IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2017

Coram

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

Writ Petition No. 14557 of 2006
and
W.P.M.P.No.15350 of 2006

M/s.Ashwin Printing Agency,
rep. by its Partner S.Bharathi,
No.40, Peters Road,
Royapettah, Chennai 600 014. ...Petitioner

Vs.

The Commercial Tax Officer,
Royapettach II Assessment Circle,
Taluk Officer Building
Greenways Road, Chennai 600 028. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the file of the respondent in TNGST.0780299/2004-05 dated 20.04.2006 and quash the same as illegal.

For Petitioner : Mr.T.Pramodkumar Chopda
Senior Standing Counsel

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.T.Pramodkumar Chopda, the learned Senior Standing Counsel appearing for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, undertakes job work of printing of the materials, viz., paper supplied by the customer and collected labour charges. The respondent, while accepting that the petitioner has done such labour work, and printing on the papers supplied by the customers, proposed to levy tax on purchase of ink, binding materials. The correctness of the impugned order is challenged in this Writ Petition.

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3. This Court need not labour much to decide the issue involved in this Writ Peitition, as already the issue has been settled by this Court, in several decisions, and latest of which, is the decision rendered in the case of (State of Tamil Nadu Vs. Orient Litho Press) reported in (2015) 82 VST 553 (Mad). The Hon'ble Devision Bench, after taking note of the earlier decision, held that, ''the fact in the execution of 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 will not necessarily be deemed, on that account, to sell the materials. It would be worthwhile to refer to the operative portion of the said decision, which reads as follows:-

> ....."The apex Court, in similar circumstances, in the decision reported in (1989) 73 STC 1 (SC) (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.
>
> For better clarity , the relevant portion of the decision of the apex court reads as follows (Page 14 in 73 STC):
>
>> "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

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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 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 Court Press Job Branch, Salem V.State of Tamil Nadu (1983) 54 STC 382 (Mad) and Commissioner of Sales Tax, Madhya Pradesh V. Ratba Fine Arts Printing Press (1984) 56 STC 77 (MP).

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 in the goods so used, passess 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 herein before, 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 August 10, 2012, in T.C.No.1984 of 2012, following the above said decision of the apex court held that

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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 (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 February 17, 2015 in T.C.(Revision) No.1958 of 2006 (Heritage Printers V. Joint Commissioner (SMR) of Commercial Taxes (2015) 80 VST 478 (Mad), allowed the appeal filed by the assessee holding as follows (Page 483 in 80 VST):

> "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, which 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 tot he contractee incidentally would not lead to the inference that the transaction is only a sale and not a works contract."

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

4. Following the above decision, this Writ Petition is allowed, the impugned notice is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nmm/sd

To

The Commercial Tax Officer,
Royapettach II Assessment Circle,
Taluk Officer Building
Greenways Road, Chennai 600 028.

+ 1 cc to Mr. T. Pramod Kumar, Chopda, Advocate Sr.50552
+ 1 cc to Mr.Spl.Government Pleader SR.50379

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