IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26100 to 26104 of 2004

M/s.Ganga Medical Center and Hospital Pvt. Ltd.,
No.2, Swarnambika Layout
RamNagar
Coimbatore – 641 009 ... Petitioner
in all the writ petitions

Vs.

The Commercial Tax Officer (FAC),
Ram Nagar Circle,
Coimbatore – 18. ...Respondent
in all the writ petitions

Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the case on the file of the respondent herein in Ref Nos.81/2004/A4/99-2000, 81/2004/A4/2000-01, 81/2004/A4/2001-02, 81/2004/A4/2002-03 and 81/2004/A4/2003-04 dated 01.07.2004 relating to the petitioner, issued under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and quash the same.

For Petitioner : Mr.B.Sivaraman
for M/s.R.V.Chitra Associates

For Respondent : Mr.M.Hariharan
Additional Government Pleader

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COMMON ORDER

Heard Mr.B.Sivaraman, learned counsel for petitioner and Mr.M.Hariharan, learned Additional Government Pleader for respondent.

2. Petitioner has filed these writ petitions challenging orders of assessment passed under the provisions of the Tamil Nadu General Sales Tax Act for the Assessment Years 1999-2000 to 2003-04. Petitioner is a Private Limited Company, which has put up construction for running a hospital. The respondent issued notice dated 23.01.2004 pursuant to visit made by the officers of the Commercial Tax Department on 11.11.2003 and it was alleged that on verification of the premises, it revealed that the operation theatres available in the 4th and 5th floors of the hospital building were let out for lease rent of Rs.1,00,000/- each per month to two Doctors and a least rent of Rs.24,00,000/- is received per year with effect from 01.08.1999 and Rs.36,00,000/- per year from 2002-03 onwards. It is further stated that as the operation theatres are equipped with surgical instruments like operation tables and other machines and appliances for conducting surgery, the lease rent received is treated as transfer of right to use the goods, liable to be taxed at 10% from 27.03.2002 (under Item No.19 of Part C) under Section 3-A of the Tamil Nadu General Sales Tax Act, 1959 and at 8% upto 26.03.2002 and

surcharge at 5% is leviable from 01.07.2002 on tax due. Further, it was stated that during the year 1999-00, the hospital management has received a sum of Rs.16,00,000/- as lease rent which is liable to be assessed to tax at 8% u/s.3-A of the Tamil Nadu General Sales Tax Act, 1959. Further, it was alleged that the transactions i.e. receipts of lease rent fall under definition 'sale' in section 2(n)(iv) of the Tamil Nadu General Sales Tax Act, 1959 and also comes under the definition of 'Business' in section 2(d)(ii) of the TNGST Act, 1959 and hence, the Management of the petitioner hospital should have got themselves registered under the provisions of the Act and reported receipts of lease rent and paid taxes thereon. With these allegations, the respondent proposed to determine the total and taxable turnover under the provisions of the Act and assessed the tax for the relevant Assessment Years. Apart from that, the respondent also proposed to levy penalty at 150% on the tax due u/s.12(3)(a) of the Act. Petitioner was directed to file their objections, which was filed. Respondent, after receiving objections, had completed the assessment by the impugned orders dated 01.07.2004 stating that the machineries which were purchased in the names of Doctors, who were also Directors of the Company, it is to be taken that the equipments and machineries are owned by the hospital and therefore, Section 3-A of the Act stands attracted and accordingly, confirmed the proposal in the notices dated 23.01.2004.

3. The first and foremost aspect which has to be considered is whether there was any material available at the hands of the respondent to come to a conclusion that the equipments were owned by the hospital which is a Private Limited Company, a separate and distinct legal entity. The respondent does not deny the fact that the equipments for which purchase invoices were produced, stand in the name of Doctors, who were the lessees of the operation theatres having entered into lease arrangement with the petitioner company. The reason assigned by the respondent for rejecting the purchase invoices in the names of Doctors is that they are Directors of the petitioner company. Respondent has lost sight of an important fact that the liability of a Director of a company is quite distinct and different from the liability of a company. As mentioned earlier, a company which is registered under the Companies Act is a statutory entity and can sue and be sued in its own name. Thus, the respondent have committed a fundamental error in assessing the petitioner to tax in respect of equipments owned by its lessees. The power to tax under entry 54 of list 2 of Schedule VII of The Constitution of India is with respect to 'sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods' and never can be extended to lease of immovable properties. Further,

respondent failed to note that the lease contemplated as deemed sale for purpose of compensation under the General Sales Tax liability of a State is with reference to movable goods alone and not with reference to immovable property like an operation theatre as in the petitioner's case. As it has been admitted by the respondent that all the machineries and equipments belong to lessees as the purchase invoices produced show that it stands in the name of Doctors, there is no lease of any goods as defined under the provisions of Act. Thus, I am fully satisfied that the respondent had no jurisdiction to levy sales tax on the petitioner in respect of the lease transaction. Thus, for the aforesaid reasons, the impugned assessment orders call for interference.

In the result, the Writ Petitions are allowed and the impugned orders are quashed. No costs.

13.04.2018

gm

To

The Commercial Tax Officer (FAC)
Ram Nagar Circle
Coimbatore – 18

T.S.SIVAGNANAM, J

gm

W.P.Nos.26100 to 26104 of 2018

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