BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)Nos.342 of 2011 and 945 of 2010
M.P.(MD) No. 1 of 2011 and 1 of 2010

In W.A.(MD) No.342 of 2011
The State of Tamil Nadu,
Represented by
Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli. ... Appellant/Petitioner

Vs.

1.TVl.Prakash Fine Arts and Printers,
16, Muslim Middle Street,
Sivakasi,
Virudhunagar District.

2.The Secretary,
The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench),
Madurai - 20. ... Respondents/Respondents

In W.A.(MD) No.945 of 2010
The State of Tamil Nadu,
Represented by
Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli. ... Appellant/petitioner

Vs.

1.TVl.Jayakar Offset Printers,
169, Municipal Office Road,
Virudhunagar,
Virudhunagar District.
2.The Secretary,
The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench),
Madurai - 20. ..Respondents/Respondents

PRAYER: The Writ Appeals are filed under Clause 15 of the Letters Patent against the order made in W.P.(MD) Nos. 3964 of 2004 and

3840 of 2004 dated 08.06.2007 and 22.06.2007.

Prayer in WP(MD). 3964/ 2004 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, made in MTSA No.688/2000, dated 10.9.2003 and quash the same by issue of Writ of Certiorari or other order of direction in the nature of Writ

Prayer in WP(MD). 3840/ 2004 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records relating to the order of the Sales Tax Appellate Tribunal (Addl. Bench) Madurai made in MTSA No.306/1999 dated 6.1.2000 and quash the same by issue of Writ of Certiorari or other order of direction in the nature of a Writ and pass such further or other orders.

In two Appeals:

For Appellant : Mr.A.Karthikeyan
For R1 : Mr.P.Radhakrishnan

C O M M O N J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, both appeals are taken up for final disposal.

In W.A.No.342 of 2011:

The first respondent/assessee is a dealer in labels and printed materials reported total and taxable turn over of Rs.36.09.234.70/- and Nil respectively and claimed that the turn over represents work contract. The Assessing Officer, while framing the assessment, determined the taxable turnover at Rs.36,09,235/-.

(ii) The first respondent/assessee aggrieved by the same filed an appeal before the Appellate Assistant Commissioner (CT) and the appeal was allowed. Challenging the same, the State/Revenue filed an appeal before the Tribunal and it was also dismissed on 10.09.2003 in MTSA No.688 of 2000 holding that on going through the impugned order passed by the Tribunal, found that it had arrived at factual finding and therefore, in the absence of any material placed to dislodge the factual finding, the Tribunal cannot interfere with the same and also placed reliance upon the judgment reported in **73 STC 1 and 370 (State of Tamil Nadu Vs. Anandham Viswanathan) (Builders Association of India and others Vs. Union of India and Others)** and challenging the legality of the order of the Tribunal, the Writ Petition in

W.P.(MD) No.3964 of 2004 has been filed. The learned single Judge, considering the materials placed, had observed that it is well settled position that as to whether a particular transaction is work contract or out-right sale has to be determined on the basis of facts of the particular case and no hard and fast rule can be prescribed. This Writ Appeal in W.A.(MD) No.342 of 2011 has been filed challenging the legality of the order of dismissal.

In W.A.No.945 of 2010:

2. The first respondent/Assessee is a dealer in printed materials reported total and taxable turn over of Rs.2,60,475.45 and Rs.1,67,487.75 respectively and claimed that the turnover represents works contract. The Assessing Officer while framing the assessment assessed a turnover of Rs.2,22,488/- as taxable at 10% rejecting the petitioner's objections.

(ii) The first respondent/assessee aggrieved by the same filed an appeal before the Appellate Assistant Commissioner (CT) and the appeal was allowed. Challenging the same, the State/Revenue filed an appeal before the Tribunal and the same was also dismissed on 06.01.2000 in MTSA No.306 of 1999 and assailing the said order of the Tribunal, the Writ Petition in W.P.(MD) No.3840 of 2004 has been filed. The learned single Bench of this Court, having found that the Appellate Assistant Commissioner (CT) the Tribunal has recorded the factual findings that the respondent/assessee has printed and supplied the materials as per specifications and designs and general lay out furnished by their customers and in the light of the factual findings, had dismissed the writ petition vide order dated 22.06.2007 and while dismissing the writ petition placed reliance on the abovesaid judgment. This Writ Appeal in W.A.(MD) No.945 of 2010 has been filed challenging the legality of the order of dismissal.

3. The learned counsel for the appellant/Revenue has drawn attention of this Court to typed set of documents and would submit that the assessees/first respondent in both appeals have not produced any evidence before the Assessment Officer that the supplying of good were in the nature of interstate works contract and as such factual findings recorded by the Assistant Commissioner and the Tribunal warrant interference and prays for setting aside the impugned orders and for dismissal of the writ petitions and for allowing the writ appeals.

4. Per contra, the learned counsel appearing for the respondents would submit that in similar facts and circumstances, challenge to similar order came up for consideration before the Hon'ble Supreme Court of India and while dismissing C.A.No.10162 of 2012 as well as Special Leave Petitions in SLP(C) Nos.26057, 26065, 26066, 26067 of 2011, 40111 of 2012 and 37524 of 2013 and 26056 of 2011, vide order dated 03.08.2016, the Hon'ble Supreme Court has observed as follows:

> 'We see no reason to interfere with the impugned judgment and order passed by the High Court'.

5. The learned counsel for the respondent in both appeals would contend that since the matter reached finality in the form of abovesaid dismissal order, the stand taken by the Appellate Authority is unsustainable and prayed for dismissal of the writ appeal.

6. This Court considered the rival submissions and perused the materials placed on record.

7. A perusal of the order passed by the Assistant Commissioner as well as Tribunal in this case would show the factual finding has been recorded regarding works contract. In the considered opinion of this Court, while exercising of appellate jurisdiction under Section 15 of Letters Patent, it may not interfere with the factual findings and that apart, similar challenge made by the Revenue in the writ petitions came to be rejected and assailing the same, the Revenue has filed the above said Civil Appeal and Special Leave petitions, which were dismissed on 03.08.2016 stating that no reason to interfere with the impugned judgment and order passed by the High Court.

8. In the light of the same, this Court finds no merit in the Writ Appeals and accordingly, the Writ Appeals are dismissed confirming the order passed in Nos. W.P.(MD) Nos. 3964 of 2004 and 3840 of 2004 dated 08.06.2007 and 22.06.2007 respectively. However, considering the above circumstances, there shall be no order as to costs. Consequently, connected M.P.(MD) Nos. 1 of 2011 and 1 of 2010 are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

CM
To
The Secretary,The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench),Madurai - 20.
+2CC to Mr.P.Radhakrishnan, Advocate Sr.No.65352
+1CC to Spl.Government Pleader Sr.No.65326

GJM/km/25.11.16-4p-5C

W.A(MD)Nos.342 of 2011 and 945 of 2010
M.P.(MD) No. 1 of 2011 and 1 of 2010
03.11.2016