IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 30466 of 2016 and 39908 of 2015
and
W.M.P. Nos. 26415 and 26416 of 2016
and
M.P.No.1 of 2015

W.P. No. 30466 of 2016:

Javanthi Singaram ... Petitioner

-vs-

1. The Commercial Tax Officer,
Kilpauk Assessment Circle,
No.50, First Avenue,
Anna Nagar East,
Chennai - 600 102.

2. The Commercial Tax Officer,
Group VII, Enforcement (N),
Office of the Deputy Commissioner (CT),
Enforcement (North),
Commercial Taxes Department,
Greams Road,
Chennai - 600 006.

3. M/s. Ceebros Investments
Having office at 'Sukriti'
19/1, 3rd Cross Road,
R.A. Puram, Chennai - 600 028,
Represented by its Proprietrix Mrs. C. Rajini

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned order i.e., Order No. RC.69/2016/A3 dt. 31/05/2016 (received on 09/08/2016) issued by the First Respondent and to quash the same and consequently forbear the First Respondent and its department officers or agents from demanding any VAT or penalty under the TN VAT Act, 2006 in connection with the Tripartite Construction Agreement dt. 09.04.2014 registered as Doc. No. 848 of 2014 in the Sub Registrar's Office, Periamet.

For Petitioner : Mr. A.R.Ramanathan
For Respondents : Mrs. G.Dhanamadhri
Government Advocate (T)

(For R1 and R2)
No appearance for R-3

W.P. No. 39908 of 2015:

Javanthi Singaram ... Petitioner

-vs-

1. The Commercial Tax Officer,
Group VII, Enforcement (N),
Office of the Deputy Commissioner (CT),
Enforcement (North),
Commercial Taxes Department,
Greams Road,
Chennai - 600 006.

2. M/s. Ceebros Investments
Having office at 'Sukriti'
19/1, 3rd Cross Road,
R.A. Puram, Chennai - 600 028,
Represented by its Proprietrix Mrs. C. Rajini
... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the Impugned Order i.e., intimation No. IF.No.392/2015-16/Gr.VII/Enft.(N) dt. 02/11/2015 issued by the First Respondent and to quash the same and consequently forbear the First Respondent and its officers or agents from demanding any VAT under the TN VAT Act, 2006 in connection with the Tripartite Construction Agreement dt. 09.04.2014 registered as Doc. No. 848 of 2014 in the Sub Registrar's Office, Periamet.

For Petitioner : Mr. A.R.Ramanathan

For Respondents : Mrs. G.Dhanamadhri
Government Advocate (T) (For R1)
No appearance for R-2

C O M M O N O R D E R

By this common order both the writ petitions are being disposed. The petitioner has challenged the impugned intimation dated 02.11.2015 in W.P.No. 39908 of 2015 and impugned order dated 31.05.2016 in W.P.No. 30466 of 2016.

2. By the impugned intimation dated 02.11.2015 intimation and order dated 31.05.2016, the petitioner has been called upon to pay VAT under section 5/6 of the TN VAT Act, 2006. The petitioner’s father had settled an immovable property along with an existing house in favour of the petitioner and her sister in the year 2004.

3. The petitioner and her sister later executed an agreement with the 3rd respondent on 09.03.2012, to develop a multi-storied apartment consisting of 12 units of which 4 units were to be retained by the 3rd respondent while 8 units were to be given to the petitioner and her sister. The 3rd respondent later obtained completion certificate from the CMDA on 04.06.2014.

4. Before the completion certificate was obtained, the petitioner decided to sell one of the built-up unit i.e., a flat to a 3rd party and therefore executed sale deed on 09.04.2014 and transferred a proportionate undivided share (UDS) in the land in favour of the prospective purchaser. On the same day, a Tripartite Construction Agreement was signed between petitioner along with the sister, with the prospective buyer and the 3rd respondent. The said construction agreement was also registered as Document No. 848 of 2014.

5. Based on the information gathered from the web report by the 2nd respondent that the petitioner had entered into a Tripartite Construction Agreement dated 09.04.2014 and had sold one flat for a total consideration of Rs.1,08,14,115/- it was concluded that the petitioner had failed to discharge tax liability as that of "works contractor" and therefore a proposal was sent vide impugned intimation dated 02.11.2015 by the 1st respondent demanding an amount of Rs.6,66,149/- as works contract tax under section 5 of the TN VAT Act, 2006.

6. The petitioner also sent a representation on 06.11.2015 and thereafter filed W.P.No. 39908 of 2015 and challenged the intimation dated 02.11.2015 of the 1st respondent. An interim order also was passed by this court on 18.12.2015, which order came to be periodically extended from time to time.

7. However, the 1st respondent proceeded to pass the impugned order dated 31.05.2016 and confirmed the demand proposed vide notice dated 24.02.2016. By the impugned order, a penalty equivalent 150% of the tax demanded was also confirmed under section 27 of the TN VAT Act, 2006.

8. Challenging the same, the petitioner submits that the petitioner is not a dealer and is therefore not liable to tax under the provisions of the TN VAT Act, 2006. It is further submitted that tax if any has to be demanded only by the 3rd respondent who has rendered the construction service involving works contract. The reasons for truncating the transfer of the built-up unit to sale of UDS and by way of construction agreement was on account of the fact that the 3rd respondent had not obtained completion certificate from the CMDA only on 04.06.2014, therefore a Tripartite Construction Agreement was registered on 09.04.2014.

9. It is further submitted that the impugned order has been passed without following principles of natural justice and without actually examining whether indeed the petitioner has rendered any works contract as has been confirmed the impugned order. The respondents have defended the impugned intimation and communication.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. The petitioner has merely sold a fully built flat to a prospective buyer on 09.04.2014, by truncating the entire transaction into sale of undivided share in the land and by signing a Tripartite Construction Agreement on 09.04.2014. The fact that the 3rd respondent obtained completion certificate on 04.06.2014 itself clearly indicates that the petitioner has not rendered any works contract to be made liable to tax under section 5 and 6 of the TN VAT Act, 2006, as what was sold was a fully construed flat.

11. It is evident that on the date when the petitioner had signed the Tripartite Construction Agreement, dated 09.04.2014, there is no proposal for construction of the building. The building had been indeed fully constructed and was awaiting completion certificate from the CMDA.

12. Under Article 5(i) to the Schedule-I of the Stamp Act,1899 as notified by Tamil Nadu Amendment Act 18/2013 stamp duty payable on construction agreement for a building. On the Tripartite Construction Agreement stamp duty of 1% and registration charges of 1% has been paid perhaps to facilitate the prospective buyer to pay lesser stamp duty on the conveyance of immovable property.

13. Article 5(i) to the Schedule-I of the Stamp Act,1899 reads as under:-

Article 5(i): If relating to construction of building	One rupee for every hundred rupees or part thereof of the cost of the proposed construction or the value of construction or the consideration specified in the agreement whichever is higher.

Explanation:- For the purpose of this clause, "building" includes any unit, residential, commercial, institutional, industrial or otherwise proposed to be constructed on an undivided share of land";

14. The intention of the State Legislature was to levy and collect stamp duty at 1% was on the cost of the proposed construction or the value of construction or the consideration specified in the agreement whichever was higher relating to proposed construction of building at the stage of construction

and not thereafter. Expression "building" included any unit proposed to be construct.

15. It was not intended to cover situation where the building was already constructed. In the facts of the case, it is evident that there was indeed a sale of flat/apartment by the petitioner and therefore stamp duty payable would have been under Article 23 of the Schedule-I to the Indian Stamp Act, 1899.

16. In my view, the truncated valuation of UDS in the land for payment of stamp duty and registration of Construction Agreement on payment of stamp duty at 1% + 1% registration in the case of built up unit was not intended under the Stamp Act, 1899.

17. There was no works contract by the petitioner exigible to tax under the provisions of the TN VAT Act, 2006. At best, such a tax liability would have been payable only by the 3rd respondent and not on the petitioner. However that would require proper examination.

18. In my view appropriate action ought to have been taken only by the authorities under the Stamp Act, 1889 under Section 47 A of the Stamp Act, 1899, in accordance with law and not from the petitioner under the provisions of the TN VAT Act, 2006.

19. In the light of the above observation, I am of the view that the impugned order demanding tax under the provisions of the TN VAT Act, 2006, is unsustainable. Therefore, the impugned intimation dated 02.11.2015 and order dated 31.05.2016, passed by the 1st respondent are quashed while giving liberty to the authorities to enquire and investigate and to take steps to collect appropriate tax from the 3rd respondent and the buyer of the property in accordance with law.

20. Accordingly, these writ petitions stand allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Ssi

To

1. The Commercial Tax Officer,
   Kilpauk Assessment Circle, No.50,
   First Avenue, Anna Nagar East,
   Chennai - 600 102.

2. The Commercial Tax Officer,
   Group VII, Enforcement (N),
   Office of the Deputy Commissioner (CT),
   Enforcement (North),
   Commercial Taxes Department, Greams Road,
   Chennai - 600 006.

+1cc to Mr.A.R.Ramanathan, Advocate, S.R.No. 4586

W.P. Nos. 30466 and 39908 of 2016
and
W.M.P. Nos. 26415 and 26416 of 2016

RJI(CO)
GN(25/08/2020)