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.7 of 2011

M/s.Century Offset Works,
No.6, Pallapatti Road,
Keelathiruthangal,
Sivakasi. .. Petitioner

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.119 of 2008, dated 23.11.2010 filed against the order of the Appellate Assistant Commissioner(CT), Virudhunagar in the Appeal No.152/2006 dated 29/10/2007 preferred against the proceedings of the Commercial Tax Officer(FAC) Sivakasi vide Assessment order No.TNGST 6000202/2004-05.

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.119 of 2008, dated 23.11.2010. The said appeal was filed by the petitioner/assessee against the order passed by the Appellate Assistant Commissioner (CT), Virudhunagar in A.P.No.152 of 2006, dated 29.10.2007 pertaining to the assessment year 2004-2005.

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 and machines 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(CO)

/True Copy/

Sub Assistant Registrar

TO

1.The Deputy Commercial Tax Officer III,
State Of TamilNadu,
Sivakasi.

2.The Appellate Assistant Commissioner,(CT)
Virudhunagar.

3.The Additional Judicial Member,and
Additional Departmental Member,
Tamil Nadu Sales Tax Appellate Tribunal(AB),
Madurai.

4.The Deputy Commercial Tax Officer,
Sivakasi.

+1cc to Mr.S.Karunakar, Advocate Sr.No.55846
+1cc to The Spl.Government pleader Sr.No.55956

ps

vb/jc/sar4/02.06.2017/3p/7c

ORDER MADE IN
TAX CASE REVISION No.7 of 2011
05.05.2017