BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

TAX CASE (REVISION)No.197 of 2011

The State of Tamil Nadu,
Rep. By the Deputy Commissioner (CT),
Madurai Division,
Madurai. .. Petitioner

Vs.

Tvl. Raj Floorings,
Madurai. .. Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (AB) Madurai dated 04.02.2002 in Madurai Tribunal Appeal Nos.206, 207, 208, 209, 210, 211, 212, 213, 214, 215/99 and 422/2000 filed against the order of the Appellate Assistant Commissioner (CT), Madurai(South) vide. A.P.498/97, 497/97, A.P.490/97, A.P.499/97, A.P.500/97, A.P.501/97, A.P.502/97, A.P.505/97, A.P/504/97, and A.P.505/97 dated 18.12.98 filed against the proceedings of the Deputy Commercial Tax Officer, Madurai (Rural)South vide Asscessment order dated 30.09.1997

For Petitioner : Mr.R.Karthikeyan,
Additional Government Pleader.

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr. R.Karthikeyan, Additional Government Pleader appearing for the petitioner.

2. This revision petition is directed against the common order passed by the Sales Tax Appellate Tribunal (Additional Bench) Madurai. In fact, the said common order in respect of various other dealers who are mosaic industries entered into a works contract- agreement for the purpose of laying mosaic tiles.

3. In the case of the respondent-dealer, the Assessing Officer held that the dealer has not maintained proper accounts and taking note of the payments effected by the dealer came to the conclusion that 70% of the amount paid to the dealer under the works contract was towards the cost of manufacturing mosaic tiles and therefore, liable to be taxed.

4. The Revenue did not dispute the fact that the raw materials which were utilised for the purpose of manufacturing mosaic tiles had suffered tax. Their contention is that the mosaic tile is commercially a distinct product and therefore, is liable to be taxed.

5. As against the order of assessment, the dealer preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner made an elaborate exercise examined books and documents produced by the dealer and held that the order passed by the Assessing Officer amounted to guess work. The Appellate Assistant Commissioner relied upon a decision of the Division Bench of this Court in the case of S.Chandrasekaran Vs.State of Tamil Nadu Manu/TN/0352/1990 which also pertained to a contract for manufacturing of mosaic tiles and laying. The Assessing Officer in the said case, after examining the terms and conditions of the agreement entered into between the dealer and the customer which provided for supply of mosaic tiles, laying and polishing of mosaic flooring took note of the pattern in which the customer paid the value for the contract and held that 65% of the total value of the work represented the price of mosaic tiles supplied and brought that amount to tax under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). Testing the correctness of such procedure being adopted by the Assessing Officer, this Court held as follows:-

> "21. In the light of the facts, decisions and the findings of the authorities, we will have to find out whether the view taken by the assessing officer and the Board of Revenue is correct or the view taken by the Appellate Assistant Commissioner is correct. No doubt, as pointed out by the Supreme Court, it is difficult to lay down any rule of universal application to find out whether a particular contract is a "works contract" or a divisible contract. Nevertheless, again, as pointed out by the Supreme Court, "the dividing line between the two types of contract is somewhat hazy and thin partitions do their bounds divide and such distinction is very much real and the court has to perform at times the ingenious exercise of distinguishing one from the other". The assessing officer as well as the Board of Revenue leaned heavily on the fact that the contract provides for a payment of 65 per cent of the total amount on delivery of tiles and that according to them, represents the value of tiles. We have already noticed that except for a guesswork, no tangible

material was available before the assessing officer to arrive at that conclusion. The comparison of the laying of mosaic tiles with fixing up of electric fans, as done by the Board of Revenue, does not appear to be appropriate. The Supreme Court, in Sentinel Rolling Shutters & Engineering Company Pvt. Ltd. v. Commissioner of Sales Tax [1978] 42 STC 409 has observed that "true nature of the contract cannot depend on the mode of payment of the amount provided in the contract". If that be so, the ground on which the assessing officer based his conclusion to treat the contract in question as a separable or divisible one cannot be supported. A close scrutiny of the contract and the final bill establishes that the contract is one for laying of mosaic tiles and not for mere supply of tiles. As rightly pointed out by the learned counsel for the appellant/assessee, the decision of the Bombay High Court in Hindustan Tiles and Cement Industries v. State of Maharashtra [1975] 36 STC 326 is clearly distinguishable in the sense that clause 9(a) in the agreement makes all the difference which weighed with the Bombay High Court as seen from the judgment which has also been extracted above. Likewise, the reliance placed by the learned Additional Government Pleader on an observation in the judgment of the Andhra Pradesh High Court reported in [1983] 53 STC 124 (United Mosaics v. State of Andhra Pradesh), in our view, is not helpful."

6. After taking note of the above referred decision in the case of S.Chandrasekaran, the Appellate Assistant Commissioner held that the Assessing Officer in the instant case, had assessed 70% of the amount received towards the contract as sale of tiles taxable at 16% and further held that the case is covered by the decision of this Court in S.Chandrasekaran wherein it was held that it is a work contract and in such a case, the dealer comes under Section 3B of the TNGST Act and is eligible for various deductions and when the dealer is eligible for various deductions, he is also eligible for deductions under Section 3B-2(b) and also other deductions that are available under Section 3B. After taking into consideration the Forty Sixth amendment to the Constitution of India and the decision in the case of ***Tamil Nadu Mosaic Manufacturers Association Vs.State of Tamil Nadu (97 STC 503)*** held that the amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the materials produced by the contractor. Further, it was held that the value of the goods in execution of a works contract will therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and service. Further, the Appellate Assistant Commissioner observed that the respondent dealer was having a separate account for the materials that had been purchased and

utilized in the course of works contract and they represented that they maintained separate figures for various charges that had been incurred during the course of the works contract and found fault with the manner in which the Assessing officer completed the assessment. Therefore, Appellate Assistant Commissioner after holding the legal position in favour of the respondent-dealer remanded the matter to the Assessing Officer for reconsideration afresh in the light of the judicial pronouncements referred to above.

7. Admittedly, the Revenue has not filed any appeal to the Tribunal as against the finding rendered by the Appellate Assistant Commissioner that the case of the respondent-dealer is covered by the judgment in the case of S.Chandrasekaran (*supra).*

8. It is the respondent-dealer who filed the appeal before the Tribunal challenging that portion of the order of the Appellate Assistant Commissioner remanding the matter for reconsideration to the Assessing Officer for ascertaining the rate of tax that has to be imposed on the various components. While testing the correctness of the order passed by the Appellate Assistant Commissioner with regard to the direction remanding the matter to the Assessing Officer held that the contentions raised by the respondent-dealer was acceptable, as the Appellate Assistant Commissioner has given a categorical finding that the dealer has maintained separate stock account for various raw materials utilized for the purpose of execution of works contract.

9. Further, the Tribunal took note of the fact that the raw materials utilized for the execution of works contract have been purchased from within the State and suffered tax and the items used for execution of works contract were tax suffered goods except sand. With regard to the tax payable on sand, the Tribunal took note of a notification issued by the Government in G.O.P.No.198, Commercial Tax Department, dated 25.03.1989, according to which, sand used is not taxable for the period from 1989-1990 to 1993 -1994 with effect from 25.03.1989. After taking note of the said notification, the Tribunal observed that that the sand used for execution of works contract is liable to be taxed for the assessment years, 1986-1987, 1987-1988, 1988-1989, 1994-1995, 1995-1996 and 1996-1997. The sand used for execution of works contract was worked out by adding reasonable gross profit of 10% and the Tribunal set out the details in a tabulated format. With the above modification, the Assessing Officer was directed to levy appropriate tax for the turnover sustained in respect of sand and the rest of the turnover sustained by the Appellate Assistant Commissioner in the appeals before him were ordered to be deleted.

10. Taking into consideration the fact that the Revenue has not questioned the order passed by the Appellate Assistant Commissioner rendering a finding that the case is covered by the decision in the case of S.Chandrasekaran's case and the other

decision in ***Tamil Nadu Mosaic Manufacturers Association*** *(supra)*, the Revenue has not made out a case to revise the order passed by the Tribunal and the order passed by the Tribunal is confirmed and the Tax Case Revision stands dismissed. No costs.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

To

1. The TN Sales Tax Appellate Tribunal (AB),
   Madurai.

2. The Appellate Assistant Commissioner(CT)
   Madurai(South), Madurai.

3. The Deputy Commercial Tax Officer,
   Commercial Tax Department,
   Madurai(Rural)South Madurai.

+1cc to The Spl. Government Pleader Sr.No.55767

am/pm

vb/mr/sar3/26.05.2017/5p/5c

ORDER MADE IN
TAX CASE (REVISION)No.197 of 2011
03.05.2017