

9. Subsequently, the Supreme Court, in a decision reported in [Tata Consultancy Services Vs. State of Andhra Pradesh,](#) , would rule in paragraph 24 reading as under.

24. In our view, the term "goods" as used in Article 366(12) of the Constitution of India and as defined under the said Act are very wide and include all types of moveable properties, whether those properties be tangible or intangible. We are in complete agreement with the observations made by this Court in [M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs,](#) . A software programme may consist of various commands, which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. But the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax. Even intellectual property, once it is put on to a media, whether it be in the form of books or canvas (in case of painting) or computer discs or cassettes, and marketed would become "goods". We see no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer. Sale is not just of the media which by itself has very little value. The software and the media cannot be split up. What the buyer purchases and pays for is not the disc or

the CD. As in the case of paintings or books or music or films the buyer is purchasing the intellectual property and not the media, i.e., the paper or cassette or disc or CD. Thus a transaction sale of computer software is clearly a sale of "goods" within the meaning of the term as defined in the said Act. The term "all materials, articles and commodities" includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed, etc. The software programmes have all these attributes.

10. In a latest Judgment reported in [Bharat Sanchar Nigam Ltd. and Another Vs. Union of India \(UOI\) and Others](#), (and other appeals and writ petitions), the Supreme Court has chosen to follow its earlier judgment as in the case of [M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs](#), .

11. In the light of the three Judgments stated supra, what is clear to us is the services rendered by the appellant is an indivisible activity and liable to levy of tax. The authority in Annexure-A, after noticing the material facts, has chosen to hold that "in the bills there is separate charge made as content development concept, design, photography scanning and other charges such as system charges including colour sketch pen or computer used design software etc. Ultimately, the brochures come out. Considering the entire ambit of activity of the dealer, it is seen that it is a comprehensive contract or supply of printed material developed by the company. The bills also indicate the entire activity tantamounts to making indivisible contract in a divisible contract". The subsequent rectification application made by the applicant dated 24.12.2005 was not considered by the authority in terms of Annexure-H, after noticing the judgment of the Supreme Court in the case of Associated Cement Companies Ltd (stated supra). Therefore, it is clear that there is no mistake apparent on the face of the record. We are in full agreement with the impugned orders at Annexures-A & H.

12. In the result, we deem it proper to answer questions of law in favour of the revenue and against the assessee. Ordered accordingly. No costs.

13. Smt. S. Sujatha, learned Additional Government Advocate is given four weeks time to file her memo of appearance.