BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.08.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

T.C.(MD).Nos.3 and 4 of 2009

The Coronation Arts Crafts
143-A, Thiruthangal Road
Sivakasi ...Appellant in both appeals

Vs

The State of Tamil Nadu
Represented by
The Deputy Commercial Tax Officer (Main)-I
Sivakasi ...Respondent in both appeals

Prayer in T.C.(MD).No.3 of 2009 : Tax Case filed under Section 37 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order the Joint Commissioner (SMR), Commercial Taxes, Chennai-5, dated 17.08.2004 in his Ref.No.M1/5775/99.

Prayer in T.C.(MD).No.4 of 2009 : Tax Case filed under Section 37 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order the Joint Commissioner (SMR), Commercial Taxes, Chennai-5, dated 08.09.2004

in his Ref.No.M1/5776/99.
(In both cases)

For Appellant : Mr.N.Inbarajan

For Respondent : Mr.S.Shaji Bino
Special Government Pleader

COMMON JUDGMENT

(Judgement of the Court was made by **DR.ANITA SUMANTH, J.**)

These tax cases have been filed by the appellant challenging the proceedings of the Joint Commissioner dated 17.08.2004 and 08.09.2004 for the periods 1988-1989 and 1989 -1990 (periods in question) under the provisions of the Central Sales Tax Act, 1956 (CST Act).

2.Assessments were originally been framed for the periods in question that were the subject matter of appeals before the Appellate Assistant Commissioner (AAC). The issue related to taxability of reading books and advertising materials. The appeals came to be allowed cancelling the tax levied holding that the appellant was entitled to exemption of both the turnover from sale of reading books and publicity material, the latter in terms of notification dated 06.08.1970.

3.That order came to be revised suo moto by the Joint

Commissioner on 17.08.2004 and 08.09.2004, the authority finding that the transactions would be liable to tax as works contract. Challenging those orders, the Appellant is before this Court. The stand of the assessee is that the provision under the CST Act that enables the assessment of works contracts is Section 3 r.w.s 2(g) of the CST Act that defines 'sale'.

4. It was only in 1983 that, vide the 46^{th} amendment to the Constitution, the definition of 'sale' was amended and clause-29(A) was inserted bringing within the ambit of tax, works contract as well.

5.Domestic Sales Tax law was amended in 1984 as per which the definition of 'sale' under the Tamil Nadu General Sales Tax Act 1959 was amended to include deemed sale in works contract.

6.The definition of sale under CST Act was amended by way of substitution only on 11.05.2002. Hence, the appellant would argue that the impugned orders of the Joint Commissioner were erroneous on the ground that works contract were not liable to be brought to tax prior to 11.05.2002.

7.For this purpose, appellant relies on the decision of the Division Bench of this Court in *NPT Offset (P) Ltd., .vs. Joint Commissioner-II* *(suo moto revision) Chepauk, Chennai and another [2021] 89 GSTR 111 (Mad)* where this specific argument has been raised by the assessee and accepted by the Division Bench. Per contra, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the State, would rely on the Constitutional amendment with effect from 02.02.1983, by virtue of which the definition of sale included a works contract.

8.According to him, it was not necessary for specific statutes to amend the definitions as the Constitutional amendment would itself suffice to support assessment made under the enactments. For this purpose, he refers to and relies upon the following cases:

(i)Consolidated Coffee Ltd., and another Vs. Coffee Board, Bangalore [(1980) 3 SCC 358](Three Judges of the Hon'ble Supreme Court)
(ii)State of Kerala and another Vs. Builders Association of India and others [(1997) 2 SCC 183]
(iii)State of Utter Pradesh and others Vs. P.N.C.Construction Co., Ltd., and others [(2007) 7 SCC 320]
(iv)Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and another [(2014) 2 SCC 576]
(v)Kone Elevator India Pvt. Ltd., Vs. State of Tamil Nadu

and others in WP(C).No.232 of 2005 dated 06.05.2014 and (vi)State of Orissa Vs. M/s. B.Engineers & Builders Ltd., & others in Civil Appeal No.2516 of 2020 dated 05.06.2020.

9. We have heard the detailed submissions advanced by both sides. By virtue of the 46th amendment to the Constitution, 'tax on sale or purchase of goods' would include:

(a)a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b)a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c)a tax on the delivery of goods on hire purchase or any system of payment by instalments;

(d)a tax on the transfer of the right to use any goods for any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e)a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

10.Article 265 of the Constitution states that no tax may be levied or collected except under the authority of law and the power to levy tax is available to the Central and State Legislatures, in terms of Entry 92A of List-1 and Entry 54 of List-2 respectively.

11. The term 'sale' is defined in Section 2 (g) of the CST Act, amended in 11.05.2022 to read as follows:

2(g)'sale' with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes-

(i)a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii)a transfer of property in goods(whether as goods or in some other form) involved in the execution of a works contract;

(iii)a delivery of goods on hire-purchase or any system of payment by instalments;

(iv)a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v)a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi)a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;

(v)does no include a mortgage or hypothecation of or a charge or pledge on goods.

12. Thus, it is only in 11.05.2002 that the definition of the term 'sale' has been expanded to included 'works contract'. In the judgement in *Consolidated Coffee*, three Judges of the Hon'ble Supreme Court considered the question of construction of Section 5(3) of the Central Sales Act, and the use of the term 'deemed' therein. The observations in *St.Aubyn Vs. Attorney General Lord Radcliffe* (1952 Appeal Cases 15) have been extracted therein as follows:

> *The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statue an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes, it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.*

13. The attempt of the respondents appears to be that with the amendment to the Constitution including works contract in the purview of sale, such an amendment should be deemed to have been made to the CST Act simultaneously as well. This interpretation has necessarily to be rejected as an assessment under a specific revenue enactment has to be tested in the context of the charging provisions.

14. In this case, Section 3 of the Central Sales Tax Act which provides for a situation where a sale or purchase of goods takes place in the course of inter-State trade or commerce, states that such sale shall be deemed to take place in certain enumerated circumstances. As the definition of sale prior to 11.05.2002 did not include reference to works contract, such transaction cannot come within the charge of Section 3 of the Act at the relevant point in time.

15. In *B.Engineers & Buildings Ltd*, learned Special Government Pleader refers to paragraph 8.14, and in the case of *P.N.C. Construction*, on paragraph 21, both dealing with value addition on works contract. The Bench was concerned with whether the transactions under consideration would constitute outright sale or a works contract. In the case of P.N.C. Construction where the result was in favour of the appellant, the Department issued show cause notices on the ground that the roads were not capable of being sold as they were not movables.

16. The Court held that the show cause notices were based on a complete misreading of the provisions of the Act, as in that case, the respective enactment included works contract in the definition of sale.

We do not see the relevance of these cases to the matter at hand as the legal issue to be decided is different and distinguishable. Likewise, in the case of *Builders Association of India*, where the challenge was to a scheme of compounding under the provisions of the Kerala Sales Tax Act 1963.

17.Certain observations in *R.K Garg Vs.Union of India [(1981) 4 SCC 675]* have been relied upon that read as under:

> *'... laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.*
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> *The court must always remember that ' legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do no relate to abstract units and are not to be measured by abstract symmetry; that exact wisdom and nice adaptation of remedy are not always possible' and that ' judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call*

trial and error method and therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down invalid. The Courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture Vs. Central Roig Refining Co, be converted into tribunals for relief, from such crudities and inequities.. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.'

18.The above observations have been rendered in the context of a writ of declaration challenging the provisions of statute. This judgement is of no assistance to the State as it is not the definition of sale that has been challenged, but rather, the fact that at the time when the assessments were framed, works contracts were not included within the purview of 'sale' under the CST Act .

19. Then again, in the case of *Kone Elevator India*, the issue related to whether, in the context of the Andhra Pradesh Sales Tax and Kerala Sales Acts, transactions of manufacture, installation and commission would constitute transactions of outright sale or works

contract. We are not concerned with this issue in the present appeals.

20. Thus, though the Constitutional amendment was on 02.02.1983, the benefit of the same for the framing of assessments would be available only when the statute in terms of which the assessments are to be framed, enable the same. In the present case, the CST Act was amended to include 'works contract' on and with effect from 01.05.2002 only. The impugned orders of the Joint Commissioner are set aside and these Tax Cases are allowed. No costs.

[A.S.M.J.,] & [R.V.J.,]

09.08.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
msa

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.
msa

To

1. The Joint Commissioner (SMR),
Commercial Taxes, Chennai-5,

2.The Deputy Commercial Tax Officer (Main)-I
The State of Tamil Nadu
Sivakasi

3.The Commercial Tax Officer
Rockfort Assessment Circle
Trichy

Common Judgement made
T.C.(MD).Nos.3 and 4 of 2009

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