BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.8091 to 8094 of 2013
and M.P(MD) Nos. 1, 1, 1 and 1 of 2013

In all writ petitions:

M/s.Rajeswari Colour Lab
S.Jerome Building,
Fort Station Road,
Trichirappalli - 620 002 .. Petitioner

Vs.

1.Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.Assistant Commissioner (CT),
Rock Fort Assessment Circle,
Trichirappalli - 620 021. ... Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent and quash the assessment proceedings in TIN No.33513400534/2006-2007, 2007-2008, 2008-2009 and 2009-2010 dated 15.04.2013 as illegal as this amounts to double taxation and direct the second respondent pass fresh orders as per the decisions of the Supreme Court reported in 12 VST 371.

In all writ petitions:

For Petitioner :Mr.C.Baktha Siromoni
For Respondents :Mrs.J.Padmavathy Devi
Special Government Pleader

C O M M O N O R D E R

Challenge in these writ petitions is to an assessment framed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') in relation to the periods 2006-2007 to 2009-2010.

2. The question that arises in all four writ petitions is common. The petitioner is a registered dealer and runs a Photo Studio in Trichirappalli. The petitioner takes digital photo prints without using photographic films, transfer such images to the computer and prints the same with the assistance of a computer and printer, into prints.

3.According to the petitioner, its activities fall within the ambit of 'photographic services' and the petitioner is assessed to service tax as 'works contract' under the provisions of the Finance Act, 1994.

4. While this is so, the petitioner received notices under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods in question calling upon it to show cause why the turnover not be subjected to VAT. The petitioner raised objections to the proposals despite which orders of assessment, adverse to it, were passed on 08.12.2011.

5. The petitioner challenged the same by way of writ petitions in W.P(MD) Nos. 1361 to 1363 of 2012. A learned single Judge of this Court, vide order dated 21.08.2012, allowed the writ petitions on the simple ground of violation of the principles of natural justice. The learned single Judge directed the respondent to consider the objections of the petitioner and pass orders *de novo* and in accordance with law. Pursuant thereto, the petitioner filed objections dated 24.09.2012 objecting to the proposed levy on the Act on the ground that its activities tantamount to 'service' and 'not sale of goods'.

6. The petitioner *inter alia* relied upon the judgments of the Supreme Court as follows:

i)The Assistant Sales Tax Officer and Others Vs. B.C. Kiame (1977-39 STC 23)
ii)M/s.Associated Cement Companies Ltd., Vs. Commissioner of Customs (124 STC 59)
iii) M/s. Imagic Creative Private Limited Vs. Commissioner of Commercial Taxes and others (2008-12 VST 371).
iv) Rainbow Colour Lab Vs/State of Madyapradesh
v)C.K.Jidheesh Vs.Union of India (3 VST 1)

7. Notwithstanding the detailed submissions made and the objections raised, the impugned orders of assessment have been passed by the Assessing Officer as against which the present writ petitions have been filed.

8. Heard Mr.Baktha Siromoni, learned counsel for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing on behalf of the respondents.

9. The issue before me concerns taxability of turnover received from the services rendered by the petitioner in regard to digital photography. Courts have consistently settled the position that the activity carried in this regard would only amount to a 'contract of skill and labour' and not a 'contract of sale'.

10. The first judgment on this issue is that of the Full Bench of the Supreme Court in the case of *B.C.Kame* (supra) wherein the

Bench, after extracting a paragraph from "Sale of Goods" by P.S.Atiyah noticing that the distinction between a 'contract of sale' and 'contract of skill and labour' agitated the Courts frequently states thus:

11. In the case of Robinson Vs. Graves(2), it was held that a contract to paint a portrait was a contract for skill and labour and not a contract for the sale of goods despite the position that the object of the contract to transfer the property in the completed portrait to the defendant. The exercise of skill and labour, consequence to the substance of the contract, was only ancillary to the position that the some tangible materials in addition to the skill was transferred to the customer and this did not make a difference to the result. Because the substance of the contract was in effect exercise of skill and experience of the artist in producing the picture.

12. Though the above observations were made in the context of the activities/skill of a photographer, the Full Bench concluded as follows:

Keeping the above principles in view, we may now turn to the facts of the present case. When a photographer like the respondent undertakes to take photograph, develop the negative, or do other photographic work and thereafter supply the prints to his client, he cannot be said to enter into a contract for sale of goods. The contract on the contrary is for use of skill and labour by the photographer to bring about a desired result. The occupation of a photographer, except in so far as he sells the goods pur- chased by him, in our opinion, is essentially one of skill and labour. A good photograph reveals not only the aesthetic sense and artistic faculty of the photographer, it also reflects his skill and labour. A good photograph in most cases is indeed a thing of beauty. It not only seeks to mirror and portray a scene from actual life, it also catches and preserves for the future what belongs to and is a part of the fleeting moment. The ravage brought about by the passage of time, the decay and the ageing process which inevitably set in as the years roll by leave what is pre- served in the photograph unaffected. It is no wonder that an old photograph revives nostalgic memories of days no more, but to which we rook back through the mist of time with fondness even though such fondness has a tinge of sadness.

13. In a subsequent judgment, the Supreme Court in the case of *Rainbow Colour Lab* (supra) reiterated the position that the work

of a photographer was only in the nature of 'service contract' that did not involve sales of goods.

14. This view was yet again reiterated in the case of *Associated Cement Companies Ltd.,* (supra) by the Full Bench and thereafter by the Division Bench of the Supreme Court in *C.K.Jidheesh* (supra).

15. In a recent decision in the case of *M/s.Imagic Creative Private Ltd.,* (supra) a Bench of the Supreme Court considered the question of whether charges collected towards service rendered by an advertising agency for evolving of a prototype conceptual design upon which service tax had been collected would also be liable for tax under the Karnataka Value Added Tax Act, 2003.

16. After considering the nature of services rendered, the Bench concluded that payment of service tax and Value Added Tax are mutually exclusive. Therefore, they should be held to be applicable exclusively having regard to the relevant parameters of the respective levies and bearing in mind the differences envisaged in a composite contact as contradistinguished from an indivisible contract. The former may consist of different elements each providing for, and attracting different levies.

17. The resounding position of law as on date is thus to the effect that the activity of digital photography as carried on by the petitioner herein, is a service as contemplated under the provisions of the Finance Act, 1994 levying service tax and the petitioner is, already, remitting service tax on the said receipts. In such circumstances, there is no justification to subject the receipts to Value Added Tax both on the reasoning that :-

i) the activity in question is a contract for skill and labour and

ii) the levy of Service Tax and Value Added Tax are mutually exclusive.

18. In the light of the aforesaid, the impugned assessments are quashed and these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

CM

To,
1.Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.Assistant Commissioner (CT),
Rock Fort Assessment Circle,
Trichirappalli - 620 021.

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-79739[F] dated 05/08/2019)

+1 CC to M/s.SPL GP (SR-80283[F] dated 07/08/2019)

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