IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.12.2019
CORAM:
THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P. No.24807 of 2002

Bharathi Press,
rep. By its Partner,
T.Jagadeesan ... Petitioner

versus

1.State of Tamil Nadu,
rep. By Secretary to Government,
Commercial Taxes &Religious Endowment department,
Fort St.George,
Chennai 600 009

2.The T.N.Taxation Special Tribunal,
'Singaravelar Maligai'
Rajaji Salai,
Chennai 600 001 ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for records of the common order passed by the 2nd Respondent Tribunal in O.P.No.699/2001 batch dated 18.03.2002.

For petitioner : Mr.N.Murli Kumaran

For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader

O R D E R
(made by DR.VINEET KOTHARI, J.)

Both the learned Counsel submitted that the case is squarely covered by the decision of the Coordinate Bench of this Court in the case of M/s.Bharat Offset vs. Tamil Nadu Taxation Special Tribunal and ors., 2010 SCC OnLine Mad 2999, wherein the Coordinate Bench of this Court has held as under :-

> 22. The works contract could be indivisible as it is in the case of a buildings construction contract or there can be cases where the price of the inputs and

the labour charges are separately fixed. The divergent judicial opinion in this regard was settled by the Supreme Court in (1958) 9 S.T.C. 353 [State of Madras Vs. Gannon Dunkerley & Co. (Madras)], where the Supreme Court held that in the case of a building contract, no sale of materials was involved in the construction of the building and therefore, they held the State Legislature was not competent to levy tax on the supply of materials involved in the execution of a works contract. Thereafter, the Law Commission suggested the insertion of a wide definition of 'sale' to cover works contract and consequently, Section 29-A was added in Article 366 of the Constitution by the 46th Amendment. It was held that when the power to tax a sale in the ordinary sense is subject to certain conditions and restrictions, the power to tax a deemed sale under 29-A was also subject to the same restrictions and conditions. In fact, in 88 S.T.C. 40 [Larsen and Toubro Ltd. vs. Union of India], the Supreme Court held that they did not propose to go into the question whether a deemed sale resulting from transfer of property of goods involved in the execution of a particular works contract amounts to a sale in the course of inter-State trade or commerce and that it ... "has to be decided in the light of the particular terms of the works contract and it cannot be decided in the abstract". Therefore, rightly in all the decisions that we have referred to above, as we have stated earlier, this issue has been decided with reference to the particular terms of the contract.

23. So, these are all the special features which would identify for us to see whether the transaction is taxable as one for sale of goods. We are not persuaded by the submissions made by the learned counsel for the petitioners that merely by inclusion the State will bring to tax what is a works contract. Even after the inclusion, it is necessary to prove whether a given transaction is a works contract pure and

simple or it involves sale of goods. The Supreme Court held that this is a mixed question of law and fact depending upon the facts of each case vide (1984) 55 S.T.C. 314. On the contrary, the State wanted to check the mischief, where merely because the goods were printed material, the assessees had been able to persuade that the transfer of goods in question were part of a works contract, relying on Anandam Viswanathan's case (supra). Therefore, the challenge to the constitutional validity of the Government Order is rejected.

24. Learned Government Pleader relied only on a decision in State of Andhra Pradesh Vs. Kone Elevators (India) Ltd., reported in 2005 (40) S.T.C. 22 which dealt with the actual work at site for installation of lift. It is submitted that for installation, the test that is applied should be applied here and that is the real standard for determination whether it is a sale or contract.

25. As we have seen from the decisions referred to above, to decide whether a contract in question is a works contract or if it is only a sale, each transaction will have to be examined on the facts and circumstances of the case having reference to the terms of the contract and that question cannot be decided in the abstract.

26. For all the reasons stated above and in view of the various decisions discussed herein before, the writ petitions are dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

2. In view of the same, the present Writ Petition is also disposed of on the same terms. No costs. Consequently, W.P.M.P.Nos.34103 to 34105 of 2002 are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1 The Secretary to Government,
Commercial Taxes &Religious Endowment department,
Fort St.George,
Chennai 600 009

2.The T.N.Taxation Special Tribunal,
'Singaravelar Maligai'
Rajaji Salai,
Chennai 600 001

+1 cc to Special Government Pleader(T) sr 106594
+1 cc to McGan Law firm Advocate sr105996

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