N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.27810 & 27811 of 2016
and
W.M.P.Nos.23985, 23986 & 23987 of 2016

Tvl.National Power Press,
Rep.by its Partner,
R.Raguraman,
No.2542 Rajagopalasamay Koil St,
Thanjavur - 9. ... Petitioner in both W.Ps.

Vs.

1.The Special Committee U/s 16 D
of the TNGST Act, 1959,
Secretariat, Chennai 600 009.

2.The Commercial Tax Officer,
Thanjavur II Assessment Circle,
Thanjavur. ... Respondents in both W.Ps.

Prayer in W.P.No.27810 of 2016: Writ Petition is filed under article 226 of the Constitution of India, Writ of Certiorari, calling for the records of the First Respondent in SCP No.01/2016 Ref No.M1/3606/2015 dated 16/06/2016 relating to Assessment Year 2002-2003 and quash the same as illegal.

Prayer in W.P.No.27811 of 2016: Writ Petition is filed under article 226 of the Constitution of India, Writ of Certiorari, calling for the records of the First Respondent in SCP No.01/2016 Ref No.M1/3606/2015 dated 16/06/2016 relating to Assessment Year 2004-2005 and quash the same as illegal.

For Petitioner : Mr.P.R.Kumar
(in both W.Ps.)

For Respondents : Mr.V.Haribabu
(in both W.Ps.) Additional Government Pleader(T)

C O M M O N O R D E R

The petitioner is aggrieved by the impugned order dated 16.06.2016 passed by the Special Committee, rejecting the Application filed under Section 16(d) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act').

2. The petitioner is engaged in printing of bus tickets and had supplied the same to the Tamil Nadu State Transport Corporation, Salem. Since the tariff entries were amended by bringing in printed materials also within the purview of TNGST Act, on 17.07.1996, tax was levied for such printed materials. The assessment made by the petitioner was accepted by the Assessing Officer for the Assessment years 2002-2003 to 2004-2005. Though, for the assessment year 2000-2001, by an order dated 20.03.2006, excess tax payable by the petitioner for the activity undertaken by upholding to the works contract was determined at Rs.1,22,883/-, for the two assessment years i.e., 2002-2003 and 2004-2005, separate Assessment orders dated 31.10.2007 and 01.11.2007, respectively, were passed by the concerned Deputy Commercial Tax Officer, II, concluding that these transactions were that of Works Contract and were liable to tax as per Entry No.40 (iv) of Part C of the First Schedule of the TNGST Act.

3.The above Assessment orders were passed, pursuant to the letter dated 09.11.2004 said to have been issued by the Commissioner of Commercial Taxes, Chennai, dated 09.11.2004 bearing reference Lr.No.Acts Cell-II/D.Dis.31954/2000. Even though, the Commissioner of Commercial Taxes had clarified the same issue to one Tvl.Kalaimagal Nilayam, Clarification No.45/2003 dated 28.02.2003 bearing reference D.Dis.Acts Cell-II/75970/2002 reads as follows:

D.Dis.Acts Cell-II/75970/2002, Dated 28.02.2003
Clarification No.45/2003

Sir,

Sub: TNGST Act'59 - Rate of tax clarification under Section 28-A of the Act - for Printing and supply of bus tickets, books and stationery items to State Transport Corporations' - Requested - Regarding.

Ref: From Tvl.Kalaimagal Nilayam, Sattur - 626 203, petition dated 28.10.2002.

Tvl.Kalaimagal Nilayam, Sattur - 203, in their letter cited have requested rate of tax clarification under section 28-A of the TNGST Act 1959 for Printing and Supply of bus tickets, books and stationery items to State Transport Corporation.

The details furnished by the petitioners have been perused and the following clarification on rate of tax is issued:

"1.Printing and supply of bus tickets to various Transport Corporations under specific contractual agreement falls under the category of works contract, lible to tax under section 3-B of the TNGST Act'59.

2.Printing and supply of books and stationery items according to specification of customers would fall under entry No.40(iv) in Part - C of the First Schedule to the TNGST Act'59, taxable at 10%.

3.Dealers who carry on the business of printing may, at their option pay tax at 3% on the total turnover, which they can collect from customers.

4.Form XVII can be issued only if the finished product is sold. Thus if a printer executes works contract (not amounting to manufacture and sale) he is not eligible to issue Form XVII for purchase of paper and ink. Separate compounded levy of tax which is optional does not alter the basic structure of Section 3(3). Hence printer paying tax under section 3-G is not eligible to issue Form XVII in respect of purchase for use in works contract.

5.Petitioners are liable to pay resale tax at 1% under section 3-H of the TNGST Act'59, wherever they claim exemption as second sale."

4.Similar clarification was issued to Tvl.Kalaimagal Nilayam vide letter dated 08.02.2008 bearing reference No.K.Dis.Acts Cell-II/56789/2005. Under these circumstances, the petitioner filed two Petitions under Section 16(2)(D) of the TNGST Act, 1959, on 28.11.2007 and 30.11.2007 for the respective assessment years. However, by two separate orders dated 06.12.2010, the Special Committee rejected the Application filed by the petitioner under Section 16(2)(D) of the said Act, on the ground there is no violation of principles of natural justice or violation of provisions of the Act.

5.Therefore, the petitioner filed Writ Petition Nos.2887 and 2888 of 2011 before this Court and by an order dated 05.04.2011, these orders of the Special Committee passed on 06.12.2010 were set aside and the case was referred back to the Assessing Officer, to pass a speaking order.

6.While disposing of the above Writ Petitions, this Court also took into consideration a Division Bench decisions of this Court in the case of Bharat Offset And Others Vs. Tamil Nadu Taxation Special Tribunal And Another reported in [2010] 34 VST 342 (Mad) wherein the Court upheld the authority of the levy of tax on printed material but at the same time, observed as under:

> "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."

7.Further, the order passed by the Assistant Commissioner of Commercial Tax Officer was again rejected vide order dated 30.09.2013. Under these circumstances, the petitioner once again approached the First Respondent/Special Committee under Section 16(2)(D) of the Tamil Nadu General Sales tax Act, 1959 to review the order under Section 88 of the Tamil Nadu Value Added Tax, 2006. The Special Committee, by its order dated 31.11.2014 vide Letter No.M1/27128/2014, once again rejected the request of the petitioner, for considering the case. Under these circumstances, the petitioner again filed Writ Petitions before this Court in W.P.No.34070 and 34071 of 2014 and by an order dated 22.12.2014, those Writ Petitions were disposed of with the following observations:

> "4.It is to be noted that at the first instance, the petitioner came before this Court challenging the order passed by the Special Committee dated 06.12.2010. This Court while setting aside the order remanded the matter back to the Assessing Officer for fresh consideration for both the assessment years, namely, 2002-03 and 2004-05 to be considered on merits and in accordance with law and in the light of the decision of this Court in the case of Bharat Offset And Others VS.Tamil Nadu Taxation Special Tribunal And Another (2010) 34 VST 342 (MAD). In the light of the said order, the order passed by the Assessing Officer is a fresh proceedings and therefore, there is no bar for the petitioner to once again approach the Special Committee under Section 16(D) of the TNGST Act. Since the order passed by the Assessing Officer dated 30.09.2014 is a fresh proceedings. Therefore, the matter is not hit by the principles of res judicata.

5.Accordingly, these writ petitions are allowed and the impugned order is set aside. The matter is remanded back to the Special Committee/first respondent for fresh consideration of the petitioner's application dated 26.08.2014 on merits and in accordance with law after affording opportunity of personal hearing to the petitioner. Accordingly, these Writ Petitions are allowed with the above direction. No costs.

8.Pursuant to the aforesaid order, the impugned order has now been passed by the first Respondent/Special Committee.

9.The learned counsel for the petitioner submits that the issue is no longer res integra and the issue as to whether the petitioner cannot be liable to sales tax or works contract tax has been decided by this Court in Writ Appeal (MD) No.79/2009 in the case of The State of Tamil Nadu Represented by Deputy Commissioner(CT), Tirunelveli Division, Versus Tvl.The Premier Litho Works, Virudhunagar District & Another reported in CDJ 2009 MHC 4111 which has been affirmed by the Apex Court by dismissing the Civil Appeal, in C.A.No.10162 of 2010 filed by the respondents, vide order dated 03.08.2016.

10.The learned counsel for the Petitioner further relied on the following decisions:-

i) 18.03.2015 - Order passed by this Court in TC.(R).No.2323 of 2006

ii) 03.11.2016 - Order passed by the Madurai Bench of Madras High Court in W.A.No.342 of 2011 And 945 of 2010

iii) 04.05.2017 - Order passed by the Hon'ble Madurai Bench of Madras High Court in T.R.(MD).No.655 of 2006

iv)28.11.2018 - Order passed by the STAT In petitioner's case.

11.The learned counsel for the petitioner further submits that the contract is that of a work contract and not that of a sale simplicitor and therefore, rejection of the petitioner's Application under Section 16(D) of the TNGST Act by the Respondent, cannot be sustained. According to him, the issue now stands covered by a decision of the Division Bench of this Court in C.A.(S).No.10162 of 2010, which has been affirmed by the Hon'ble Supreme Court, on 03.08.2016. The learned counsel for the petitioner further submits that once a clarification is adopted, it cannot be deviated, unless there is a change of the provisions of the of the Appellate Authority. The order for the Assessment Year 2000-2001 was passed on 20.03.2006. The Commissioner of Commercial Taxes issued clarification to one Tvl.Kalaimagal Nilayam vide clarification No.45/2003 dated 28.02.2003. The clarification is much prior to the order passed for the Assessment Year 2000-2001. In the absence of any change of provisions, the Assessing Authority ought not to have denoted from the earlier clarification.

12.Per contra, the learned counsel for the Respondent submits that the impugned order passed under Section 16(D) of the said Act is well reasoned and requires no interference. The only ground made out is that there is violation of the principles of natural justice. He further submits that under those circumstances, a Special Committee can set aside the order of contract and the Assessing Officer can make Assessment and pass proceedings in such a manner has taken a chance by filing Writ Petitions repeatedly before this Court under Article 226 of the Constitution of India, by exarting the court to directed a Special Committee should pass an order under Section 16(D) of the said Act. The Special Committee constituted under Section 16(D) of the Act is not an Appellate Authority and therefore such a committee cannot decide the case on merits, and therefore, submits that the impugned order passed by the Special Committee is liable to be sustained and consequently, the writ petition is liable to be dismissed.

13.Heard the learned counsel for the Petitioner and the learned counsel appearing for the Respondent.

14.The issue as to whether the activity undertaken by the petitioner, to supply printed tickets as per the contract from the sole simplicitor or Works Contract, now stands affirmed by the Division Bench of this Court, cited supra.

15.Therefore, on merits the issue stands squarely covered in favour of the petitioner. Further, the appeal filed on behalf of the Respondent as such was also dismissed by the Hon'ble Supreme court on 03.8.2016 in Civil Appeal No.(S). 10162 of 2010. That apart, the considered view of the Court has been reiterated by the learned counsel for the petitioner that, the activity undertaken by the petitioner would not attract tax Entry No.40(iv) of Part C of the First schedule to the TNGST Act, 1959.

16.It has also been clarified that dealers who carry on the business may pay tax at 3% on the total turnover and they had an option to collect the same from the customers. Likewise, as per entry No.40(iv) of Part-C of the First Schedule to the TNGST Act, 59, printing and supplying of books and stationery items according to specimen of customers would be payable at 10%.

17.Thus the issue of taxability of printing and supply of bus tickets to various Transport Corporations under

Specific Contractual agreement stands clarified by the clarification issued by the Commission, Commercial Taxed note clarification dated 28.02.2003. The order passed by the Assessing Officer for the Assessment Year 2002-2003 and 2004-2005 are contrary to the said clarification.

18.For the above said reasons, the Writ Petition stands allowed. I am of the view that the petitioner made out the good case of allowing this Writ Petition. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Committee U/s 16 D
of the TNGST Act, 1959,
Secretariat, Chennai 600 009.

2.The Commercial Tax Officer,
Thanjavur II Assessment Circle,
Thanjavur.

+1cc to Mr.P.R.Kumar, Advocate, S.R.No. 629
+1cc to the Special Government Pleader(Taxes), S.R.No. 929

W.P.Nos.27810 & 27811 of 2016
and
W.M.P.Nos.23985, 23986 & 23987 of 2016

VD(CO)
GN(27/02/2020)