IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.07.2017
CORAM:
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.15872 & 15873 of 2004 and
W.M.P.Nos.18851 & 18852 of 2004

M/S.Amra Press
No.22, Kalki Krishnamurthy Salai,
Thiruvanmiyur,
Chennai - 600 041. ..Petitioner in both W.Ps

Vs.

The Commercial tax officer,
Thiruvanmiyur Assessment Circle,
Annai Velankanni Church Road,
Besant nagar,
Chennai-90. ..Respondent in W.P.No.15872 of 2004/
First Respondent in W.P. No.15873 of 2004

The State of Tamilnadu,
Rep by its Secretary to the Government,
Commercial Taxes Department,
Fort St.George,
Chennai - 9. ..Second Respondent in W.P.No.15873 of 2004

Prayer in W.P.No.15872 of 2004: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in TNGST/0920014/2001-02, quash the impugned proceedings dated 30.04.2004 and further direct the respondent to follow the law laid down by the Apex Court and the High Court.

Prayer in W.P.No.15873 of 2004: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Declaration is filed to declare the entry 52 (iv) of the Part C of the First Schedule of the Tamil Nadu General Sales Tax Act, 1959 as ultra vires the provisions of the Constitution of India under Article 366 (29A)(b) read with entry 54 List II of the Seventh Schedule of the Constitution of India particularly in view of the goods supplied by the petitioner relating to the question papers in light of the law laid down by the Apex Court and the High Court in 73 STC 1.

For Petitioner : Mr. V.Sundareswaran

For Respondent : Mr. K.Venkatesh,
Government Advocate

C O M M O N O R D E R

Heard Mr.V.Sundareswaran learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2. The petitioner has challenged the order of assessment dated 30.04.2004 passed by the respondent under the Tamil Nadu General Sales Tax Act for the Assessment year 2001-2002. The petitioner is engaged in the business of printing and suppling books and question papers to their customers. The issue would be whether the nature of work done by the petitioner is a contract of labour only or contract for sale of any printed material. This issue is no longer res-integra and settled by a Division Bench of this Court in the case of The State of Tamil Nadu Vs. Anandam Viswanathan 1976 Volume 39 STC page No. 226, which was confirmed by the Hon'ble Supreme Court in 1989 volume 73 STC page 1. Though, this point has been specifically canvassed by the petitioner in more than one place in the affidavit filed in support of the writ petition, the respondent in their para wise comments addressed to the learned special government pleader, dated 30.08.2010 has brushed aside the same by stating that the Act does not distinguish between the confidential nature of printed materials printed and sold by printing press. Unfortunately the respondent has failed to take note of the legal principles which was laid by the said decision.

3. For a better appreciation, the relevant portion of the decision of the Division Bench is quoted herein below:

> (i)that the contract entered into between the assessee and the Universities and other educational institutions was a composite contract in the sense that it was a contract for work and labour as well as a contract for the sale of the paper, since there was an express agreement for the sale of the paper by the assessee. Printing of question papers of educational institutions is extremely and highly of a confidential nature and such a contract will be entered into only by the Universities and other educational institutions with a person in whom they have got the highest confidence so that the confidential nature of the entire transaction will be preserved. In view of this peculiar feature, the contract entered into by the assessee could be held to be a contract for labour only and not a contract for the sale of any printed materials and, therefore, the

turnover relating to printing charges could not be included in the assessee's taxable turnover;

(ii) that with regard to the blocks, which were destroyed after the question papers were printed, there was no question of the sale of the blocks as there was no passing of the property in the blocks from the assessee to the Universities and other educational institutions and, therefore, the block-making charges also could not be included in the taxable turnover.

Contracts entered into by the Universities and other educational institutions with the printer or any other person for printing question papers and supplying the same to the Universities and institutions cannot be said to be a contract whose main object is the transfer of property in the question papers from the printer to the Universities and institutions.

The above view was confirmed by the Hon'ble Supreme Court in the decision referred to above. Therefore, the impugned assessment, in so far as it relates to assessing the petitioner to tax for printing of question papers has to be set aside.

4. With regard to the reading books is concerned, the issue is also again covered by a decision of the Division Bench in S.R. & Company Vs. State of Tamil Nau reported in 1978 volume 48 STC page 99. The Division Bench, while interpreting the words "reading books"in item 22 of the schedule to the notification issued under Section 17 of the Tamil Nadu General Sales Tax Act, held that it should be understood as "books for reading or books meant for reading". Whether the books would be read by the general public at large or only by a section of public is irrelevant. Thus by applying the said decision, the assessment made on the printing of reading books also deserves to be set aside. Therefore, the writ petition is allowed and the impugned assessment order is quashed. Consequently Writ petition No.15873/2004 is closed. Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sli/kak

To

1. The Commercial tax officer,
Thiruvanmiyur Assessment Circle,
Annai Velankanni Church Road,
Besant nagar,
Chennai-90.

2 The State of Tamilnadu
Rep by its Secretary to the Government,
Commercial Taxes Department,
Fort St.George,
Chennai - 9.

+1 cc to M/s.V.Sundareswaran Advocate sr 53617
+1 cc to Special Government Pleader Taxes sr 53164

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