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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. No.48722 of 2006 and
M.P. No.1 of 2006

M/s.Sri Balaji Offset
No.153C, Lattice Bridge Road
Thiruvanmiyur
Chennai 600 041 .. Petitioner

Vs.

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal (MB)
City Civil Court Buildings
Second Floor, Chennai 600 014

2.The Appellate Assistant Commissioner (CT)
Kancheepuram

3.The Deputy Commercial Tax Officer (BY)
Thiruvanmiyur Assessment Circle
Chennai 600 018 .. Respondents

* * *

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, to call for the records of the first respondent in T.A. No.457/2001 dated 19.9.2005 and quash the same and further direct the third respondent to follow the order of the second respondent in AP No.665/92 dated 16.02.1998.

* * *

For Petitioner : Mr.V.Sundareswaran

For Respondents : Ms.Amirtha Poonkodi,
Government Advocate for R1 to R3

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O R D E R

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

When the writ petition was taken up for hearing, both the learned counsel appearing for the petitioner and the learned Government Advocate, representing the Commercial Tax Department, confirms that the issue is now squarely covered in favour of the assessee/petitioner herein, in terms of the decision of the Division Bench of this court in ***The State of Tamil Nadu, represented by Deputy Commissioner (CT) vs. Tvl.The Premier Litho Works and another in W.A.(MD) No.79 of 2009 dated 31.07.2009***, which has been confirmed by the Hon'ble Supreme Court in ***SLP. No.10162/2010 dated 03.08.2016***. The relevant portion of the order of the Division Bench, reads thus:

> "*15. In Anandam Viswanathan, the assessee entered into contracts with Universities and Educational Institutions for printing question papers. A question arose whether the taxable turnover should include the printing and block making charges or not. After considering an earlier decision in Government of Andhra Pradesh vs. Guntur Tobaccos Limited, the Supreme Court reiterated that a contract for work in the execution of which goods are used, may take one of the three forms viz., (i) the contract may be for work to be done for remuneration and for supply of materials used in the execution of the works for a price (ii) it may be*

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a contract for work in which the use of materials is ancillary or incidental to the execution of the work or (iii) it may be a contract for work and use or supply of materials, though not ancillary, to the execution of the contract.

22. The other decisions relied upon by the learned Government Advocate, have no application to the issue involved. As rightly pointed out by the learned Judge, the facts of the present case show that the ratio in Anandam Viswanathan case, squarely applies. The Assessing Officer had no evidence before him to come to a conclusion that the labels printed by the first respondent are marketable, though not actually marketed. There was also no evidence on record to show that the printing of labels is not incidental, but primary. Without any evidence, the Assessing Officer went on presumptions and hence the Tribunal and the learned single Judge, were right in over turning the orders of the Assessing Officer and the Appellate Assistant Commissioner."

2. In view of the above, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

[S.V.N., J.]   [C.S.N., J.]
01.11.2022

Asr

Index : Yes/No

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Kancheepuram

3.The Deputy Commercial Tax Officer (BY)
Thiruvanmiyur Assessment Circle
Chennai 600 018

4.The Government Pleader
High Court, Madras

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