IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.8695, 12606, 12603, 8696,
8697, 8698, 8699, 8701 & 8700 of 2020
WMP. Nos.10539, 10540, 15549, 15550, 15545, 15547, 10541,10542, 10543, 10544, 10545, 10546, 10547, 10548, 10551, 10552, 10549 and 10550 of 2020

M/s.Jansons Textiles Processors
Rep.by its General Manager-J.Srinivasaraghavan,
68/1-A, Namakkal Road,
Tirucengode, Namakkal District
… Petitioner in all Wps.

Vs.

The State Tax Officer,
Tiruchengode Town Assessment Circle,
Tiruchengode, Namakkal District … Respondent in all Wps.

Common Prayer in W.P.No.8695 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records on the file of the respondent in his impugned proceedings made in TNGST 770279/1994-95 dated 12.03.2020, TNGST 3181546/1997-98, dated 20.08.2020, TNGST 3181546/1999-2000, dated 06.08.2020, TNGST 3181546/1995-96 (Old No.TNGST 770279/1995-96) dated 12.03.2020, TNGST 3181546/2001-02, dated 12.03.2020, TNGST 3181546/2002-03, TNGST 3181546/1996-97(Old.No.TNGST 770279/1996-97), dated 12.03.2020, TNGST 3181546/2000-01 dated 12.03.2020, TNGST 3181546/1998-99, dated 12.03.2020 respectively, quash the same as illegal and contrary to the scheme of the Act.

(In all WPs)
For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

C O M M O N O R D E R

The petitioner challenges orders of assessment passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') involving works contract of dyeing for the periods 1994-95 to 2002-03. Original assessments of this petitioner had travelled to the High Court in Tax Case

(Revision) and by order dated 11.03.2015, a Division Bench of this Court applying the ratio of an unreported decision of this Court dated 01.07.2011 in T.C.(R) Nos.842 of 2006 and batch dismissed the Tax Case (Revision) confirming the order of the Sales Tax Appellate Tribunal. Inter alia, they have referred to the judgment of the Supreme Court in Rainbow Colour Lab and Another Vs. State of Madhya Pradesh and Others [(2000) 118 STC 9] and Associated Cement Companies Ltd Vs. Commissioner of Customs [(2001) 124 STC 59], which dealt with the introduction of Section 3B in the Act, dealing with works contracts.

2. Notices were issued for the periods in question in 2019 and replies filed by the petitioner. Though the primary reply of the petitioner was to the effect that the transactions itself are outside the pale of taxability, that line of argument is fairly, not pursued by the petitioner before me, now. Learned counsel for the petitioner would thus succumb to the position that contracts of dyeing are taxable and this issue is no longer, res integra. This is recorded.

3. The limited prayer before me is that while computing the taxability of the dyeing transactions, the standard deductions set out in Section 3B(2) Clause (a) to (e) have not been granted. The aforesaid provision grants a series of deductions to be taken into account while arriving at taxable turnover of dyeing contracts.

4. Mr.Mohammed Shafiq, learned Special Government Pleader would only state that this contention has been raised for the first time before this Court and no particulars of the deductions have been supplied at any stage of the assessment by the petitioner.

5. In its reply dated 03.01.2020, the petitioner, at para 1 sets out the process adopted for dyeing and mentioning therein, the use of electricity and other infrastructure and resources that form part and parcel of the execution of the works contract. Section 3B(2)(a) to (e) reads as follows:

> Section 3-B. Levy of tax on the transfer of goods involved in works contract. - (1) Notwithstanding anything contained in sub-sections (2-B), (3), (4), (7) and (8) of section 3, or section 7-A, but subject to the other provisions of this Act including the provisions of sub-section (1) of section 3, every dealer referred to in item (vi) of clause (g) of section (2) shall pay, for each year, a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned

in [sub-section (2), (2-A) or (2-C)] of section 3 or, as the case may be, in section 4.

Explanation:- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each item of work.

(2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall, on and from the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer:-

(a) all amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce:

(b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract in the same form in which such goods were purchased:

(c) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:

(d) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly: Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amounts is included in the return filed by such sub-contractor: and

(e) all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

THE TABLE

Serial number	Type of works contract	Labour or other charges as a Percentage of the value of the works contract
(1)	(2)	(3)
1	Electrical Contractors	15
2	All structural contractors	15
3	Sanitary contracts	25
4	Watch and/or clock repair contracts	50
5	Dyeing contracts	50
6	All other contracts	30

6. In my view, the grant of standard deduction is automatic, subject to the petitioner establishing actual incurrence of each of the expense. In the present case, the taxability of the transactions is beyond doubt and hence the deductions set out under 2(a) to (e) of Section 3B are to be granted.

7. The petitioner is, in line with my decision as above, permitted to file a representation setting out the details of the expenses incurred in line with 3B(2) a to (e) of the Act within a period of four weeks from today and the authority shall dispose the same within a period of four weeks from date of receipt thereof, after hearing the petitioner.

8. These writ petitions are disposed in the above terms. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Tiruchengode Town Assessment Circle,
Tiruchengode, Namakkal District.

+1cc to Ms.R.Hemalatha, Advocate, S.R.No.16693.
+1cc to the Government Pleader(Taxes), S.R.No.16966.

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AK-II(CO)
CSR 15.04.2021