IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

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

T.C.(A).No.732 of 2006

M/s.Women's Industrial Tailoring
Community Service Society,
P.S.S.Office Complex,
Unjavelampatti Post,
Pollachi Taluk. ... Appellant

..Vs..

The State of Tamil Nadu rep by
The Joint Commissioner (SMR) of
Commercial Taxes,
Chepauk, Chennai-600 005. ... Respondent

Prayer: Tax Cases (Appeal) are filed under Section 260-A of the Income Tax Act, 1961, against the order of the Joint Commissioner (SMR) of Commercial Taxes dated 29.01.2002 passed in Ref.No.N1/22436/98-SMR No.:357/98 for Assessment Year 1995-1996.

For Appellant	:	Ms.R.Hemalatha
For Respondent	:	Mr.ANR.Jaya Prathap Government Advocate (Tax)

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J.)

This Tax Case (Appeal) has been filed by the Assessee against the order of the learned Joint Commissioner (SMR) of Commercial Taxes dated 29.01.2002, whereby the said authority reversed the order passed by the Appellate Assistant Commissioner and held against the Assessee that the job of printing of Bill books, receipt books, name pads e.t.c., of the particular institution viz., Arokiya Matha Higher Secondary School are not works contract and subject to tax as per Section 3 (2) of the Tamil Nadu General Sales Tax Act (in short 'Act'). The relevant portion of the order passed by the authority is quoted below for ready reference:

> "*Perusal of the records reveals that the Appellate Assistant Commissioner (CT) allowed the appeal observing that goods purchased locally were used and materials were manufactured for the use of the individual customer. It is seen on going through the records that the dealers manufactured printed materials by using their own raw materials and supplied the goods charging the customers entire cost of the goods. There was no proof to show the customers had entered into contract with the dealers for purchase of paper and for job work. Further the Supreme Court had decided in the decision reported in 95 STC page 595 that even if there is only one purchaser of the article, there is a market for the articles. In the scheme of taxation, the sale of goods mentioned in First Schedule has to be taxed*

straightaway with reference to the section 3 (2) of the Act. No works contract is involved when the printed materials are manufactured out of their own materials and sold by the dealers. Tamilnadu Taxation Special Tribunal has held in various cases that printed materials are liable to tax as sales of goods as could be seen from the decisions cited below:-

1.Tvl.P.Munirathnam Naidu & Sons, Vellore Vs. State of Tamilnadu
((TC (R)No.434 and 435/97 dated 9.4.1999)
2. The South Arcot Cooperative printing works Limited (TC (A)no.298/97 dated 1.9.1999)
3. Tvl. Rukmani offset Press (TC (R)No.3203/3204/97 dated 30.11.1991.

In these circumstances, I find that the order of the Appellate Assistant Commissioner (CT) is not correct and hence it is set aside and the order of the Assessing Officer is restored. The Assessing Officer is directed to give effect to this order.

In the end the Suo Motu Revision proposal is confirmed.

Sd/- R.AbdulAzeez.

Joint Commissioner (SMR)"

2. The Appellate Authority has passed the order in favour of the Assessee in the following manner:

"7.I heard both the sides and perused the connected records which are made available before me. The assessing authority has rejected the accounts on the ground that the society-appellant has issued sale bills and therefore sold the printed materials only to the customer. The assessing

authority has added that the raw-materials were owned by the Society-appellant and the appellants has failed to prove that they are doing job work only. The Departmental representative also in his written argument had stated that the customers have not supplied any materials to the appellant and prayed for sustainment of assessment order. I have examined all these points with that of accounts. The appellants had undertaken printing work for various customers. The Printed materials were prospectus, receipt books, letter and question papers for school examination, invoices, voucher books, pay roll, answer sheets and question papers, memo pad etc.

The main object of the society (appellants) is providing Vocational Training to rural youth and women in printing, binding, composing and tailoring under the auspicious of governmental organizations like DRDA DIC etc., A perusal of the purchase bills revealed all the materials were tax suffered. Eventhough it is printing contract the predominant role is only work of labour. The materials are suitable for the specific customer and it is not suitable for general purpose. Therefore applying the principles of Gunasundari case to this case, the goods were not utilized for general purpose and it is for the individual customer and therefore I have allowed the appeal to the favour of appellants. The levy of penalty is also *not warranted in this case and hence the penalty also ordered to be deleted.*

In the result, the appeal is ALLOWED.
Dated this the 15th day of September 1997.:"

3.The learned counsel for the Assessee Ms.R.Hemalatha, urged that the Assessee was a charitable organization for Women and to encourage vocational training to Rural youth and women in various discipline. They have undertaken job works like printing of Bill books, receipt books, name pads e.t.c., of the particular institution viz., Arokiya Matha Higher Secondary School on receipt of specific orders and therefore the work carried out by the Assessee is in the nature of works contract, since the Sales Tax under the provisions stood already paid for materials like paper and binding materials and no tax can be levied by the revisional authority by reversing the order of the Appellate Authority. She relied upon the Judgment of the Bombay High Court in the case of ***Sarvodaya Printing Press Vs. State of Maharashtra*** reported in (1994) (93)STC 387. The relevant portion of the said Judgment is quoted below for ready reference:

"*The applicant ran a printing press where only job-work was done. It supplied printed material to* *the Madhya Pradesh Electricity Board (MPEB) in the form of multi-coloured triplicate receipt books, specially designed, printed and prepared to the specifications of the MPEB. The words "Madhya Pradesh Electricity Board" were printed in various faint colours all over each page of the receipt book as a background on which the detailed heads of the charges of electricity such as energy bill, surcharge, etc., were printed in black. The charges for the supply were of one composite sum for the entire job. The applicant was obliged to destroy any receipt books in excess of the MPEB's requirements. On the question whether the transaction was a sale or works contract:*

Held,that having regard to special type of job-work done and other basic circumstances, the supply represented a works contract. The intention of the parties was material and it was obvious. The principal object of the MPEB was to get the material printed and not to purchase printed material. The charges were composite. The books were specially designed *for the MPEB as per its specifications as to size, type, colour, format, background, etc. No space was left blank obviously because the books were valuable and upon misuse could cause terrible loss to the MPEB. Under the contract the applicant could not retain or use the printed books and the excess, if any, had to be destroyed. Although the paper and ink used were property of the applicant before printing, thereafter they became the property of the MPEB by theory of accretion. The passing of property in the goods used to the MPEB was, by the very nature of things, only incidental or ancillary to the contract of printing. No transfer of chattel qua chattel was involved. The work done was composite or indivisible with separate charges for the material. The applicant was responsible for protecting the goods and preventing them from falling into the hands of third parties. The goods were not standard goods and were not capable of any use to any one else and thus had no commercial value. Material could not be used even as scrap if rejected and had to be destroyed. Therefore,* *the supply of printed material to the MPEB by the applicant was not a sale but a works contract.*

4. She also relied on the Judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu Vs. Anandam Viswanathan*** reported in ***(1989) 73 STC 1.*** The relevant portion of the said Judgment is extracted hereunder:

"Held, affirming the decision of the High Court, that the ontract in this case was one, having regard to the nature of the job to be done and the confidence reposed, to work to be done for remuneration and no liability to sales tax arose in respect thereof. But, since the demand notes prepared by the respondent showed the cost of paper separately and the supply of paper was treated separately, this was a composite contract for the supply of paper and for the execution of work.

BY THE COURT: (i) " In each case, the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of *a contract for work some materials are used and the property in the godds so used passes to other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials. Whether or not and which part of the job-work relates to that depends on the nature of transaction. A contract for work in the execution of which goods are used may take any one of the three forms as mentioned by the Supreme Court in GOVERNMENT OF ANDHRA PRADESH vs.GUNTUR TOBACCOS LTD. [1965] 16 STC 240."*

(ii) *"Printing of question papers at the behest of a University or educational institutions is rather a delicate and confidential type of work and the price paid for supplying such printed question papers or printed matters entails primarily the confidence, and secondly the skill and to a very small measure the material... It cannot be categorised as entailing sale of goods but it is rather a contract for works done."*

Government of Andhra Pradesh V.Guntur Tobaccos Ltd. [1965] 16 STC 240 (SC) applied."

5.The learned counsel for the Revenue, however, reiterated his submissions advanced before the Joint Commissioner and also placed reliance on the impugned order of the Joint Commissioner in support of his contention.

6.Having heard the learned counsels on either side and having gone through the materials placed on record and the Judgments cited at bar, we are of the opinion that the Impugned Order passed by the Joint Commissioner (SMR) of Commercial Taxes under revisional jurisdiction is not sustainable. The works carried out by the Assessee, which is a charitable organisation for Women promoting vocational training to Rural youth and women in various discipline is in the nature of the works contract as the goods are supplied to a particular institution on specific orders and as such are not utilised in the course of business of the Assessee for sale otherwise and the property in question stands transferred to the customer as per the specification of the customer and that the specific works contract has been carried out by the Assesee complying with the specific orders and, therefore, the same clearly falls under the Section 3(B) of the TNGST Act, 1959, falling within the charging provision of Section 3 of the Act. Therefore, we are satisfied that the order of the Revisional authority dated 29.01.2002 is liable to be set aside and accordingly set aside.

In the result, this Tax Case Appeal is allowed. No order as to costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking Order
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(V.K.,J.) (R.S.K,J.)
06.02.2020

To

The Joint Commissioner (SMR)
Commercial Taxes,
Chepauk, Chennai-600 005

DR. JUSTICE VINEET KOTHARI,J
and
MR. JUSTICE SURESH KUMAR,J

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T.C.A.No732 of 2010

10.02.2020