BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.01.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A.(MD)No.1298 of 2020

and

C.M.P.(MD)No.7404 of 2020

The Commercial Tax Officer – 1
(Now re-designated as State Tax Officer-1),
Commercial Taxes Building,
Madurai Road,
Virudhunagar. ... Appellant/Respondent

Vs.

Tvl. Unique Multi Films Virudhunagar (P) Ltd.,
Rep. by its Partner,
Thiru T.Muralidharan,
No.7/152/2 Perali Road,
Virudhunagar. ... Respondent/Petitioner

Writ Appeal filed under Clause XV of Letters Patent Act, against the order dated 30.10.2018 passed in W.P.(MD)No.7744 of 2010.

Prayer in WP(MD). 7744/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, to call for the records relating to the final assessment order passed by the Respondent in Tamil Nadu General Sales Tax in TNGST 5721409/04-05 dt. 07-05-2010 received by the petitioner on 13-05-2010 and quash the same.

For Appellant	:	Mrs.J.Padmavathi Devi, Special Government Pleader
For Respondent	:	Mr.A.Chandrasekaran

JUDGMENT

[Order of the Court was made by **M.M.SUNDRESH, J.**]

This appeal has been preferred by the Revenue, aggrieved over the order of the learned Single Judge, by which, the order, passed by the Assessing Officer, dated 07.05.2010, has been set aside, by placing reliance upon the judgment of the Division Bench made in Tax Case (R) No.2322 of 2008, dated 04.02.2010.

2. The learned Special Government Pleader appearing for the appellant submitted that the learned Single Judge made a wrong reliance, without going into the factual issues involved, as determined by the Assessing Officer. There is an alternative remedy available under the statue. The question as to whether the activity, that is being carried on by the Assessee, would be amenable to tax or not, as against the work contract, has been finally concluded by the Full Bench of this Court, after taking note of the contrary judgment rendered earlier in Writ Appeal No.649 of 2014 dated 12.06.2020. Thus, the appeal requires to be allowed.

3. Mr.A.Chandrasekaran, learned counsel appearing for the Assessee submitted that though the law has been laid down by the Full Bench of this Court as submitted by the learned Special Government Pleader appearing for the appellant, the issue with respect to the assessment under Section 3(3)(b) of the TNGST Act 1959 is still required to be considered. Therefore, this Court can consider the remitting of the matter for fresh consideration of the other issue with respect to the consequential penalty.

4. In matters pertaining to tax, the Court will have to be very slow in exercising the power under Article 226 of the Constitution of India. Perhaps, the learned Single Judge entertained the writ petition and allowed it in view of the law governing at the relevant point of time. Be that as it may, in view of the Judgment of the Full Bench of this Court, there is no controversy over the legal issue and the learned Single Judge has not gone into the factual issues involved.

5. In such view of the matter, we are not inclined to go on adjudication on merits. The Assessee was pursuing the remedy before this Court. Therefore, it would only be appropriate to permit the Assessee to file a statutory appeal, particularly, when there is a change of law, which has arisen subsequently resolving the conflicting decisions rendered by this Court.

6. In such view of the matter, while setting aside the order of the learned Single Judge of this Court, we permit the Assessee to file a statutory appeal, within a period of four weeks from the date of receipt of a copy of this order. As and when the appeal is filed, the Appellate Authority shall decide the same, within a period of twelve weeks thereafter, without rejecting it on the ground of limitation. All the issues are left open to be decided by the Appellate Authority. As it is submitted by the learned Special Government Pleader that the Assessee has paid the Tax, the Appeal will have to be entertained, without insisting upon any pre-deposit and thus, decide the appeal on merits.

7. Accordingly, the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.The Commercial Tax Officer-1,
(Now Re-Designated as State Tax Officer-1)
Commercial Taxes Building, Madurai Road,
Viruthunagar.

+1 CC to M/s.A.CHANDRA SEKARAN, Advocate (SR-388[F] dated 07/01/2021)

+1 CC to M/s.SPL GP (SR-259[F] dated 06/01/2021)

Copy to

The AR(Reocrds),
Madurai Bench of madras High Court,
madurai.
(To Return the Original order Copy)

W.A.(MD)No.1298 of 2020
05.01.2021

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KB(21.01.2021) 3P 5C