



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Revision) No.43 of 2015

The State of Tamil Nadu
represented by
The Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli - 627 002.

.. Petitioner

versus

Tvl.Kavitha Traders,
Sivakasi.

.. Respondent

PRAYER: PETITION filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal as against the order dated 21.08.2003 made in T.S.A.No.329 of 2002 on the file of the Sales Tax Appellate Tribunal (AB), Madurai against the order of the Appellate Assistant Commissioner, Virudhunagar dated 20.11.2001 and made in Appeal NO.AP.402/00, 270/2000 against the assessment order of the Deputy Commercial Tax Officer III, Sivakasi dated 31.7.2000 for the year TNGST No.6000945/97-98. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

For Petitioner : Mr.Kanmani Annamalai, AGP(T)

For Respondent : Mr.V.Sundareswaran

O R D E R

(Made by R.SUDHAKAR, J.)

This Tax Case (Revision) is filed by the Revenue as against the order of the Sales Tax Appellate Tribunal dated 21.08.2003 made in T.S.A.No.329 of 2002 on the file of the Sales Tax Appellate Tribunal (AB), Madurai. Following are the substantial questions of law that arise for consideration in this revision:



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"1. Whether the Sales Tax Appellate Tribunal is right in holding that no sales tax is payable on the supply of printed materials which were printed by assessee on the orders received from their customers and according to their specifications without ascertaining the dominant intention of the parties to the transaction which is crucial to decide the issue?

2. Whether the Tax Appellate Tribunal is right in proceeding on the footing that since the printed materials supplied by the assessee have no commercial value in the sense that they cannot be marked in the open market, the impugned transactions were purely ones of work and labour?"

2. The brief facts of the case are as follows:

The respondent/assessee is doing works contract. They have purchased papers, paper boards and printing ink from registered dealers within the State and outside the State. They have manufactured printed labels and Beedi labels, using their own papers purchased inside the State as well as outside the State and supplied them to the specific customers. The Assessing Authority, while completing the assessment, rejected the exemption claimed on the entire turnover holding that the transactions did not come under the works contract even if the goods were used by a single customer. Consequently, vide separate proceedings, the Assessing Authority levied penalty under Section 12(3) of the Tamil Nadu General Sales Tax Act.

3. Aggrieved by the order of the Assessing Authority, the assessee preferred an appeal before the Appellate Assistant Commissioner, who set aside the assessment and levy of penalty, thereby remanded the matter back to the Assessing Officer for fresh disposal holding as follows:

"the dealers have supplied the printed materials only to the specific customers under specific orders when their logo, trade marks and other things which cannot be sold in the open market are to be treated only an assessment under Section 3-B of the Act. When the assessment is to be made under Section 3-B of the Act, deductions are to be given for the transfer of property involved in the execution of works contract."

4. Aggrieved by the said order, the Revenue filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal dismissed the appeal holding that there was no sale involved in this case and the nature of work undertaken by the respondent were falling under the definition of works contract and were assessable under Section 3-B of the TNGST Act 1959.



5. Being aggrieved by the order of the Tribunal, the Revenue has filed the present revision before the Tamil Nadu Taxation Special Tribunal. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

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6. Heard learned Additional Government Pleader appearing for the petitioner/Revenue and Mr.V.Sundareswaran, learned counsel appearing for the respondent/assessee and perused the materials placed before this Court.

7. The Apex Court, in similar circumstances, in the decision reported in 73 STC 1 (State of Tamil Nadu Vs. Anandam Viswanathan) while dealing with the case of the printed materials, particularly in the context of printing of question papers, pointed out that in every case, the nature of the contract and the transaction must be gone into so as to arrive at a conclusion as to whether the transaction is a works contract or sale and this is possible only when the intention of the parties is found out. Having observed so, the Apex Court pointed out that in the execution of a contract for work, some materials are used and the property in the goods so used passes to the other party, the contractor undertaking to do the work would not necessarily be deemed on that account to sell the materials. Therefore, in every case of this nature of transaction, the Assessing Officer has to point out which part of the job work related to sale.

8. For better clarity, the relevant portion of the decision of the Apex Court reads as follows:

"The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property. Where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only a works contract. See the observation in The Court Press Job Branch, Salem v. The State of Tamil Nadu, 54 STC 383 and Commissioner of Sales Tax, M.P. v. Ratna Fine Arts Printing Press, 56 STC 77. In our opinion, in each case the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of a contract for work some materials are used and the property/goods so used, passes to the other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials. Whether or not and which part of the job work relates to that



depends as mentioned hereinbefore, on the nature of the transaction

9. In an identical circumstance, while dealing with the works contract executed by the assessee for printing and supplying letter pads, labels, bill book, memo pad, order forms and also printed manuals to the customers like BHEL and Co-operative Societies, this Court, by order dated 10.8.2012, in T.C.No.1984 of 2012, following the above-said decision of the Apex Court held that the transaction in question does not call for any liability under the Act.

10. In the decision reported in (2014) 69 VST 506 (Mad) (State of Tamil Nadu V. Rainbow Printers), this Court, while dealing with the printing of labels and supplied on job work basis, after following the decision of this Court reported in [2009] 26 VST 205 (Mad) (State of Tamil Nadu V. Premier Litho Works), held that the transaction in question could not be assessed to tax.

11. Following the above-said decisions, this Court, by order dated 17.02.2015 in T.C.(A)No.1958 of 2006, allowed the appeal filed by the assessee holding as follows:

"14. As far as the present case is concerned, the work executed by the assessee related to printing of materials and such printed materials are meant for particular customers, who placed orders and it cannot be sold in the open market like any other goods. Going by the principle laid down in the above-said decision of the Apex Court, which was followed by this Court in the subsequent decisions, we have no hesitation in accepting the case of the assessee that the transaction in question does not call for any liability under the Act. As pointed out by the Apex Court, the mere fact that in the execution of the contract for work, the paper owned by the assessee stands transferred to the contractee incidentally would not lead to the inference that the transaction is only a sale and not a works contract."

12. In such circumstances, the questions of law framed by this Court are answered in favour of the assessee and against the Revenue



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In the result, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Madurai.

2. The Appellate Assistant Commissioner
Virudhunagar

3. The Deputy Commercial Tax Officer III
Sivakasi

4. The Deputy Commssioner (CT)
Tirunelveli Division, Tirunelveli

1 cc Spl.G.P. (Taxes), sr. 19731

1 cc to Mr.V. Sundareswaran, Advocate, Sr. 19726

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