IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM :

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.11251 of 2009
and
M.P.No.1 of 2009

Shree Design,
represented by its Proprietor,
C.K. Shridar, 2, 49th Street,
7th Avenue, Ashok Nagar,
Chennai – 600 083. .. Petitioner

Vs

The Commercial Tax Officer,
Ashok Nagar Assessment Circle,
Chennai – 600 078. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the files of the respondent herein, in his TNGST.1401813/2005-2006 dated 22.05.2009 and to quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.S. Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.N.Inbarajan, the learned counsel for the petitioner and Mr.S. Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. In this Writ Petition, the petitioner has challenged the order of assessment, under the provisions of Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as 'TNGST Act'), by which, the respondent invoked his power under Section 16 (1) (b) of the TNGST Act and revised the assessment and treated the transaction done by the petitioner as supply contract and levied higher rate of tax.

3. It is not in dispute that the petitioner has paid tax under Section 7 (C) of the TNGST Act. This was accepted; tax at the rate of 4% was levied; and the assessment was completed on 01.12.2006. This was sought to be reopened, by issuing a notice, dated 20.02.2009, stating that, the predominant part of the contract is only supply of the goods, and therefore, it was treated as a supply contract or a sale, and proposed to asses the turnover at 12%. The petitioner submitted their objections. However, the respondent passed the impugned assessment order, overruling the objections.

4. The legal issue involved, in this Writ Petition, has been settled by a decision of the Hon'ble Division Bench of this Court, in ***Deputy Commissioner of Commercial Taxes, Vellore v. Devandran & Company*** reported in ***{(1981) 47 STC 264}*** wherein, the Hon'ble Division Bench confirmed the finding of the Tribunal on the following lines:-

> "In this case, as we pointed out already and as admitted, the entire sales turnover relating to the tanned hides and skins had been assessed at 1½ per cent under item 7(b) and the sales turnover was assessable only under that item. Only if the whole or any part of this turnover had escaped such assessment, the whole or any part of the turnover can be said to have been assessed at a lower than the rate at which the same was assessable so as to attract the provisions of section 16(1)(b). That not being the case, the order of the Tribunal cannot be said to be erroneous in law and consequently the tax revision case is dismissed".

5. The above decision of the Hon'ble Division Bench was affirmed by the Hon'ble Supreme Court, in ***State of Tamil Nadu vs. Devendran & Company {(1996) 103 STC 95}.*** These decisions were taken note of by this Court, in ***Hydro Electrical Systems vs. Commercial Tax Officer, Velachery Assessment Circle, {(2010) 34 VST 160 (Mad)*** and an identical impugned order was set aside. Following the above decisions, the impugned order has to be held to be not sustainable, and accordingly, requires to be set aside.

6. In the result, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2017

Index: Yes/No

msm/sd

To

The Commercial Tax Officer,
Ashok Nagar Assessment Circle,
Chennai – 600 083.

T.S.Sivagnanam, J.

msm/sd

<u>W.P.No.11251 of 2009</u>

31.10.2017