IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.10615 of 2010
and
M.P. No.2 of 2010

M/s Soundarya Decorators (P) Ltd,
Rep by its Authorised Signatory,
Mr.P.Madhusudanan,
No.6, Developed Plot,
Guindy Industrial Estate,
Chenni - 600 032.

...Petitioner

Vs

1.The Assistant Commissioner (CT) Addl,
Guindy Assessment Circle,
No.46 Greenways Road,
Chennai - 600 028.

2.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

3.The Union of India,
Rep by its Secretary,
Ministry of Finance,
Department of Revenue,
No.14, Hudco Visahala Building,
"B" Wing, 6th Floor,
Bhikaji cama Palace,
New Delhi - 110 066

... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, to call for the records of the first respondent in TNGST.No.0903198/2005-06 quash the impugned revised order dated 29.03.2010 passed pursuant to the "audit objections" and further direct the first respondent not to levy or collect any "sales tax"on the turnover of Rs.14,43,78,304/- relating to "service charges" received by the petitioner for interior decoration" under Section 65(105)(59) taxable under Section 65(105)(q) under the Finance Act 1994 on which the petitioner had already remitted the service tax to the third respondent herein and not being liable to sales tax under entry 54, List II of the VII Schedule of the Constitution of India as held by the Apex Court in (2006) 145 STC 91 and followed in (2008) 12 VST 371.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.V.Haribabu,
Additional Government Pleader (T)
for R1 and R2
No appearance for R3

O R D E R

The petitioner has challenged an order-in-original dated 29.03.2010 for the period 2005-2006.

2. The petitioner was originally assessed vide proceedings dated 18.03.2008. Thereafter, various defects were noticed in the completion of original proceedings leading to commencement of proceedings for revision afresh.

3. The petitioner states that it is engaged in the activity of interior decoration assessed to service tax in terms of the Finance Act, 1994, under which Service Tax is levied. It had entered into contracts with clients for provision of interior decoration services.

4. The Assessing Authority was of the view, upon perusal of its financials, that the Petitioner had engaged in the supply of goods and had called upon the petitioner to furnish various particulars such as agreement copies, work orders, detailed description of the nature of work carried out etc. The pre-assessment proposal dated 30.07.2019 states as follows:

> 'Tvl.Soundarya Decorators (P) Ltd., Chennai- 600 032 were finally assessed on a total and taxable turnover of Rs.12,78,98,281.00 under the TNGST Act'59 for the year 2005-06 in his office proceedings dated 18.03.2008.

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2) On a further scrutiny of records, the following defects were noticed.

(i) A turnover of Rs.40,712.00 was assessed at 3%. But no Form XVII declarations were filed.

(ii) In the Profit and Loss account sub-schedule, the contract receipt in Chennai is shown as Rs.14,43,78,304.00 under Non-Excise and Rs.10,71,36,999.00 under Excise and contract receipt supply Rs.2,06,41,377.00. But, the assessees disclosed supply of goods for a turnover of Rs.12,78,98,281.00 and assessed. The difference between the turnover as per Profit and Loss account and the turnover assessed is not known.

Contract receipt (Non-Excise)	Rs.14,43,78,304.00
Contract receipt (Excise)	Rs.10,71,36,999.00
Contract receipt (supply)	Rs. 2,06,41,377.00
Total receipts	Rs.27,21,56,680.00
Turnover already assessed	Rs.12,78,98,281.00
Difference	Rs.14,42,58,399.00

3) The assessees are requested to furnish the details for non-disclosing the above difference in the returns and assessment. They have not furnished any details regarding the detailed list of works contract done along with the copies of agreement, work order, nature of work done, etc., In the absence of such details, the eligibility for exemption or otherwise could not be verified. It is therefore proposed to assess the above turnover at 12%.

4) The assessees purchased solid sheet for a value of Rs.1,43,883.00 against Form XVII declarations from Tvl.Onspect, Guindy. They have not furnished the details of purchase of XVII extract and the details of goods manufactured and sold or used in work contract. In the absence of such details, the correctness of issue of Form XVII could not be verified. It is therefore proposed to levy the difference of tax at 16.85% and penalty at 150% of the difference tax and surcharge due, under Section 23 of the TNGST Act'59.

5) It is therefore proposed to revise the assessment for the year 2005-06 under the TNGST Act' 59 as detailed below:

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(i) Liability under Section 3B :Rs.7,18,04,930.00 at 12%

(ii) Not covered by Form XVII :Rs. 40,712.00 at 12%

(iii) Liability under Section 3H (Resale)

:Rs.5,60,52,639.00 at 12%

(iv) Difference of works contract turnover:

Rs.14,42,58,399.00 at 12%

(v) Purchase value against Form XVII

: Rs.11,43,883.00 at 16.85%

Total and taxable turnover proposed :

Rs.27,33,00,563.00

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6) It is also proposed to revise the surcharge already levied.

7) It is also proposed to levy penalty of Rs.2,89,116.00 being 150% of the difference tax and surcharge at 16.85% on the turnover of Rs.11,43,883.00 towards purchases against Form XVII under section 23 of the TNGST Act' 59.

8) The assessees are requested to file their objections against the above proposals within fifteen days from the date of receipt of this notice, failing which final orders will be passed as proposed above.'

5. The petitioner filed a reply dated 16.09.2009 producing some particulars as called for. This reply does not clarify, in my considered opinion, the nature of work engaged in by the petitioner. I extract the same below:

'With reference to above, we are furnishing following facts for your perusal

1) Contract receipt (non-) Rs.14,43,78,304.

With reference to above, we have paid the resale tax on deemed sale value on monthly basis and paid 1% tax. The said deemed sale value works out to Rs.5,60,52,639.00. The said turnover has been assessed in the assessment order. The difference between Rs.14,43,78,340 and Rs.5,60,52,639 is Rs.8,83,25,701. The details are hereunder

(in Rupees)

A	Labour charges	5,50,75,840
B	Admin Charges	1,60,53,696

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A	Labour charges	5,50,75,840
C	Selling Charges	46,47,931
D	Finance Charges	14,45,987
E	Depreciation	5,35,091
F	Others	1,05,67,156
	Total	8,83,25,701

2) Contract Receipts - Rs.10,71,36,999

The sales within Tamil Nadu- Rs.7,18,04,930 Already assessed under TNGST Act as per your order

CST Sales - Rs.3,53,32,069

Total -Rs. 10,71,36,999

Few copies of Invoices have been enclosed to support our claim.

2) Contract receipts - Rs.2,06,41,377

This amount represents contract receipts relating to work done at Hyderabad branch and received at the branch account at Hyderabad. The entire transaction took place in Hyderabad and was disclosed to Hyderabad Sales Tax authorities and copy of ledger abstract is enclosed. The relative goods have been purchased and used in Hyderabad itself. No materials were transferred from Chennai. Hence there is no tax liability.

As we have furnished the required details there is no tax liability on the difference turnover sd it relates to sales effected in other states, CST sales, labour and other like charges. We request you to drop the proposal of levy tax on the difference turnover.

We are enclosing the details contract receipts alongwith PO copies as required.

(Supply)

4) Form XVII value of Rs.11,43,833

We are herewith submitting statement from ONSPEC, Guindy, which contains details of Serial Number, Party Name, Address, Form XVII No, date, Amount. The said total value of Form XVII worksout to be Rs.11,43,883/-.

We have procured Corian Acrylic sheets from Onspe and used in the manufacture of Table Top, work station, wash basin and which are sold and paid tax and assessed.

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Considering the above facts, we request you to drop the penalty proceedings and assess the turnover as reported and render justice.'

6. On 21.09.2009 time was sought by the petitioner and on 09.10.2009, the petitioner files a reply stating that break-up of the operating income earned was enclosed. No such enclosures have been placed in the compilation before me. There is only an extract from balance sheet placed at Page 61 of the document compilation that does not support this submission as it contains no narration in regard to nature of activity.

7. The case of the petitioner is that income was earned purely on the activity of interior decoration, for which service tax has been paid. The petitioner thus prayed that the proposal for levy of VAT be dropped. Vide final notice dated 28.10.2009, the petitioner was specifically called upon to produce documentary evidence in support of its claim that the sum of Rs.14,43,78,304/- only pertained to the activity of installation and would not attract levy of Sales Tax. Work orders, purchase orders, description of work and installation done, Invoices and other supporting documents were called for.

8. Vide letter dated 27.10.2009 the petitioner had requested 10 days time to furnish the details and file objections and a final opportunity was granted till 16.11.2009. A detailed show cause notice dated 10.12.2009 was thereafter issued proposing confirmation of the proposals made.

9. Vide reply dated 19.12.2009, the petitioner raises the following objections:

(i) Challenging the jurisdiction of the Assessing Authority to re-assess on the ground that (i) there is no escapement of tax or turnover to justify the proposed re-assessment and (ii) no material has been gathered after the original order of assessment implying that the present proceedings were a change of opinion, thus impermissible in law. Reliance was placed on the Judgments of the Delhi High Court in the case of Tvl.Krishna Enterprises Vs. Commissioner of Sales Tax (140 STC P. 148) and Binani Industries Limited v. Assistant Commissioner of Commercial Taxes (6 VST 783 (SC)) in this regard.

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(ii) On merits, the petitioner reiterated that the income related entirely to the activity of installation and there was no transfer of property in goods that would give rise to turnover assessable to VAT. Ledger copies were enclosed in support of this position.

10. It is relevant to note that the evidence specifically sought for such as the work orders, purchase orders, detailed description of the work carried out, invoices etc., were not produced. A personal hearing was granted, at the time of which, a statement of the Senior Manager was recorded. It appears that some documents such as, Cognizant PO No.2005/IF/365/CAP dated 29th November 2005 for Rs.54,44,419/-; Bill SDPL-C-162 dated 30th December 2006 for Rs.53,98,991.65; Designer.WEB Certification dated 5th January 2007 for Rs.53,98,991.65; Cognizant PO No.2005/IF/364/ CAP dated 29th November 2005 for Rs.48,47,623/-; Bill SDPL-C-163 dated 30th December 2006 for Rs.48,47,502.00 and Designer.WEB Certification dated 6th May 2006 for Rs.48,47,502.00 were produced.

11. It is on the basis of the aforesaid material (or the lack of it) that the Assessing Authority has passed the impugned order of assessment.

12. Heard Mr.Sundareswaran, learned counsel for the petitioner and Mr.Haribabu, learned Additional Government Pleader (T) for respondents 1 and 2.

13. I see absolutely no merit in the Writ Petition insofar as the Assessing Authority, has in the course of the order, rendered categoric findings with regard to his repeated requests for evidences in support of the stand of the petitioner to the effect that the activity carried on by the petitioner was pure installation, that were not produced.

14. In my considered view, categorisation/classification of an activity can be undertaken by the Court only if all material, relevant and descriptive details of the work have placed before the authorities and findings contrary to such evidences have been rendered. In this case, despite more than adequate opportunities, having been extended, the petitioner has placed on record only very limited particulars, that are insufficient

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to support its stand. The petitioner now attempts to obtain an order from the Court on the nature of activity carried on by it which is impermissible in terms of Article 226 of the Constitution of India. The Assessing Authority, has on the basis of the materials produced, come to a conclusion that the materials are insufficient and do not satisfy the claim of the petitioner. There was no detailed description given and importantly, no certificate produced from the clients in support of the petitioners' claim that all materials were supplied only by the clients and it was only the activity of installation that was rendered by it. I thus see nothing perverse in the order impugned, warranting interference. Reliance upon the judgement of the Supreme Court in the case of Imagic Creative Pvt. Ltd V. Commissioner of Commercial Taxes and others ((2008) 12 VST 371) is futile in this case as, in my view, it would apply only in a matter where the nature of activity carried on is undisputed. The Writ Petition is dismissed granting liberty as stated in paragraph 15 below. Connected Miscellaneous Petition also dismissed. No costs.

15. The Petitioner is permitted, if it so desires, to file statutory Appeal challenging the impugned order of assessment within a period of three (3) weeks from date of receipt of a copy of the order, in accordance with law.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT) Addl,
Guindy Assessment Circle,
No.46 Greenways Road,
Chennai - 600 028.

2. The Secretary, The State of Tamil Nadu,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

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3. The Secretary, The Union of India,
   Ministry of Finance, Department of Revenue,
   No.14, Hudco Visahala Building,
   "B" Wing, 6th Floor, Bhikaji cama Palace,
   New Delhi - 110 066

+1cc to the Special Government Pleader Sr.77339

+1cc to Mr.V.Sundareswaran, Advocate Sr.77129

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