IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23664 of 2004

The State of Tamil Nadu,
rep. by Deputy Commissioner (CT),
Coimbatore Division,
Coimbatore. ...Petitioner

Vs.

1.Tvl.S.C.M.Textile Processing Mills,
896/2 Suriya Nagar,
Karuvampalayam, Tirupur - 4.

2.The Registrar,
Tamilnadu Taxation Special Tribunal,
Chennai - 1. ...Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorari calling for the records of the Second Respondent pertaining to the order dated 29.07.2002 made in O.P.No.503 of 2002 and quash the same as illegal.

For Petitioner : M/s.Dhanamadhuri
Government Advocate

For 1st Respondent : Mr.A.S.Mujibar Rahman

For 2nd Respondent : Tribunal

ORDER

(Order of the Court was made by DR.VINEET KOTHARI, J.)

The present writ petition has been filed by the Revenue aggrieved by the order passed by the Tamil Nadu Taxation Special Tribunal, Chennai - 1 dated 29.07.2002 in O.P.No.503 of 2002, allowing the petition filed by the 1st respondent/S.C.M.Textile Processing Mills. The Tribunal held that the use of dyes and chemicals by the 1st respondent/petitioner/assessee, which executed the works contract in favour of its customers, was not taxable as there was no transfer of property to the customers.

2.Learned Government Advocate for the Revenue would submit that a Coordinate Bench of this Court has already decided similar revision petition in favour of the Revenue and placed before us, one such judgment in State of Tamil Nadu Vs Tex-in Printers reported in (2014) 70 VST 239 (Mad), in which a Coordinate Bench of this Court, in similar circumstances, held as under:

> "The learned Additional Government Pleader appearing for the Revenue placed before us the unreported decision of this Court dated July 1, 2011, passed in T.C.(R) Nos.842,817, 818, 819 to 823, 826, 841, 843, 849, 850, 870, 982, 987, 990, 1036, 1038 and 1040 of 2006, wherein identical questions of law were raised. In the said revision while following the decisions reported in Rainbow Colour Lab Vs State of Madhya Pradesh (2000) 118 STC 9 (SC) and Associated Cement Companies Ltd Vs.Commissioner of Customs (2001) 124 STC 59 (SC), this Court held that after introduction of Section 3B and aftr amendment made to the definition of "sale" under Section 2(n)(ii), the contention raised by the learned counsel for the assessee cannot be accepted, since by the operation of law, the transfer of goods involved in works contract would amount to "sale" taxable under section 3B. The assessee therein had purchased the dyes and chemicals from outside the State. Consequently, this Court held that the entire turnover was assessable to tax.
>
> In the circumstances, following the unreported decision of this Court dated July 1, 2011 passed in TC(R) Nos.842 of 2006 etc., batch, the above tax revision is allowed, thereby the order of the Sales Tax Appellate Tribunal is set aside. No costs."

3.Learned counsel for the 1st respondent/assessee has not controverted the aforesaid submissions made by the learned counsel for the Revenue. Accordingly, we allow the present Writ Petition in favour of the Revenue in the same terms as that of the decision cited supra. No costs. A copy of this order shall be communicated to the 1st respondent/ assessee.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Registrar,
Tamilnadu Taxation Special Tribunal,
Chennai - 1.

2.Tvl.S.C.M.Textile Processing Mills,
896/2 Suriya Nagar,
Karuvampalayam, Tirupur - 4.

+1cc to Mr.A.S.MujiBurrahman, Advocate, S.R.No.15489
+1cc to Special Government Pleader, S.R.No.16406

W.P.No.23664 of 2004

LN(CO)
KKV/07/08/2020