



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

TAX CASE REVISION No.26 of 2011

M/s.Century Fine Arts,
No.6, Pallapatti Road,
Keelathiruthangal,
Sivakasi.

.. Appellant

Vs.

The State of Tamil Nadu,
Rep. By its Deputy Commercial Tax Officer-III,
Sivakasi.

.. Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai passed in M.T.A.No.328 of 2006, dated 22.11.2010 against the order passed by the appellate Assistant Commissioner (CT), Virudhunagar dated 06/06/2006 made in A.P.No.231 of 2003 against the order passed by the Deputy Commercial Tax Officer - III, Sivakasi, dated 19.10.2001 Made in TNGST 6000623/2000-2001.

For Petitioner

: Mr.S.Karunakar

For Respondent

: Mr.R.Karthikeyan,

Additional Government Pleader.

ORDER

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

Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondent.

2.This Tax Case Revision is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai in M.T.A.No.328 of 2006, dated 22.11.2010. The said appeal was filed by the petitioner/assessee against the order passed by the Appellate Assistant Commissioner (CT), Virudhunagar, in A.P.No.231 of 2003, dated 06.06.2006 pertaining to the assessment year 2000-2001.

3.The questions of law which arises for consideration in

the instant case are:



"a) whether in the facts and circumstances of the case, the Tribunal was right in disallowing the claim of concessional rate of tax against Form XVII on the purchase of ink in execution of printing works is correct? and

b) Whether in the facts and circumstances of the case, the Tribunal was right in refixing and upholding the levy of penalty under Section 23 of the Tamil Nadu Sales Tax Appellate Tribunal (TNGST) Act is correct?"

4. We need not labour much to answer these questions as in the assessee's own case for the assessment year 2001-2002, identical issue arose before the Tribunal and the Tribunal in M.T.A.No.75 of 2004 which is an appeal by the State against the order passed by the Appellate Assistant Commissioner (CT), Virudhunagar in A.P.No.232 of 2003, dated 16.10.2003. The identical contention as raised in this Tax Case had been raised before the Appellate Assistant Commissioner by the assessee, who were the respondent in the said appeal.

5. The Tribunal, after considering the factual matrix, held that the works contract may also some times involve manufacturing or processing activities and in such circumstances, the purchasing dealer are entitled for issuance of Form XVII for their purchases effected by them and consumed. To ascertain the factual details, the Tribunal set aside the order passed by the Appellate Assistant Commissioner and remanded the case back to the Assessing Officer for fresh verification of the entire transactions/activities done by the petitioner and pass appropriate orders. Further direction was given that the use of the raw materials in the printing of own goods must also be ascertained and relief must be given.

6. Therefore, we are of the view that a similar order has to be passed in the assessee's present case, which is for the later assessment year, namely 2004-2005.

7. The learned counsel for the petitioner would point out that the Tribunal has taken inconsistent stand with regard to the same issue in the case of State of Tamil Nadu Vs. Tvl.Senthil Offset Printers, Sivakasi in M.T.S.A.No.73 of 2004. The Tribunal by order dated 12.10.2010 held that the purchasing dealers are entitled for issuance of Form XVII for their purchases that may be consumed and with this positive finding the matter was remanded for fresh consideration by the Assessing Officer along with the issue regarding the levy of penalty. Similar order has been passed in the case of Tvl.Raman Process, Sivakasi Vs. State of Tamil Nadu in M.T.A.No.239 of 2007, dated 09.11.2010 and in the assessee's own case in Tvl.Century Fine Arts, Sivakasi Vs. State of Tamil Nadu in M.T.A.No.49 of 2008, dated 02.02.2011. Therefore the matter requires to be remanded to the Assessing Officer for fresh consideration.



8. Thus, by observing that works contract may also sometimes involve manufacturing or processing activities and in such circumstances, the purchasing dealers are entitled for issuance of Form XVII for their purchases that may be consumed, the matter is remanded to the Assessing Officer for fresh consideration.

9. In the result, the Tax Case Revision is allowed to the extent indicated. The order passed by the Tribunal as well as the Appellate Assistant Commissioner are set aside and the matter is remanded to the Assessing Officer for fresh verification of the transaction and for passing appropriate orders. The Assessing Officer is directed to issue notice to the assessee after affording an opportunity of personal hearing, taking note of the factual and legal submission and decide the matter afresh and in accordance with law. As we have set aside the orders passed by the Tribunal as well as the Appellate Assistant Commissioner on remand, the Assessing Officer shall also consider the issue relating to penalty. No costs.

Sd/-
Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To

- 1 The Deputy Commercial Tax Officer-III,
Sivakasi.
- 2 The Additional Judicial Member,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Madurai.
- 3 The Appellate Assistant Commissioner (CT),
Virudhunagar.
- 4 The Deputy Commercial Tax Officer - III,
Sivakasi.

+1cc to M/S.S.KARUNAKAR, Advocate SR.No. 55842
+1cc to Special Government Pleader, SR.No. 55940

ORDER MADE IN
TAX CASE REVISION No.26 of 2011
05.05.2017