IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/6/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Tax Case No.119 of 2018

The State of Tamil Nadu
rep. by
The Deputy Commissioner (CT)
Chennai (East) Division
Chennai 600 006. ... Petitioner

Vs

Tvl.K.C.P.Limited
No.2, Dr.P.V.Cherian Cresent Road
Chennai 600 105. ... Respondent

Tax Case filed under Section 38 of the TNGST Act, 1959, to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (MB), Chennai, passed in S.T.A.No.284 of 2002, dated 27/10/2003 against the order of Appellate Assistant Commissioner (CT)-IV, Chennai-600 108, dated 17.10.2000, ie., A.P.No.294 to 298/2000 and 386/2000, and arising out of the Assessment Order of Deputy Commercial Tax Officer, Triplicane I Assessment Circle, dated 15.5.2000 in TNGST:071702/91-92.

For petitioner ... Mr.V.Hari Babu
Additional Government Pleader
(Taxes)

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Instant Tax Case Revision is filed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (MB), Chennai, dated 27/10/2003, made in S.T.A.No.284 of 2002.

2. Short facts leading to the filing of the appeal are that the respondent K.C.P.Limited, Chennai, dealer in heavy machinery cement Steel Scraps, were reported a total and taxable turnover of Rs.4,30,68,056 and Rs.3,58,37,563/-, for the assessment year 1991 - 92, under the TNGST Act, 1959.

3. The turnovers disputed under different heads and the penalties disputed under different sections are as follows:-

(i). Value of materials issued free of cost by the customers for use in machinery ordered by such customers along with respondent's own materials but treated as turnover of the respondent.

(ii). Inter-State sales effected from the respondent's workshop at Vuyyuru (AP) to buyers in Tamil Nadu and assessed as local sales in the State of Tamil Nadu.

(iii). Receipts by way of user charges of computer in the respondent's premises assessed under Section 3-A as involving transfer of right to use goods.

(iv). Inter-State sales of machinery from Vuyyuru (AP) to Cauvery Sugars & Chemicals Limited and later used in works contract of erection and commissioning in Tamil Nadu assessed to tax under Section 3 - B.

(v). Labour charges assessed in original assessment, deleted on appeal but included again taxable turnover in reassessment by mistake.

4. Aggrieved, against the reassessment/final assessment proceedings of the Commercial Tax Officer, Chennai, K.C.P.Ltd., Chennai, has filed an appeal, in A.P.No.297 of 2000. Vide order, dated 17/10/2000, the Appellate Assistant Commissioner (CT) - IV, Chennai, allowed the appeal.

5. Being aggrieved, State had filed S.T.A.No.284 of 2002, against the Appellate Assistant Commissioner's order and the Tribunal, vide order, dated 27/10/2003 dismissed the STA stating that the dealer had installed the computers permanently in the lessee's premises, as immovable property and effective control is vested with the owner and there is no transfer of property involved in this case and hence lease rental cannot be subjected to tax under Section 3 A.

6. Aggrieved, the Deputy Commissioner (CT), Chennai (East) Division, Chennai, has filed the instant Tax Case Revision, on the following grounds:-

(i). The Tribunal erred in observing that the machinery was permanently installed and no liability would arise which is not acceptable in view of the decisions reported in 83 STC 325, 132 STC 217 and the decision rendered by the Tribunal in T.A.No.1029 of 1995 dated 31/10/1996.

(ii). The Tribunal ought to have followed the decision of the Special Tribunal which has already held that the effective passage of property from the lesson to the lessee is not essential and liability would arise even when there is passage of economic benefit.

(iii). The Tribunal failed to note that after the advent of the 40th Amendment in the Constitution of India, the definition of sale of goods which existed as per Section 4 of the Sale of Goods Act, 1939 became widened, inserting clause 29-A in Art.366 bringing the transfer of right to use goods to be a sale (deemed sale). The position was made clear in Finance Bill 2002 and the decision reported in 119 STC 182 the issue was discussed in detail. The Tribunal failed to give credence to the above position which is bad in law.

7. Heard Mr.V.Hari Babu, learned Additional Government Pleader (Taxes) for the appellant.

8. Though Mr.V.Hari Babu, learned counsel for the appellant reiterated the above said grounds, we wish to state that since the State has admitted that the assessment on this turnover was due to an error, we hold that there is no case for levy of penalty under Section 12 (5) (III) and 16 (2) and the Appellate Assistant Commissioner (CT) was also proper in deleting the penalty levied, after having coming to the conclusion that the assessment made on the turnovers in question, was not proper.

9. In view of the above, Tax Case Revision is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

mvs.
To

1.The Tamil Nadu Sales Tax Appellate Tribunal (MB),
Chennai.

2.The Deputy Commissioner (CT)
Chennai (East) Division
Chennai 600 006.

3.The Appellate Assistant Commissioner,(CT)-IV,
Chennai-600 108.

4.The Deputy Commercial Tax Officer,
Triplicane I Assessment Circle,
Triplicane.

T.C.No.119 of 2018

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srg 10/08/2018