IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Tax Case (Revision) No.2306 of 2008

The Deputy Commissioner (CT),
Tiruchirappalli
.. Petitioner

versus

Tvl. Nathan and Company,
77, Madurai Road, Trichy.
.. 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 30.10.1995 made in M.T.A.No.789 of 1992 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Madurai. Against the order of the Appeallate Assistant Commissioner (CT) Trichy, dt.9.10.92, made in Appeal Nos.430, 431, 432, 433, 434/92 against the order of the Commercial Tax Officer, Mailam Chendai I, Trichy, dt.2.3.92, made in TNGST No.105538/85-86. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

For Petitioner : Mr.Manoharan Sundaram, AGP(T)
For Respondent : Mr.N.Inbarajan

O R D E R
(Made by R.SUDHAKAR,J.)

This Tax Case (Revision) filed by the Revenue as against the order of the Sales Tax Appellate Tribunal. Following are the substantial questions of law that arise for consideration in this revision:

> "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 predominant intention of the parties to the transaction which is crucial

to decide the issue?

2. Whether the Sales Tax Appellate Tribunal is right in holding 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 engaged in the business of printing as per the specification of the customer. The Assessing Authority, while completing the assessment, assessed the sales turnover of printed materials, thereby rejected the exemption claimed. 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, dismissed the appeal, thereby sustained the assessment

4. Aggrieved by the said order, the assessee filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal allowed the appeal holding that the materials printed and supplied to the customers had no commercial value and hence the transaction would only fall under works contract.

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.

6. Heard learned Additional Government Pleader appearing for the Revenue 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 liabililty 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

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

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

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

2.The Deputy Commissioner (CT)
Trichy.

3.The Commercial Tax Officer,
Mailam Chandai I, Trichy.

+1 cc to Spl.Government Pleader,SR.15790.

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