Oriental Decorators and Another Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 12, 1989

Acts Referred: Bengal Finance (Sales Tax) Act, 1941 â€" Section 2

Citation: (1989) 1 CALLT 374

Hon'ble Judges: Monoranjan Mallick, J

Bench: Single Bench

Advocate: Anindya Kumar Mitra and Sunit Panja, for the Appellant;None, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Monoranjan Mallick, J.
The Writ-petitioner which is a decorating firm has moved this Writ Court praying for a writ of Mandamus and

Prohibition directing the respondent-Sales Tax Authorities not to demand or impose or collect any sales tax from the writ petitioner in respect of its

business transactions as decorators for erection of pandals. It is complained that the Inspector of Sales Tax Department had been visiting the

business premises of the writ petitioners and had been demanding such Sales Tax. But, the pandals erected by the writ petitioners at the instance of

the customers not being ""Goods,"" such erection of pandals does not in any way come within the definition of the Sales given in Section 2(g) of the

Bengal Finance (Sales Tax) Act 1941. It is submitted that a pandal, erected with bamboo posts or other such posts, is fixed at particular place and

such pandal does not come within the definition of ""Goods"" as given in Section 2(d) of the Bengal Finance (Sales Tax) Act, 1941.

2. Even though the Notice has been served upon the respondents none of them has entered appearance to oppose this writ petition. It appears,

from Annexure "B" to the writ petition that before filing this writ petition the writ petitioners sent a letter, dated 16.12.1985 to all the respondents

urging them not to charge any sales tax for the transaction of erection of pandals or structures in connection with the business of decorators.

3. It is submitted by Mr. Mitra on behalf of the writ petitioners that after sending this letter, dated 16.12.1985 and even during this whole period

for which the writ petition has been kept pending no further action has been taken by the respondents for charging any sales tax for the pandals

erected by them on behalf of the customers. However, he prays that until and unless a writ in the nature of prohibition is issued against the

threatened action of the respondent Authorities, the petitioners'' interest will be affected in future.

4. So far as the other goods with which the decorators are transacting the business by giving them on hire, if they are movable properties, then such

transaction may come within the definition of Sale as given in Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941. But, so far as a pandal

which is erected by the decorators like the petitioners at the instance of their clients at a particular fixed place is concerned, I am unable to hold

that such Pandal would come within the definition of ""Goods"" as given in Section 2(d) of the said Act.

5. In the circumstances, the writ petition be disposed of with the following Order :

A writ in the nature of Prohibition be issued prohibiting the respondents from charging any salea tax for erection of pandals by the writ petitioners

for their clients in connection with their business of decorators.

6. There will be no Order as to costs.

7. All parties concerned are to act on a signed copy of the dictated Order upon usual undertaking.