IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.20324 of 1999

M/s.NPT offset (P) Ltd
rep. by its Managing Director
Rajkumar Sachdev
231, Royapettah High Road
Chennai 600 014. : Petitioner

..Vs..

1. The Joint Commissioner-II
(Suo Moto Revision)
Commercial Taxes Department
Chepuak
Chennai 600 005.

2. The Deputy Commercial Tax Officer
Royapettah II Assessment Circle
46 Greenways Road
Chennai 600 028. : Respondents

Writ Petition filed under Section 226 of the Constitution of India for a Writ of Certiorari to call for the records relating to the proceedings of the 1st respondent herein in Ref.No.M1/12141/98, SMR No.211/98 dated 8.7.1999 and quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader
(Taxes)

O R D E R

(Order of this Court was made by DR.VINEET KOTHARI,J)

The Assessee M/s.M/s.NPT offset (P) Ltd, has filed this Writ Petition under Article 226 of Constitution of India, aggrieved by the order of the Revisional order viz., the Joint Commissioner-II, Chennai for Assessment Year 1994-1995, on 08.07.1999 holding that the printing materials manufactured out of their own materials and sold by dealers are liable to be taxed as "printed materials".

2. The learned Appellate authority however held in favour of the Assessee vide order dated 22.05.1997, holding that the printing materials manufactured and supplied by the Assessee comes under the works contract and not a Sale, falling within the meaning of Section 3-B of the Tamil Nadu General Sales Tax Act, 1959. The Revisional authority vide impugned order dated 08.07.1999 suo moto revised the order of the Appellate authority and held against the Assessee. Aggrieved by the same, the Appellant has filed the present Writ Petition before this Court.

3. The learned counsel for the Petitioner submitted that the controversy is no longer res integra as the issue is covered by the Division Bench of this Court in the case of State of Tamil Nadu Vs. Premier Litho Works and Another reported in (2009) 26 VST 205 (Mad) in which the Division Bench of this Court has clearly held that supply of printed materials by the dealer to its customer constituted a works contract and not inter-state sales. The relevant portion of the said Judgment from the head notes is quoted below for ready reference:

> "On the question whether the supply of printed materials by the dealer to its customer constituted a works contract and not inter-State sales:
>
> Held, dismissing the appeal, that what was supplied by the dealer was only labels on which certain particulars had been printed to suit the requirements of a particular customer. The labels, by themselves, could not really be sold in the open market, since without the product of the customer being packed with any package material, there was no use for the labels. It could not be the case of the appellants that persons who manufactured spurious goods under the very same brand name,had an opportunity to buy these labels, so as to pass off their goods as those of the customers of the dealer. The contractor undertaking to do the work would not necessarily be deemed to sell the materials by the fact that in the execution of the contract for work some materials were used and the property/goods so used, passed to the other party. Therefore there was no reason to interfere with the order of the single judge."

4. He further submitted that the said Judgment is affirmed by the Hon'ble Supreme Court by dismissal of the Appeal in C.A.No(s).10162 of 2010 [State of Tamil Nadu Vs. Tvl the Premier Litho Works] filed by the State of Tamil Nadu on 03.08.2016. The learned counsel for the Assessee therefore submitted that the Revisional authority cannot have imposed tax on the said contract of printing the materials and supplying it to the customers which were works contract in the eye of law. It is further submitted that since the definition of 'Sale' under Section 2 (g) of the Central Sales Tax Act was amended by Finance Act 20 of 2002 only with effect from 11.05.2002, therefore for the Assessment Years 1994-1995 the Assessing Authority could not have imposed the CST tax on the Assessee as per the provisions of Central Sales Tax.

5. The learned counsel for the Revenue Mr.Mohammed Shaffiq was unable to contradict the said submissions.

6. Having heard the learned counsel on either side, we are of the view that the Writ Petition deserves to be allowed and the impugned order of the Revisional authority i.e., The Joint Commissioner-II dated 08.07.1999 deserves to be set aside as this matter is squarely by the decision quoted supra and in view of the provisions of the Section 2 (g) of the CST Act., the learned Assessing authority could not have imposed the tax for the interstate transactions in the present case. The work of printing the materials and supplying it to the individual customers as per their requirements obviously amounts to "works contract" and not sale, during the relevant period and as such since the extended definition of goods under CST Act came on the Statute book only with effect from 11.05.2002, no tax under the CST Act can be imposed on the Assessee prior to 11.05.2002, on works contracts. The period in question is 1994-1995 i.e., prior to said amendment of CST and the therefore the matter is squarely covered by the said Judgment of this Court. Accordingly, the impugned order of the Joint Commissioner-II, dated 08.07.1999 is set aside and the Writ Petition filed by the Assessee is allowed. No order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner-II
   (Suo Moto Revision)
   Commercial Taxes Department
   Chepuak
   Chennai 600 005.

2. The Deputy Commercial Tax Officer
   Royapettah II Assessment Circle
   46 Greenways Road
   Chennai 600 028.

+1CC to K.Goviganesan, Advocate, SR.No.101841.
+1CC to SPL.GP.SR.No.101810.

W.P.No.20324 of 1999

BP(CO)
CSR: 22/01/2020