IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.2.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Revision No.65 of 2018

The State of Tamil Nadu, rep.
By the Deputy Commissioner (CT),
Salem Division, Salem. ...Petitioner

Vs

Tvl.Ram Printing Mills, Erode-1. ...Respondent

REVISION under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order dated 30.1.2003 passed by the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore made in CTA.No.29/ 2002.

For Petitioner : Mr.Mohammed Shaffiq, SGP

Order of the Court was made by T.S.SIVAGNANAM,J

This revision has been filed by the State under Section 38 of the Tamil Nadu General Salex Tax Act, 1959 ('the Act' for brevity) challenging the order dated 30.1.2003 passed by the Sales Tax Appellate Tribunal (Additional Bench) (for short, the Tribunal)

Coimbatore in CTA.No.29/2002.

2. We have heard Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the petitioner.

3. The issue involved in this revision was answered in favour of the Revenue in the decision of this Court, ***to which, one of us (TSSJ) was a party,*** in the case of ***State of Tamil Nadu Vs. Tex-in-Printers [reported in (2014) 70 VST 239]***. Subsequently, it appeared that there was a different view taken by another Division Bench following the decision of the Bombay High Court, which necessitated a reference to be made to the Hon'ble Full Bench wherein it was held that the purchase of ink for printing polythene rolls is taxable in terms of Section 3B of the Tamil Nadu General Sales Tax Act, 1959/the Value Added Tax Act, 2006. The Hon'ble Full Bench answered the reference in favour of the Revenue, wherein the relevant portions are as follows :

> *"59. We therefore hold as follows:-*
>
> *1.The judgment in State of Tamil Nadu Vs. Premier Litho Works and another, (2009) 26 VST 205 (Madras), examined the question whether a particular transaction is an inter-state sale or a works contract. In the instant case, there is no quarrel that the appellants are involved in works contract. The judgment*

is distinguishable on facts and on law and reliance placed by the appellant on the said judgment is totally misconceived. The 46th Amendment to the Constitution of India and the insertion of Clause 29-A in Article 366 and Section 3-B(2)(e) of the Tamil Nadu General Sales Tax , 1959, were not brought to the attention of the Division Bench, since the issue involved was entirely different.

2.The attention of the Division Benches of this Court in Tax Case (MD).No.202 of 2012, State of Tamil Nadu, rep. By the Deputy Commissioner (CT), Tirunelveli Division, Tirunelveli Vs. Tvl.Vibgyor Process, Kovilpatti, (Tax Case (Revision) No.687 of 2006), State of Tamil Nadu, rep. By the Deputy Commissioner (CT), Tirunelveli Division, Tirunelveli Vs. Tvl.Vibgyor Process, (2019) SCC Online Mad. 997, [WP.No.35213 of 2003], State of Tamil Nadu, rep. By the Deputy Commissioner (CT), Tirunelveli Division, Tirunelveli Vs. Tvl.Mahalakshmi Process, Sivakasi, The State of Tamil Nadu, rep. by. The Deputy Commissioner (CT), Tirunelveli Division, Tirunelveli Vs. Tvl.Subramanian Offset Printers, and [WP.No.20324 of 1999], M/s.NPT Offset (P) Ltd. Vs. The Joint Commissioner II and another, were not drawn to the correct *position of law as repeatedly and consistently pointed out by the Hon'ble Supreme Court and are accordingly over ruled.*

3.The correct position of law as repeatedly and consistently pointed out by the Hon'ble Supreme Court, finally in, State of Karnataka Vs Pro Lab & Ors, (2015) 78 VST 451 (SC), is "to sum up, it follows from the reading of the aforesaid judgment that after insertion of clause 29-A in Article 366, the Works Contract which was indivisible one by legal fiction, altered into a contract, is permitted to be bifurcated into two: one for "sale of goods" and other for "services", thereby making goods component of the contract exigible to sales tax. Further, while going into this exercise of divisibility, dominant intention behind such a contract, namely, whether it was for sale of goods or for services, is rendered otiose or immaterial. It follows, as a sequitur, that by virtue of clause 29-A of Article 366, the State Legislature is now empowered to segregate the goods part of the Works Contract and impose sales tax thereupon. It may be noted that Entry 54, List II of the Constitution of India empowers the State Legislature to enact a law taxing sale of goods. Sales tax, being a subject-matter into

> *the State List, the State Legislature has the competency to legislate over the subject."*
>
> *59. We therefore hold that since the question of law has been resolved on the basis of authoritative pronouncements of the Hon'ble Supreme Court, it would be a fruitless exercise to refer the Writ Appeal once again to the Division Bench.*
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> *60. The Writ Appeal has no merits and it is accordingly dismissed."*

4. Following the said decision, we are required to allow the revision filed by the State. However, there would not be any such necessity to do so in in the instant case because the matter is hit by the State Litigation Policy as per G.O.(Ms.) No.105 Commercial Taxes and Registration (D1) Department, dated 25.7.2019 wherein it has been stated that the Revenue will not prosecute the appeals/writ petitions/revisions, if the tax liability is less than Rs.5 lakhs, both in respect of the assessment arising under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Tamil Nadu Value Added Tax Act, 2006. It is not in dispute that in the case on hand, the tax liability is less than the threshold limit of Rs.5 lakhs. Therefore, the Revenue cannot prosecute the revision on account of the policy decision taken by the Government of Tamil Nadu.

T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

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5. Therefore, while holding the legal position in favour of the Revenue, we dismiss this tax case revision on the ground of the State Litigation Policy.

01.2.2021

To
The Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

TCR.No.65 of 2018