BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. (MD).No.21468 of 2024
and
W.M.P. (MD).No.18155 of 2024

M/s.Photo Park,
Represented by its Proprietor,
No.52-C/5B/5C, Raja Buildings,
Tirunelveli - 627 001. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Tirunelveli.

2.The Assistant Commissioner (ST)
Tirunelveli Junction,
Tirunelveli. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in TIN 33605541420/2014-15 dated 24.07.2024 and to quash the orders passed therein and to direct the second respondent to pass fresh orders as per the decisions of the Supreme Court of India in the case of Assistant Sales Tax Officer Vs.B.C. Kame reported in 39 STC239 also as per the decision of the Madras High Court (Madurai Bench) order in W.P.(MD).Nos.8091 to 8094 of 2013 dated 05.08.2019 in the case of

M/s.Rajeswari Colour Lab, Trichy and other cases in view of the Article 142 of the Constitution of India as the orders of the Apex Court are binding on the authorities as per the Article 142 of the Constitution of India.

For Petitioner	:	Mr.C.Baktha Siromoni
For Respondents	:	Mr.R.Sureshkumar Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order of assessment dated 24.07.2024 under the TNVAT Act for the assessment year 2014-2015, pursuant to an order of remand by the Appellate Authority, namely, the Appellate Deputy Commissioner dated 13.07.2023, insofar as the impugned proceedings levies taxes on the value of material involved in processing and supplying of photographs, photo prints, negatives on the premise that photography is an activity of service on which no tax could be levied.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer registered under the TNVAT Act and engaged in digital photography. The petitioner suffered an original order of assessment vide proceedings dated 14.08.2020. The assessment order was made on the basis of alleged mismatch with regard to certain purchases made by the petitioner, which are stated to be unaccounted and an estimation of the sales turnover was

thus made and a turnover of Rs.41,00,951/- was arrived at.

2.1. It was contended by the petitioner before the Appellate Authority that the activity of printing and digital photography represents labour work and that they had reported a total and taxable turnover of Rs.33,52,984/- and Rs. 2250/- for assessment under the TNVAT Act for the assessment year 2014-2015, while claiming exemption on the sum of Rs.33,50,734/- as representing job receipts for the digital photography work. The levy of tax was primarily challenged by placing reliance upon the decision of this Court in the case of ***M/s.Rajeswari Colour Lab Vs. Commissioner of Commercial Taxes, Chennai in W.P.(MD).Nos.8091 to 8094 of 2013 dated 05.08.2019***, wherein, it was held that digital photography is only labour work. Reliance was also sought to be placed on the following judgments of the Supreme Court before the Appellate Authority:

(i) ***The Assistant Sales Tax Officer and others Vs. B.C.Kiame, (1977) 39 STC 237 (SC)***

(ii) ***Associated Cement Companies Ltd. Vs. Commissioner of Customs, (2001) 124 STC 59***

(iii) ***Imagic Creative Private Limited Vs. Commissioner of Commercial Taxes and others, (2008) 12 VST 371***

(iv) ***Rainbow Colour Lab & Anr vs The State Of Madhya Pradesh & Others, 2000 (118) STC 9***

(v) ***C.K.Jidheesh Vs. Union of India, (2006) 144 STC 322 (SC)***

It may be relevant to note that the above judgments are also placed reliance in the present Writ Petition by the learned counsel for the petitioner.

2.2. On considering various aspects, the Appellate Authority set aside the levy of tax on the estimated sales turnover of Rs.41,00,951/- with a direction to the Assessing Officer to follow the guidelines laid down by this Court in the case of ***Tvl.JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343***.

2.3. Importantly, enhancement petition was also filed by the Revenue, wherein, it was submitted that the exemption on the sales turnover of Rs. 33,50,734/- as representing receipt towards labour charges for printing and digital photography has been erroneously allowed on the basis of the decision of this Court in *M/s.Rajeswari Colour Lab* (cited supra), which is contrary to the law laid down by the Supreme Court in the case of ***State of Karnataka Vs. M/s.Pro Lab and others*** in ***Civil Appeal No.1145 of 2006 dated 30.01.2015***, wherein, it was held that photography is works contract and the goods component involved therein is liable to tax. Thus, the Appellate Authority, while remanding the matter back in respect of the purchase omission of Rs. 41,00,951/-, had also remanded the matter back to the Assessing Officer to re-examine the claim of exemption on a turnover of Rs.33,50,734/- representing sums collected towards photography charges and to tax the goods element involved in respect of the above transaction. The relevant portion of the order passed by the Appellate Authority is extracted hereunder:

> "*Hence, it is submitted that the reliance placed by the appellant dealers TVL Photo Park on the judgement delivered by the Hon'be Madras High Court (Madurai Bench) in the case of M/s, Rajeswari Colour Lab Vs Assistant Commissioner (CT) Trichy in W.P. No. 8091 to 8094 of 2013, dated 05.08.2019 is not acceptable since the issue had been decided in a different way by the Hon'ble Apex Court in the case of M/s Pro Lab in CA No. 1145 of 2006, in CA. 1145 of 2006, dated 30.01.2015 as per which photographic job is a works contract and the goods component involved in the execution needs to be taxed under the Sales Tax Laws.*
>
> *In the present case, it seems, the appellant dealer had claimed exemption on a turnover of Rs. 33,50,734/- towards receipt of labour charges for printing and digital photography works done which seems to have been allowed in full. As per the judgement of*

the Hon'ble Apex Court delivered in the case of Pro Lab in CA No. 1145 of 2006, in CA. 1145 of 2006, dated 30.01.2015, the goods component involved in the labour receipt turnover of Rs. 33,50,734/- is exigible to tax under TNVAT Act'06 and which levy was found to have been omitted to be made in the assessment order.

As seen from the above referred case laws, it is obvious that the service of manufacturing photography on the photographic paper owned by the appellant and thereafter the photograph is transferred to the customer in the form of finished goods, such activity would not fall under the service tax but under the definition of works contract eligible to tax under the provisions of the TNVAT Act, 2006. In this case the Assessing officer has omitted the levy of tax on the photographic charge received. In his circumstances, it is pertinent to mention here that the assessment could be made the TNVAT Act, 2006. At the time of revision the Assessing officer consider the above discussion, and this matter was also remand back to the Assessing officer for fresh consideration as per law.

In the result, the above said appeal is Remanded."

3. Pursuant to the above directions of the Appellate Authority, the impugned order of assessment has been made. The impugned order would reveal that a notice was issued to the dealer mentioning the following defects, viz., purchase suppression and assessment of exempted turnover. However, the

impugned order records that no reply was filed by the petitioner and thus, the sales suppression, which was originally arrived at Rs.41,00,951/- was confirmed. While dealing with the claim of exemption on photography the impugned order has treated the same to be works contract and has treated a sum of Rs.33,50,734/- as representing the value of the goods involved in the execution of the works contract. Out of the total value of the goods involved in the execution of the contract of Rs.33,50,734/-, 99% of the material were liable to tax at 5%, while 1% of the value of material out of Rs.33,50,734/- was liable to tax at 14.5% and taxes were accordingly worked out and orders of assessment were passed.

4. It is against the above order of assessment, the present Writ Petition is filed on the premise that works contract with photography is a service contract, on which no taxes could be levied, for there is no sale of material, by placing reliance upon the following judgments:

(i) ***Rainbow Colour Lab & Anr vs The State Of Madhya Pradesh & Others, 2000 (118) STC 9,***

(ii) ***The Assistant Sales Tax Officer and others Vs. B.C.Kiame, (1977) 39 STC 237 (SC)***

(iii) ***Associated Cement Companies Ltd. Vs. Commissioner of Customs,***

(2001) 124 STC 59

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5. This Court finds that the above submission is completely devoid of merit, consequent to the 46th amendment to the Constitution, a works contract which was indivisible, is deemed to be an divisible contract and the States are enabled to levy tax on the value of the goods involved in the execution of such works contract. With regard to photography, the Supreme Court in *Rainbow Colour Lab*'s case (cited supra), held that taxes cannot be levied on the value of the goods, which stood transferred in the execution of contracts for photography. The above judgment was reversed by the Supreme Court in the case of ***Associated Cement Companies Ltd. Vs. Commissioner of Customs, (2001) 124 STC 59.*** Subsequent thereto, the Supreme Court, in *Pro Lab*'s case, again re-confirmed the position that the goods involved in the execution of photography would be liable to sales tax/VAT. That being the position, the challenge to the impugned order of assessment on the ground of lack of jurisdiction cannot be sustained.

6. On perusal of the impugned order of assessment, this Court finds that no reply was even submitted by the petitioner pursuant to the order passed by the Appellate authority, nor has any appeal been filed against the order of the Appellate Authority before the Tribunal, insofar as it found that the petitioner is liable to tax in respect of photography. Since the question of liability to tax on photography is decided in the affirmative, the question that remains is the quantum of tax, which would depend on the value of materials involved in the execution of works contract. The same is essentially a question of fact, which, I would think, is appropriate for the Appellate Authority to decide.

7. In view thereof, liberty is granted to the petitioner to file an appeal before the Appellate Authority, if so advised, on the limited ground, of determining the extent of the value of the materials involved in the execution of works contract, within a period of three (3) weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same shall be entertained by the Appellate Authority without reference to limitation subject to complying with all other conditions relating to filing of appeal and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.10.2024

Index : Yes / No
Internet : Yes/ No
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To:

1.The Appellate Deputy Commissioner (ST),
Tirunelveli Division,
Tirunelveli.

2.The Assistant Commissioner (ST)
Tirunelveli Junction,
Tirunelveli.

MOHAMMED SHAFFIQ, J.

Lm

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