IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.48717 of 2006

M/s Amra Press
No.153, Dr.Muthulakshmi Road,
Chennai – 600 041. .. Petitioner

vs

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal (AB),
City Civil Court Buildings,
Second Floor,
Chennai – 600 104.

2.The Commercial Tax Officer,
Thiruvanmiyur Assessment Circle,
Chennai – 600 018.

3.The Deputy Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings,
Greams Road,
Chennai – 600 006. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus or any other appropriate writ direction or order to call for the records of the first respondent in STA No. 1543/2000, quash the impugned proceedings dated 22/10//2003 and further direct the second respondent to accept the returns filed by the petitioner and pass orders in accordance with the provisions of the Tamilnadu General Tax Act, 1959 and the decisions of the Apex Court in 88 STC 204 followed by this Court in 97 STC 503 etc., and pass such further order or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Ms.Amrita Dinakaran
Government Advocate
for R2 & R3
R1 – Tribunal

ORDER
(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The petitioner carries on the business of printing and supplying printed material per the specifications of its customers. It is a registered dealer on the files of the Commercial Tax Officer and is assessed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST / Act).

2. For the period 1994 – 95, the petitioner had filed monthly returns that were taken up for assessment. One of the transactions engaged in, in the course of the relevant financial year, was the taxability or otherwise of question papers that had been printed and supplied by the petitioner.

3. In the course of that assessment, that was completed on 21.03.1996, the assessing authority considered taxability of the paper on which the question papers were printed, the ink used and the kraft paper purchased for making envelopes to securely communicate the question paper to the respective Universities.

4. As far as the paper is itself concerned, the assessing

authority has allowed the claim of exemption in relation to that component of the turnover. He, however brings to tax, the sales of ink at the rate of 8%. We are not concerned with this as well, as the petitioner had appealed against the liability of tax qua the sales of ink and has succeeded in first appeal.

5. As regards the purchase of kraft papers for the making of envelopes, the assessing authority notices that the kraft papers were purchased both locally and inter-state amounting to Rs.27,073/- and Rs.34,801/-, respectively. The kraft papers were converted into packing covers of different sizes and such covers were used for packing the confidential papers.

6. The stand of the petitioner was that the covers had not been sold specifically as envelopes, and their use were solely to maintain confidentiality of the question papers and to transport them securely.

7. The question of taxing covers / envelopes as a sale or deemed sale was contested by the assessee at the time of assessment despite which the amount was brought to tax at the rate of 8%, with an addition of 20% as gross profit. In first appeal, the Appellate Assistant Commissioner ('AAC') reverses the addition in the following terms:-

> *"8.In respect of deemed sales of paper used in the execution of works contract there is no dispute regarding levy of tax; but the dispute is against the quantum of turnover fixed by the Assessing Officer. The Assessing Officer has fixed the deemed sales of paper at Rs.3493.00 by adopting a formula, where as the claim of the appellants was that tax not suffered paper worth of Rs.3000.00 alone was used in printing work. If 20%*

gross profit is added to the value of Rs.3000/- the deemed sales turnover comes to Rs.3600.00, whereas the Assessing Officer has fixed the deemed sales of paper at Rs.3493.00 only. Hence I sustain the turnover of Rs.3493.00 assessed by the Assessing Officer.

9.Regarding the tax liability in respect of packing materials and envelopes the Assessing Officer has not proved that they were sold as such by the appellants. He has not cited even a single instance that the appellants have effected independent sales of packing materials and envelopes. The appellants have used the envelopes and packing cases for packing the printed materials manufactured by them and the cost of envelopes and packing cases are inclusive of the cost of printed materials sold by the appellants. Hence no tax is leviable on the packing materials and envelopes. I, therefore set aside the assessment and levy of tax at 8% on the disputed turnover of Rs.83,502.00 and Rs.651.00."

8. Assailing the order of the Appellate Assistant Commissioner, an appeal was filed before the Income-Tax Appellate Tribunal, which allowed the same. Hence this appeal/writ petition.

9. Mr.Sundareswaran, learned counsel, appearing for the petitioner relies on the judgment of the Supreme Court in the case of *State of Tamil Nadu v Anandam Viswanathan* [(1989) 1 SCC 613].

10. Ms.Amrita, learned Government Advocate, appearing for R2 & R3 would, for her part, rely on the judgment in the case of *State of Karnataka v Pro Lab* [321 ELT 366] and a decision of this Court in the case of *Bharat Offset and Others v Tamil Nadu Taxation Special Tribunal and another* [2010 SCC OnLine Mad 6414].

11. We have heard both learned counsel and have considered the rival contentions carefully. We are of the view that the Tribunal has mis-

appreciated the nature of its transactions engaged in by the petitioner. While the printing of question papers could well have been treated as works contract even at the stage of assessment, the assessing authority has consciously not proceeded in such fashion, preferring instead to tax each component of the turnover individually. He has accordingly verified and accepted the stand of the assessee that the sale of paper would be exempt. With this component out of the way, what remains is only the component of the turnover in relation to the ink and the envelopes.

12. As regards the addition made towards the turnover relating to ink, the first appellate authority has accepted the stand of the petitioner and has reversed the addition made on this aspect. No appeal has been filed as against this reversal before the Tribunal. All that remains is to decide whether the sale of envelopes that were used for securing the question papers would amount to taxable sale or a deemed taxable sale.

13. The reasons set out by the Tribunal to reverse the order of Appellate Assistant Commissioner are that separate accounts have not been maintained as regards the purchase of kraft paper. However, we find this observation misconceived as the break-up of the packing materials, specifically Envelopes & Covers has been provided by the petitioner. The break-up is part of the order of the Tribunal at internal page 4 of its order where the narration is as follows: In the detailed reply sent by the appellants on 11.1.93 for the pre assessment notice dated 11.12.92, the appellants have explained that they have purchased packing materials for a sum of Rs.1,70,299.28 and in page 2 of the said

letters, they have detailed the items purchased for the packing materials - envelopes & covers, *kraft paper, gada cloth, bealwood cases, stitching charges, staolers, jute cloth, rubber bands, gum, clios, thread, nails, tags, taset and packing sheets*.

14. In the case of *Anandam Viswanathan*, the assessee had entered into contracts with various Universities and educational institutions for printing of question papers. The question that was raised was whether the turnover from printing and block-making charges would be liable to tax. The Court refers to its decision in *Government of Andhra Pradesh v Guntur Tobacco* (AIR 1965 SC 1396) laying down the tests for determining works contract, as under:-

> *"9. Our attention was drawn by both Mr. Mohan, learned counsel for the appellant and Mr. Ramachandran, counsel for the respondent to the decision of this Court in Govt. of Andhra Pradesh v Guntur Tobacco Ltd., where this Court laid down that a contract for work in the execution of which goods are used may take one of three forms. The con- tract may be for work to be done for remuneration and for supply of materials used in the execution of the works for a price; it may be a contract for work in which the use of materials is accessory or incidental to the execution of the work; or it may be a contract for work and use or supply of materials, though not accessory to the execution of the contract, is voluntary or gratuitous. In the last class there is no sale because though property passed it did not pass for a price. Whether a contract is of the first or the second class must depend upon the circumstances; if it is of the first, it is a composite contract for work and sale of goods; where it is of the second category, it is a contract for execution of work not involving sale of goods."*

15. At paragraph 10, they opine that the tests laid down were

correct, noticing thereafter that the questions are set on a piece of paper and sent for printing. The University remained the owner until it divulged those question to the intending candidates or the students. Ultimately, the Court goes on to conclude that the question papers, after being printed, are neither available commercially nor to any specific community, save under specific circumstances to the candidates appearing at a particular time for an examination.

16. Hence, the content of the question papers is, at the behest of the University or Educational Institutions, to be kept confidential. This would entail primarily, the upkeep of confidence inter se the parties and such a transaction would not involve the sale of goods but rather a contract for work done. In any event, in the present case, the Department has consciously not adopted the approach of taxing the transaction as a works contract and hence this modus operandi cannot be applied.

17. In the case of *Bharath Offset*, this Court was concerned with the printing of labels, logos and diaries that were sold at the time of new year. In that context, the Bench has rendered an observation to the effect that the judgment in the case of *Anandam Viswanathan* cannot be applied across the board to all transactions where printing materials are supplied. In fact, this distinction, would only go to serve the case of the petitioner rather than that of the respondents.

18. There is a distinction between the printing of question papers which contained confidential material and the printing of labels, logos and diaries which were sold commercially. In the present case, the covers are

only for the purpose of transporting, in a secure fashion, the question papers. They form part and parcel of the supply effected by the petitioner. Admittedly, and needless to say, the question papers have to be sent securely and confidentially and cannot be transported in an open fashion.

19. Hence and applying the decision in the case of *Anandam Viswanathan*, the sale of covers for securing communicating question papers to the University would not entail any taxable sale as the retention of the question papers in the kraft paper covers is only to maintain confidentiality and has not been envisaged as a commercial transaction.

20. Mr.Sundareswaran, also advances at this juncture, an additional argument, that the appeal filed by the Revenue before the Tribunal was belated. According to him, though the Form filed by the Department before the Tribunal reveals that the date of communication of the order of the AAC to the Department was 29.06.04, that date was incorrect as what would ought to have been adopted was the date of communication of the order of the AAC to the Departmental representative.

21. In this context, he relies on a decision of this Court in the case of *Arihant Electrical and Refrigeration Centre v the State Tax Appellate Tribunal and others* (W.P.No.13223 of 2002 dated 14.11.2003). The question that arose in that case was the determination of limitation, particularly the point of commencement of limitation, for filing of an appeal before the Sales Tax Appellate Tribunal.

22. The Division Bench has opined that the point of

commencement would be the date of service of the order of the AAC on the departmental representative and not on the Deputy Commissioner who is empowered to file an appeal before the Tribunal. In doing so, they have been guided by the fact that the period of limitation provided to the Department is 120 days whereas the limitation provided to an assessee is 60 days.

23. Hence the period of limitation provided to the Government under Section 36 is not to be further extended by postponing the starting point for such computation to the date on which the Deputy Commissioner becomes aware of the order passed by the Appellate Assistant Commissioner.

24. In order to address this argument which has been raised by the first time before us, it would be necessary to determine the date on which the order was served upon the Departmental representative. Both learned counsel are handicapped without that specific detail. Since the writ petition is of the year 2006, and in light of the fact that the appellate records have not been retained, we are not inclined to answer this point.

25. In light of the discussion as aforesaid, the impugned order of the Tribunal is set aside and this writ petition is allowed. No costs.

[A.S.M., J] [G.A.M., J]
19.09.2024

Index:Yes
Neutral Citation:Yes
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