IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No. 24992 of 2002
and
WMP. No.34298 of 2002

M/s. Artisan Company Printers
Rep. by its Proprietor
42(129) Sterling Road
Nungambakkam
Chennai - 600 034 .. Petitioner

Versus

1.The Registrar
The Tamilnadu Taxation Special Tribunal
Chennai - 600 001

2.The State of Tamilnadu
Rep. by the Secretary
Commercial Taxes
Fort St. George
Chennai - 600 009

3.The Commercial Tax Officer
Valluvarkottam Assessment Circle
Chennai - 600 006 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in O.P. No. 772 of 2001 on the file of the first respondent herein dated 18.03.2002 and quash the same and consequently declare the Entry 52 (IV) Part 'C' of the First Schedule of the Tamilnadu General Sales Tax Act, 1959, as ultravires and violative of Entry 52 List II, VII Schedule to the Constitution read with Article 366 (29-A)(b) and Article 265 of the Constitution of India.

For Petitioner : Mrs.Lakshmi Sriram
for Mr. A. Arivazhagan

For Respondents : Mr. M. Venkateswaran
Special Government Pleader (Tax)

ORDER

(Order of the Court was made by R. MAHADEVAN, J)

Seeking to quash the order dated 18.03.2002 made in O.P. No. 772 of 2001 on the file of the first respondent herein and consequently to declare the Entry 52 (IV) Part 'C' of the First Schedule of the Tamil Nadu General Sales Tax Act, 1959, as ultravires and violative of Entry 52 List II, VII Schedule to the Constitution read with Article 366 (29-A)(b) and Article 265 of the Constitution of India, the present writ petition has been filed.

2. According to the petitioner, they are carrying on business in job printing and supplying materials as per the individual specifications and orders of the customer. When the very nature of their business is such, they do not carry on any trading activity which would result in the sale of printed materials so as to fall within the scope of the charging provisions of Sec.3 or 3-B of the Tamil Nadu General Sales Tax Act, 1959. While so, G.O.Ms.No.66, Commercial Tax Department dated 16.08.2001 came to be passed, amending Entry 52 part 'C' of the first schedule by substituting sub-item (iv) in Entry 52. It is the specific case of the petitioner that the amendment brought under G.O. Ms. No.66 dated 16.08.2001 is beyond the legislative competence conferred under Entry 54 List II read with Article 366 (29A)(b) and hence, the same ultra vires the provisions of the Constitution insofar as it levies tax against those transactions, which are purely simple works contract, by treating them as sales. Feeling aggrieved, the petitioner filed O.P.No.772 of 2001 before the Tamil Nadu Taxation Special Tribunal, Chennai, which, by order dated 18.03.2002, dismissed the said original petition. Therefore, the petitioner is before this court with this writ petition.

3. When the writ petition is taken up for consideration, the learned counsel for the petitioner fairly submits that the validity of G.O. Ms. No.66, Commercial Taxes (B1) Department dated 16.08.2001 was put to challenge by filing a batch of writ petitions and the Division Bench of this Court, by a decision in the case of Bharat Offset and others vs. Tamil Nadu Taxation Special Tribunal and Another reported in (2010) 34 VST 342, dismissed those writ petitions. The relevant portions of the said decision are extracted as follows:

> “27. In the Judgement referred to above, we find that the court, be it this court or the Supreme Court, had examined the contract in question and considered whether it was charged or whether it was a pure sale, and whether the sale of materials was incidental to the works component or whether the works component was incidental to the sale. Therefore, works contracts or whether it is a sale, the original authority, the appellate authority and the Tribunal are bound to examine the contract and

the terms and conditions contained therein. Merely because in one case it has been held that the printing order that has been undertaken was a works contract will not automatically mean that any contract where printed materials are supplied, even if they bear the name of purchaser, will without any question be deemed to be works contract....

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29. So, these are all the special features which would identify for us to see whether the transaction is taxable as one for sale of goods. We are not persuaded by the submissions made by the learned counsel for the petitioners that merely by inclusion the State will bring to tax what is a given transaction is a works contract. Even after the inclusion, it is necessary to prove whether a given transaction is a works contract pure and simple or it involves sale of goods. The Supreme Court held that this is a mixed question of law and fact depending upon the facts of each case - vide Hindustan Aeronautics Ltd. v. State of Karnataka (1984) 55 STC 314 (SC). On the contrary, the State wanted to check the mischief, where merely because the goods were printed material, the assessees had been able to persuade that the transfer of goods in question were part of a works contract, relying on Anandam Viswanathan's case (1977) 39 STC 226 (Mad). Therefore, challenge to the constitutional validity of the Government Order is rejected.

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31.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.

For all the reasons stated above and in view of the various decisions discussed hereinbefore, the writ petitions are dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed."

4. In light of the above referred decision, this writ petition will have to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

1.The Registrar,
The Tamilnadu Taxation Special Tribunal,
Chennai - 600 034.

2.The Secretary,
The State of Tamilnadu,
Commercial Taxes, Fort St.George,
Chennai - 600 009.

3.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai - 600 006.

+1cc to Mrs.Lakshmi Sriram, Advocate SR. No. 60465

WP No. 24992 of 2002

VSNII (CO)
PR (10/01/2022)