IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.NOS. 35277 TO 35281 OF 2007
AND
M.P.NOS.1 TO 1 OF 2007

M/s.Industrial X-Ray Inspection Co.,
rep. by its Proprietrix
No.4, Cross Road, Sri Nagar Colony,
Saidapet, Chennai - 600 015.

... Petitioner in all W.Ps

Versus

1. The Secretary to the Tamil Nadu Sales Tax,
   Appellate Tribunal (Additional Bench),
   Madras High Court Compound,
   Chennai - 600 104.

2. The Commercial Tax Officer,
   Adyar-1 Assessment Circle,
   46, Greenways Road,
   Chennai - 600 028.

... Respondents in all W.Ps

Common Prayer :

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in its proceedings in T.A.No.35/2002, T.A.No.36/2002, T.A.No.37/2002, T.A.No.38/2002 and T.A.No.39/2002 dated 27.09.2007, quash the same and further direct the exemption be granted on the transactions of the petitioner as there is no sale or deemed sale involved.

In all W.Ps

For Petitioner : Mr.C.Subramanian
for M/s.K.J.Chandran & R.L.Ramani

For Respondents : Mr.NRR. Arun Natarajan
Special Government Pleader (Taxes)

COMMON ORDER

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

The prayer made in these writ petitions is to issue a writ of certiorarified mandamus to quash the common order dated 27.09.2007 passed by the first respondent / Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai (in short, 'the Tribunal') in T.A.Nos.35/2002, 36/2002, 37/2002, 38/2002 and 39/2002 and consequently, direct the second respondent / assessing officer to grant exemption from payment of sales tax on the transactions of the petitioner.

2.The brief facts leading to the filing of these writ petitions are as follows:

2.1. The petitioner is an Inspection Agency engaged in inspecting machinery, equipment and goods belonging to the customers and to certify its quality, content and utility. It has necessary expertise for such inspection and examination. In essence, the nature of the work performed by the petitioner is purely a job involving expertise and technical know-how to evaluate the products made available by the customers to test and certify the same. For the purpose of conducting the tests viz., radiographic testing, ultrasonic testing, magnetic particles testing and dye penetrant testing, they buy either locally or from outside the state or imported goods such as X-ray films, chemicals, dyes etc. According to the petitioner, these materials are retained, after carrying out the tests and they are not passed on to the customers; and that, the customers obtain only certificate from the petitioner certifying about the quality, content and utility of the product given for testing; and hence, there is no transfer of title of any goods from the petitioner to its customers, which activity does not attract any liability to pay sales tax.

2.2. While so, the business premises of the petitioner was inspected by the Enforcement Wing Officials and based on the inspection report, the second respondent assessed the petitioner and levied sales tax, besides surcharge, additional surcharge and penalty for the assessment years from 1993-94 to 1997-98, as if there was a deemed sale involved in the execution of works contracts which fall within the purview of section 3B of the TNGST Act, 1959. While passing the assessment orders, the second respondent failed to consider the objections filed by the petitioner to the effect that there was no sale or deemed sale whatsoever to be brought under the provisions of the Act.

2.3. Aggrieved by the assessment orders of the second respondent, the petitioner preferred statutory appeals before the Appellate Assistant Commissioner (CT), Kancheepuram, who, though satisfied that there was no transfer of title in respect of any goods instead of allowing the appeals by setting aside the assessment orders, remanded the matter to the second respondent / assessing officer for fresh consideration.

2.4. Challenging the order of the Appellate Authority, the petitioner went on further appeals before the first respondent / Tribunal. Without considering the case of the petitioner in the light of the legal proposition, the Tribunal erroneously remanded the matter to the second respondent / assessing officer, after having concluded that there was a deemed sale in the execution of the works contract with reference to the so called sale value of the consumables. Therefore, the petitioner has filed these writ petitions with the aforesaid prayer.

3.The challenge made in these writ petitions is to the order of the first respondent / Tribunal passed in the appeals filed by the petitioner, relating to the assessment years from 1993-94 to 1997-98, wherein, the issues arisen for consideration, were, (i) whether the assessing officer was right in levying tax on the sales turnover determined in relation to the materials used in the works contracts; and (ii) whether the assessing officer was justified in invoking the penal provision in section 12(3)(a) of the TNGST Act, 1959. After considering the pleadings made by the parties and the legal provisions, the Tribunal arrived at the following decisions with respect of those two issues:

> "....In view of the matter, the assessment made for all these assessment years warrant a reconsideration by the assessing authority. The assessing authority is directed to determine the deemed sale value of the materials used by the assessee in the execution of works contract to the extent they have not suffered tax under the Local Act and pass orders afresh."

> "....since the refixation of penalty u/s 12(3)(a) of the Act would be dependent on the quantum of tax liabilities that would be re-determined for all these assessment years in pursuance of this Tribunal

> order, the penalties imposed in the assessment orders in dispute are directed to be struck down. The assessing authority would carry out the exercise of refixing the quantum of penalties payable by the assessee during all these assessment years, at the time of passing denovo assessment orders in pursuance of the above findings.”

4.The main contention of the learned counsel for the petitioner is that the amount received from the customers is only towards the inspection, testing and the certification provided by the petitioner and there is no consideration paid or payable by the customers to the petitioner for transfer of property in any goods as such or in any other form and hence, the petitioner cannot be brought under the scope of the Act. Without considering the same, the second respondent / assessing officer levied sales tax along with penalty on the petitioner. Instead of quashing the same, the authorities below remanded the matter to the second respondent / assessing officer for denovo assessment. Thus, according to the learned counsel, the order impugned herein is patently wrong and illegal and hence, the same is liable to be set aside.

5.However, when this court expressed its view that the issues involved herein have to be determined based on the factual scenario and the order of the Tribunal, which is impugned herein, is nothing but an order remanding the matter to the assessing officer to pass denovo assessment orders, the learned counsel for the petitioner agreed to remand the matter to the assessing officer for fresh consideration and prayed to fix an outer limit for filing objections along with the required documents by the petitioner / assessee and passing assessment orders afresh by the second respondent / assessing officer. The learned Special Government Pleader (Taxes) appearing for the respondents has no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and as agreed by the learned counsel appearing for both sides, this court, without expressing any opinion on the merits of the case, directs the petitioner / assessee to file its objections along with the necessary documents, if any, to the second respondent / Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of such objections and the documents, the second respondent / Assessing Officer shall consider the same and pass appropriate orders, on merits and in accordance with law, after providing due opportunity of personal hearing to the petitioner / assessee, within a period of four weeks thereafter. If there is any failure on the part of the petitioner / assessee in producing the relevant documents, the second respondent / assessing officer shall proceed with the denovo assessment and pass orders afresh, relating to the assessment years in question, based on the available materials, without causing any further delay.

7.With these observations, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kas/gba

To

1. The Secretary to the Tamil Nadu Sales Tax,
   Appellate Tribunal (Additional Bench),
   Madras High Court Compound, Chennai - 600 104.

2. The Appellate Assistant Commissioner (CT)
   Kancheepuram.

3. The Commercial Tax Officer,
   Adyar-1 Assessment Circle,
   46, Greenways Road, Chennai - 600 028.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.10862
+1cc to the Special Government Pleader, S.R.No.11257

W.P.Nos. 35277 to 35281 of 2007

MT(CO)
PM/15/03/2022