IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.25658 of 2002
and
W.M.P.No.35329 of 2002

Tvl.Mani Offset,
rep. by its Proprietor,
Mr.S.Baskar Pandian,
No.112, Bells Road,
Chennai 600 005. Petitioner

Versus

1. The Tamil Nadu Taxation Special Tribunal, Chennai.

2. The State of Tamil Nadu,
rep. by its Secretary
to the Government,
Commercial Taxes & Religious
Endowment Department,
Fort St. George, Chennai 600 009.

3. The Commercial Tax Officer
Chepauk Assessment Circle, Chennai Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in O.P.No.853 of 2001 dated 18.3.2002 and quash the same and further direct the respondents not to subject the printed materials that are executed against specific orders exigible to Sales Tax U/S.3 of the TNGST Act, 1959 as sale in pursuance of G.O. Ms.66/2001 dated 16.8.2001, as it is outside the purview of the power of the State Legislature and violative of the consistent principles in law laid down by the Hon'ble High Court of Madras reported in AIR 1954 Madras 1130; 39 STC 226; 51 STC 28; 54 STC 382; 97 STC 489 and the Hon'ble Supreme Court of India reported in AIR 1958 SC 560; 16 STC 240; 29 STC 438; AIR 72 SC 1131; 73 STC 1; 55 STC 314 and 88 STC 248.

For Petitioner : Ms.K.Amudha
For Respondents : Mr.M.Hariharan, AGP

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

Learned counsel appearing for both sides submitted that the controversy involved in the present case is covered by the decision reported in in Bharat Offset and others v. Tamil Nadu Taxation Special Tribunal and another ((2010) 34 VST 342 (Mad)).

2. The relevant portion of the said Judgment is quoted below for ready reference:-

> "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 Hindustan Aeronautics Ltd. v. State of Karnataka (1984) 55 S.T.C. 314 (SC). 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 (1977) 39 STC 226 (Mad). Therefore, the challenge to the constitutional validity of the Government Order is rejected.
>
> The learned Government Pleader relied only on a decision in State of Andhra Pradesh v. Kone Elevators (India) Ltd. reported in (2005) 140 STC 22(SC) 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.
>
> 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.

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

3. In view of the same, the present Writ Petition is also disposed of on the same terms. No costs. Consequently, the connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

ssk.

To:

1. The Tamil Nadu Taxation Special Tribunal, Chennai.

2. The Secretary to the Government,
Commercial Taxes & Religious
Endowment Department,
Fort St. George, Chennai 600 009.

3.The Commercial Tax officer
Chepauk Assessment Circle
Chennai

+1 CC to The Spl. Govt. Pleader (T) sr 105442.

W.P.No.25658 of 2002

VD(CO)
SP(07/02/2020)