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.11 & 12 of 2018

1.Tvl.New Rajeswari Color Lab
245/7, V.V.Complex
Kalavasal, Pandian Nagar
Madurai ...Appellant in T.C.No.11 of 2018

2.Tvl.Rajeswari Colour Lab
5, Jerome Buildings
Fort Station Road
Trichy ....Appellant in T.C.No.12 of 2018

Vs

1.The Commercial Tax Officer
West Veli Street Assessment Circle
Madurai ......Respondent in T.C.No.11 of 2018

2.The Commercial Tax Officer
Rockfort Assessment Circle
Trichy ....Respondent in T.C.No.12 of 2018

Prayer in T.C.(MD).No.11 of 2018: Tax Case filed under Section 38 of the TNGST Act, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai passed in MTSA No.61 of 2007 dated 29.11.2010 and set aside the same.

Prayer in T.C.(MD).No.12 of 2018: Tax Case filed under Section 38 of the TNGST Act, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai passed in MTA No.157 of 2006 dated 29.11.2010 and set aside the same.

(In both cases)

For Appellants : Mr.N.Sudalaimuthu
For M/s.S.Karunakar

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

COMMON JUDGMENT

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

The question that arises in these tax cases is as to whether the transactions engaged in by the assessee would amount to a service contract, not involving sale of goods or work contracts under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act).

2.The impugned assessment orders relate to the period 2003-2004 and 2004-2005. This very question was considered in relation to the assessments for the period from 2006-2007 to 2009-2010 under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). There is no material difference between the assessments made under TNVAT Act or TNGST Act for the purposes of this issue.

3.The assessments under the TNVAT Act were the subject matter of challenge in WP(MD).Nos.8091, 8092, 8093 and 8094 of 2013 and one of us, (Dr.Justice Anita Sumanth) had heard those matters. In that order, I have considered the issue in the context of the judgments of the Hon'ble Supreme Court in *Rainbow Colour Lab Vs. State of Madhya Pradesh [2000] 118 STC 9 (SC), Associated Cement Companies Ltd., Vs. Commissioner of Customs [2001] 124 STC 59 (SC)* and *Imagic Creative Pvt.Ltd. Vs. Commissioner of Commercial Taxes [2008] 12 VST 371 (SC).*

4.The assessments were quashed on the basis that the turnover cannot be brought to tax under two different enactments, both the TNVAT Act and Finance Act, 1994 and that order has attained finality. In the present cases, there is no finding to the effect that the receipts in question have suffered service tax in terms of Finance Act, 1994. Hence, we are reluctant to apply that decision unconditionally.

5. For this limited purpose, we remit the matter to the file of the Sales Tax Appellate Tribunal (AB), Madurai ('Tribunal') to receive evidence in the form of service tax returns and service tax assessment orders to confirm whether the receipts for the period 2003-2004 and 2004-2005 have suffered tax under the provisions of Finance Act, 1994. To reiterate, if no such evidence is produced

before the Tribunal, the impugned order of the Tribunal stands confirmed.

6.For the above purpose, the appellant will appear before the Tribunal on the friday, the 18th of August 2023, accompanied with evidences in support of its stand and without awaiting any further notice in this regard. The substantial questions of law admitted are extracted below and are answered in terms of this order.

> *"1.Whether on facts and in the circumstances of the case, the Tribunal was right in sustaining the levy of tax in respect of materials used in developing and printing of photos from films as transfer of goods involved in the execution of works contract, is correct in law?*
>
> *2.Whether on the facts and in the circumstances of the case, the Tribunal was right in treating the work done by the petitioner as works contract instead of service contract, is correct in law?"*

7.Accordingly, these Tax Cases stand disposed. No costs.

[A.S.M.J.,] & [R.V.J.,]
09.08.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
msa
Note: Issue order copy on 11.08.2023

To

1.The Commercial Tax Officer
West Veli Street Assessment Circle
Madurai

2.The Commercial Tax Officer
Rockfort Assessment Circle
Trichy

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

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Pre-delivery Common Judgment made in
T.C.(MD).Nos.11 & 12 of 2018

09.08.2023