IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
28.01.2022	04.02.2022

CORAM

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

W.P. No.10350 of 2007
and
M.P.No.1 of 2007

M/s.Bharat Mosaic Tiles,
Rep. by its Propreitor V.Sithanandham,
55, Sarathy Mansions,
Vellore. ...Petitioner

Vs.

1.The Tamilnadu Sales Tax Appellate Tribunal,
rep. by its Secretary,
2nd Floor, City Civil Court Buildings,
High Court Campus, Chennai-600 104.

2.The Appellate Assistant Commissioner (CT),
C.T. Buildings, Fort Round,
Vellore-1.

3.The Deputy Commercial Tax Officer,
Vellore (South) Assessment Circle,
Fort Round, Vellore-1. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 1st respondent in T.A.No.591 of 2001 dated 26.09.2005 and quash the same as illegal, arbitrary and against the provisions of the TNGST Act, 1959.

For Petitioner : Mr.K.Soundararajan

For Respondent 1 : Tribunal

For Respondents 2 & 3 : Mr.N.R.R.Arun Natarajan
Special Govt. Pleader (Taxes)

ORDER

MOHAMMED SHAFFIQ, J.

We have heard the learned counsel appearing for both sides and also perused the materials available on record.

2.The challenge made in this writ petition is to the order dated 26.09.2005 passed by the first respondent / Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.591 of 2001, relating to the assessment year 1985-86, insofar as it affirms the levy of tax at Rs.7,28,266/- under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act, 1959").

3.The short question that arises for consideration herein is, as to whether the receipts by the petitioner from their customers, based on which the assessing officer levied tax at Rs.7,28,266/- which was confirmed by the first appellate authority as affirmed by the Tribunal, represent the sale value of mosaic tiles or the works contract executed by the petitioner for laying and polishing the mosaic tiles, which are outside the purview of the TNGST Act, 1959, as it existed during the assessment year 1985-86.

4.According to the petitioner, the receipts represent the works contract for laying and polishing the mosaic tiles and the same was brought within the purview of the TNGST Act, 1959 only with effect from 26.06.1986 and thus, levy of tax on works contract during the assessment year 1985-86 by treating it as sale of mosaic tiles, is without any authority of law and is unjustifiable.

5.Admittedly, the petitioner is a mosaic tiles works contractor and the dispute pertains to the assessment year 1985-86. It is also not in dispute that tax is levied on the sale of goods involved in works contract only with effect from 26.06.1986. Thus, it may be relevant to note that if the receipts were to constitute works contract, then, there may not be any liability to tax under TNGST Act, 1959, inasmuch as works contract which was deemed to be a sale pursuant to the 46th Amendment to the Constitution of India, was made liable to tax under TNGST Act, 1959, by introduction of Section 3B of the TNGST Act, 1959, which created a charge on works contract with effect from 26.06.1986. On the contrary, if the receipts relate to the sale of mosaic tiles, then, there will be a liability under Section 3 of the TNGST Act, 1959, which provides for levy/charge in respect of a regular/conventional sale.

6.To answer the above question, it may be appropriate to briefly set out the findings of the lower authorities:

Assessing Authority:

"…. On perusal of the account, it is seen that no agreements were executed between the contractor and the customers in connection with the terms and conditions to be followed by the both while the contracts were executed…."

"…. At this stage, it is confirmed that the dealer did not actually carried over the works contracts for the year 1985-86 and hence it is decided that he has manufactured mosaic tiles and effected the same at outright 1st sale in 1985-86."

First Appellate Authority:

"The only point to be decided in this case is whether the receipts of the appellants are towards the sale of material or receipt under works contract. The appellant though contended that they had collected the same not only for the cost of tiles but also for the job of laying and polishing. They never came forward to produce any agreement entered into between them and the customers showing the nature of the job and other terms and conditions. No forms of XXVIII were kept and maintained. Hence, there is no indication in the accounts regarding the materials taken to the specific place of the customers where the works were executed. In view of that there is no other alternative but to hold that the appellants have engaged in sale of materials only and not in the execution of works contract."

Appellate Tribunal:

"9.....Perusal of the first appellate authority, it is seen that the appellants have not produced any agreement entered into between them and that too, with the customers showing the nature of the job and other terms and conditions. The Appellate Assistant Commissioner opined that no forms of XXVIII were kept and maintained by the appellants herein and in turn, the Appellate Assistant Commissioner had come to the conclusion that, there was no indication in the accounts regarding the materials taken to the specific place of the customers where the works were executed. While perusing the connected records, it is seen that, the appellants herein have engaged in the sale materials only and not in the execution of works contract. It is an admitted fact, that the appellants herein have failed to maintain the production-cum-stock account neither with opening nor with closing stock inventories. In the absence of aforesaid details, it is clearly established that, the Assessing

Officer had estimated the entire sales turnover of mosaic tiles by adding Gross Profit of 21% to the net purchase value and determined the sales turnover. The first appellate authority also has confirmed the findings of the assessing officer. In the light of the aforesaid observations, we are inclined to hold that, the authorities below have correctly estimated the entire sales turnover of mosaic tiles and so we see no grounds to interfere with his finding in that regard."

7.It is seen from the findings as extracted above that all the lower authorities have treated the receipts to be relating to regular/conventional sale of mosaic tiles on the premise that the petitioner had not come forward with any material whatsoever in support of their stand that the receipts represented works contract, including copies of contract entered into between the petitioner and its customers; and accordingly, they have held that the said receipts are liable to tax under the TNGST Act, 1959. In the absence of any supportive document produced on the side of the petitioner, we do not find any reason to differ with the conclusion so arrived at or interfere with the findings so rendered by the Tribunal.

8.At this juncture, it may also be significant to point out that the question, whether a contract is one for sale of goods or for executing the works is largely one of facts depending on the terms of contract, nature of obligations to be discharged thereunder in the surrounding circumstances as observed by the Hon'ble Supreme Court in Union of India v. Central India Machinery Manufacturing Company Ltd. and others [(1977) 40 STC 246]. The Tribunal is the highest fact finding body. Therefore, this Court would not interfere with the finding of fact rendered by the Tribunal, unless the same is shown to be perverse, as held by the Hon'ble Supreme Court in Metroark Ltd v. CCE [(2004) 12 SCC 505]. For better appreciation, the relevant passage of the said decision is quoted below:

"8. Even otherwise, the law on the subject is clear. The Tribunal is the final fact-finding authority. Unless it is shown that there is something perverse in its finding, this Court would not interfere. No authority is required for this purpose. But as a large number of authorities are cited, we refer to them: Pragati Computers (P) Ltd. v. Collector of Customs [(2000) 10 SCC 150] , Reliance Silicon (I) (P) Ltd. v. CCE [(1997) 1 SCC 215] , Asian Paints India Ltd. v. CCE [(1988) 2 SCC 470 : 1988 SCC (Tax) 201] and Collector of Customs v. Swastic Woollens (P) Ltd. [1988 Supp SCC 796 : 1989 SCC (Tax) 67]"

9.In the light of the above legal proposition, the writ petition is liable to be dismissed, as there is no infirmity or perversity in the order of the Tribunal, warranting interference by this court. Accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The Tamilnadu Sales Tax Appellate Tribunal,
2nd Floor, City Civil Court Buildings,
High Court Campus, Chennai-600 104.

2.The Appellate Assistant Commissioner (CT),
C.T.Buildings, Fort Round, Vellore-1.

3.The Deputy Commercial Tax Officer,
Vellore (South) Assessment Circle,
Fort Round, Vellore-1.

+1cc to the Special Government Pleader (Taxes), SR. No. 7799
+1cc to Mr.K.Soundararajan, Advocate SR. No.7507

W.P.No.10350 of 2007

SS (CO)
PR (07/03/2022)