



WEB COPY



T.C.No.88 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

T.C.No.88 of 2018

M/s.Industrial Engineering Corporation
No.609, Anna Salai
Chennai – 600 002.

.. Petitioner

Vs.

The State of Tamil Nadu
Rep. By the Deputy Commissioner (CT)
Now designated as Joint Commissioner (CT)
Chennai (Central) Division, PAPJM Buildings
Greams Road, Chennai.

.. Respondent

Prayer: Petition filed under Section 38 of the Tamil Nadu Goods and Service Act, 1959, to revise the common order of the Sales Tax Appellate Tribunal (Additional Bench) Chennai dated 11.05.2011 passed in S.T.A.No.210 of 2005.

For the Petitioner : Mr.V.Sundareswaran

For the Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

(Order of the Court was authored by R.SURESH KUMAR, J.)

This Tax Case Revision has been preferred against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in S.T.A.No.210 of 2005 and COP.No.35 of 2005 dated 11.05.2011.



T.C.No.88 of 2018

WEB COPY

2.1. It is the case of the petitioner that the petitioner is doing Industrial Engineering Services for various office clients and entered into a contract with the Government of India, Ministry of Defence, Directorate of Procurement, New Delhi, on 02.12.1999 and another contract with the Office of the Deputy Chief Electrical Engineer (Shops), South Central Railways, Secunderabad, on 27.09.1999.

2.2. The said work contracts had to be undertaken at Mumbai and Secunderabad respectively. When that being so, for the purpose of execution of the work contracts, necessary goods were supplied and the work contracts were undertaken by the petitioner at the respective places, namely, Mumbai and Secunderabad.

2.3. It is to be noted that as per the definition of the word "sale" under Section 2(g) of the Central Tax Act, 1956, amended vide Act 20 of 2002 with effect from 11.05.2002, the word "contract" has also been included and it has become taxable. However, the issue relating to the present *lis* is of the Assessment Year 1999-2000, that is well before 11.05.2002.



T.C.No.88 of 2018

WEB COPY

2.4. In this context, it is the case of the petitioner that those were work contracts, which have been undertaken outside the jurisdiction of the State of Tamil Nadu, that is at Mumbai and Secunderabad respectively, and since the work contracts were prior to the cutoff date of 11.05.2002, those kind of work contracts cannot be brought under the taxable purview within the meaning of "sale" as stipulated under Section 2(g) of the Central Tax Act, 1956.

2.5. These points were also raised by the petitioner before the Tribunal by way of the following grounds:

"...

(vi) In-any event the Central Sales Tax Act, 1956 there was an Amendment only in the year 2002 with effect from 11.05.2002. Till then, there was no enabling provisions under the Central Sales Tax Act, 1956 as in the case of the Section 3B of the Act to take the deemed sales of the goods involved in the execution of works contract (though it is acceptable by the officer that there was no movement of goods from the State of Tamil Nadu to the other state for the execution of the contract)

(vii) In this connection when a similar stand was taken by the Assessing Officer which was supported by the Special Tribunal the Hon'ble High Court quashed the said order reported in 128 STC 358 following the decisions of the Apex Court reported in 73 STC 370 and 88 STC 204



WEB COPY



T.C.No.88 of 2018

*wherein the High Court held that when the contract is interstate in nature, the said application of Section 3B under the local Act does not apply.
..."*

2.6. In support of the said contentions, in fact the petitioner relied upon the judgment of this Court in the case of ***Sundaram Industries Limited vs. Commercial Tax Officer and Ors.***¹, following the decisions of the Hon'ble Supreme Court of India in the cases of ***Builders' Association of India and Ors. vs. Union of India and Ors.***² and ***M/s.Gannon Dunkerley and Ors. vs. The State of Rajasthan and Ors.***³.

2.7. Though these points mainly have been raised by the petitioner before the Tribunal, the Tribunal, while considering these aspects, has come to the conclusion that there is no proof filed on behalf of the petitioner before the Tribunal even to establish that the work undertaken by th petitioner is in the nature of work contract, that too outside the jurisdiction of Tamil Nadu.

2.8. In view of the said conclusion arrived by the Tribunal,

1 (2002) 128 STC 358

2 (1989) 73 STC 370

3 (1993) 88 STC 204



T.C.No.88 of 2018

the Tribunal, at no occasion, might have thought of any necessity to go into the other aspect as to whether the work contracts undertaken by the petitioner prior to the cutoff date, that is 11.05.2002, are taxable or not. Resultantly, the Tribunal allowed the appeal filed by the State and reversed the order passed by the appellant/Deputy Commissioner and also insofar as the COP filed by the petitioner, only in respect of Form XVII, the COP was partly dismissed and partly allowed.

3. Aggrieved over the same only, the present Tax Case Revision has been preferred by the petitioner.

4. The claim made by the petitioner to establish that the work undertaken by the petitioner are only work contracts, *Mr.V.Sundareswaran*, learned counsel for the petitioner, has invited our attention to the copy of the Schedule for acceptance of tender for ship stationed at Mumbai under the Defense Ministry dated 02.12.1999 for a contract value of Rs.76,18,000/-. Like that, under the contract dated 27.09.1999 with the Office of the Deputy Chief Electrical Engineer (Shops), Secunderabad, there was another contract entered into by the petitioner to an extent of Rs.8,23,842/- Despite these document which were available for



T.C.No.88 of 2018

consideration, the Tribunal has come to the conclusion that in the absence of any documents to establish that the works done by the petitioner are work contracts, the materials that have been transported are only to be treated as “*sale*” and not as materials supplied for the purpose of work contracts and therefore, to that extent, the Tribunal accepted the case projected by the Revenue before the Tribunal.

5. Insofar as the applicability of Section 2(g) of the Central Sales Tax Act, 1956, w.e.f. 11.05.2002, if had the works done by the petitioner are work contracts undertaken prior to the said cutoff date, the same could easily be treated as non-taxable works undertaken by the dealer concerned. As per the case in hand, admittedly, the works were undertaken in the Assessment Year 1999-2000, that is well before the cutoff date of 11.05.2002. In view of the contract documents, which have been place before us, we do not have any doubt over the works that have been undertaken by the petitioner to state that they are work contracts. If those are work contracts undertaken by the petitioner, that too prior to 11.05.2002, the said work contracts cannot be brought under the purview of the tax net under the Central Sales Tax Act, 1956.



T.C.No.88 of 2018

WEB COPY

6. This view of ours is further fortified by virtue of the decision made in the case of **Sundaram Industries Limited** (*supra*), which in fact was following the decisions of the Hon'ble Supreme Court of India in the cases of **Builders' Association of India** (*supra*) and **M/s.Gannon Dunkerley** (*supra*).

7.1. In view of the same, the grounds raised in this Tax Case Revision on behalf of the petitioner is to be accepted. Resultantly, the order impugned, passed by the Tribunal insofar as allowing the appeal filed before the Tribunal by the State as well as the dismissal of the COP filed by the petitioner, is to be reversed or set aside. Accordingly, the same is set aside.

7.2. In the result, this Tax Case Revision is allowed in favour of the petitioner and against the respondent Revenue. However, there shall be no order as to costs.

(R.S.K., J.) (C.S.N, J)
04.09.2024

Neutral Citation:Yes/No

drm

To:



T.C.No.88 of 2018

WEB COPY

1. The Deputy Commissioner (CT)
Now designated as Joint Commissioner (CT)
The State of Tamil Nadu
Chennai (Central) Division, PAPJM Buildings
Greaves Road, Chennai.



WEB COPY



T.C.No.88 of 2018

R. SURESH KUMAR, J.
AND
C. SARAIVANAN, J.
(drm)

T.C.No.88 of 2018

04.09.2024