IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM:

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

Tax Case (Revision) No.1958 of 2006

Heritage Printers,
1/A1, Jothi Nagar,
1st, Uppilipalayam
Coimbatore - 641 015.

.. Petitioner

versus

1. The Joint Commisioner (SMR)
of Commissioner Taxes,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. The Commercial Tax Officer,
Singanallur Circle, Coimbatore.

.. Respondents

PRAYER: PETITION filed under Section 37 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Appellate as against the order dated 22.4.2002 made in SMR No.56 of 1998 on the file of the Joint Commissioner, Chennai. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

against the order dated 14.2.97 made in Appeal Nos.A.P.1113 and 1119 /96 on the file of Additional Appellate Assistant Commissioner (CT) Coimbatore and against the order dated 26.2.1996 made in TNGST 216/94-95 on the file of Commercial Tax officer, Singanallur Cirlce, Coimbatore.

For Petitioner : Mrs.Lakshmi Sriram

For Respondents : Mr.Kanmani Annamalai, Spl.G.P.(T)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Made by R.SUDHAKAR,J.)

This Tax Case (Revision) is filed by the assessee as against the order of the Joint Commissioner (SMR) raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the respondent is right in law in negativing the claim under section 3(B) of the Act?

2. Whether on the facts and in the circumstances of the case, the respondent is right in law in holding that the appellant is not eligible for exemption under the notification, relating to the exemption of reading books?

3. Whether on the facts and in the circumstances of the case, the respondent is right in law in interfering in the order of the Appellate Assistant Commissioner, by holding that the plea taken by the appellant as regards to the claim of exemption under reading books was not tenable, when the Appellate Authority did not consider the plea, in view of his decision of granting relief by accepting the main plea viz., works contract?

4. Whether on the facts and in the circumstances of the case, the respondent is right in law by one and the same proceedings set aside the order of the Appellate Authority rendered in the quantum appeal and penalty appeal?

5. Whether on the facts and in the circumstances of the case, the respondent is right in law in restoring penalty, when the entire turnover is disclosed and claim of exemption was made?"

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

The petitioner/assessee is a dealer in printing materials. The assessee filed return of income for the assessment year 1994-95 admitting the total and taxable turnover at Rs.1,05,43,281/- and Rs.73,56,670/- respectively after claiming exemption on the sales turnover of printing of Annual Report at Rs.19,34,120/-. The Assessing Authority, while completing the assessment, rejected the exemption claimed and held that the sales turnover of annual report was taxable as printed material and it would not come under works contract. 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 appeals before the Appellate Assistant Commissioner, who after following the decision of this Court in the case of Gunasundari Printers reported in 97 STC 489, held that annual

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reports do not have any commercial value and that cannot be sold across the table and hence section receipts towards annual reports were liable to be dealt with under Section 3B of the Act. Hence, the Appellate Assistant Commissioner deleted a sum of Rs.17,66,252/- from the taxable turnover determined by the Assessing Officer and sustained the taxable turnover to the tune of Rs.1,19,911/- towards interstate purchase of paper at Rs.1,19,911/-. Consequently, the First Appellate Authority modified the levy of penalty.

4. Finding that the order of the Appellate Assistant Commissioner was prejudicial to the interest of the Revenue, in exercise of power under Section 34 of the Tamil Nadu General Sales Tax Act, the Joint Commissioner initiated suo motu revision by issuing show cause notice to the assessee. In response to the show cause notice issued, the assessee filed a reply stating that the receipts obtained from the annual reports were entitled to be exempted as reading books under various circulars and statutory notifications. Not satisfied with the reply filed by the assessee, the Joint Commissioner held that there was no proof that the customers had entered into contract with the dealers for purchase of paper and for job work and that no works contract was involved when the printed materials were manufactured out of their own materials and sold by the dealers. Accordingly, the Joint Commissioner set aside the order of the First Appellate Authority, thereby confirmed the order of the Assessing Officer.

5. Being aggrieved by the order of the Joint Commissioner, the assessee 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. Learned counsel appearing for the assessee submitted that the assessee had printed the annual reports as per the specification of a particular customer and hence, it could not be sold in the open market. She further submitted that the printed material supplied by the assessee has no commercial value and hence, the same could not be marketed in the open market. In support of her contention, she relied on the decision of this Court reported in (2014) 69 VST 506 (Mad) (State of Tamil Nadu V. Rainbow Printers).

WEB COPY

7. Per contra learned Special Government Pleader appearing for the respondents submitted that when the order placed before the assessee was for supply of printed materials, it is only a sale of printed materials and not as a works contract. In the circumstances, rightly the Joint Commissioner has confirmed the proposal and restored the assessment.

https://hcservices.ecourts.gov.in/hcservices/

8. Heard learned counsel appearing for the assessee and the learned Special Government Pleader appearing for the Revenue and perused the materials placed before this Court.

9. It is seen from the assessment order herein that the assessee undertook the work of printing annual reports as per the instructions of the customers. The above items were printed for their exclusive use on works contract basis. When the predominant intention is for printing annual report as per the specification given by the customer, it is, therefore, in the nature of works contract. 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.

10. 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.

11. 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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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

12. 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.

13. As rightly pointed out by the learned counsel appearing for the assessee, 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.

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.

15. In such circumstances, question of law Nos.1 to 3 are answered in favour of the assessee and against the Revenue and the order of the Joint Commissioner stands set aside. In view of the decision rendered in respect of question of law Nos.1 to 3, question of law Nos.4 and 5 become academic.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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

Sd/-
Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

sl

To

1. The Joint Commisioner (SMR)
of Commissioner Taxes,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. The Commercial Tax Officer,
Singanallur Circle, Coimbatore.

3. The Additional Appellate Assistant Commisioner (CT)
Coimbatore

4. The Commercial Tax Officer
Singanallur Circle, Coimbatore

1 cc to the Special Government Pleader (Taxes), Sr. 9091
1 cc to M/s. Lakshmi Sriram, Advocate, sr. 8341

Tax Case (Revision) No.1958 of 2006

WEB COPY

VD (CO)
kk 4/3

https://hcservices.ecourts.gov.in/hcservices/