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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22/09/2025

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

T.C.(MD)No.172 of 2012

The state of Tamil Nadu, Represented by
The Deputy Commissioner of
Commercial Taxes,
Tiruchirappalli Division,
Tiruchirappalli. ...Petitioner

vs.

Tvl.Hotel Tamilagam (P) Ltd.,
Karur Bye-pass Road,
Trichy. ... Respondent

Prayer: Tax Case Revision filed under Section 38 of the TNGST Act, 1959 praying to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai in M.S.T.A.Nos.200 of 2000 and 204 of 2000, dated 10.01.2001.

For Petitioner : Mr.J.K.Jeyaselan
Government Advocate

For Respondent : Mr.S.Karunakar

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ORDER

P.VELMURUGAN, J.

Challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.S.T.A.Nos.200 of 2000 and 204 of 2000, dated 10.01.2001, the Revenue has filed the present Tax Case Revision.

2. According to the petitioner/Revenue, the respondent/dealer obtained a Registration Certificate to run a business in the name and style of Hotel Tamilagam (P) Ltd., at Karur Bye-Pass Road, Trichy-2. On 13.08.1996, at the time of applying for the Registration Certificate, the respondent/dealer stated that they had applied for registration under the CST Act for the purpose of purchasing machinery, air conditioners, lifts, and electrical goods from other states. The building was constructed during the financial year 1996-1997. The petitioner/Revenue further contends that the respondent purchased raw materials from registered dealers within the State as well as from other States and utilized them for the construction of the building. Subsequently, the building was named "Mayas," and a registration certificate under the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981, was obtained on 11.02.1997. In both concerns, all three Directors are the same individuals viz., father, mother, and son. The building was constructed by Hotel

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Tamilagam (P) Ltd., which had TNGST RC No.341025, and later transferred to Hotel Mayas, which had R.C.No.I/00635 under the Luxuries Act. Even though the Directors are the same in both entities, the Registration Certificates are separate under different Acts. Therefore, it should be treated as a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

3. According to the respondent/dealer, they are neither building contractors nor flat promoters engaged in commercial construction activities. They claim that they purchased sand, jelly, wood, and other materials exclusively for the construction of their own building and are, therefore, not liable to pay tax on such purchases in the absence of a business venture. Furthermore, they assert that Hotel Tamilagam (P) Ltd. is a registered concern that constructed the building for its own use. The ground floor was utilized as a restaurant and hotel, while the upper floors were constructed for lodging purposes. The lodging facility was named "Hotel Mayas," and the restaurant was named "Hotel Geethanjali." Since no sale took place, and the respondent is not a dealer in buildings, they argue that the assessment by the Commercial Tax Officer, Rockfort Circle, Trichy, for the financial years 1994-95, 1995-96, and 1996-97, with turnovers of Rs.28,57,109/-, Rs.16,92,674/-, and Rs.3,41,669/- respectively, is incorrect.

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4. Challenging the order of the Assessing Officer, the respondent/dealer filed an appeal before the Appellate Assistant Commissioner (CT), Trichy, disputing the entire taxable turnover and the resultant levy of tax, surcharge (SC), additional sales tax (AST), and the imposition of a penalty under Section 12(3)(B) of the Act. The Appellate Authority, vide order dated 11.01.1999, allowed the appeal with the following observations:

> *"In the instant case, no valuable consideration had also been received by the appellants. In a building contractor, where the agreement between the parties was that the contractors should construct the building in accordance to the specifications contain on the agreements and in consideration thereof received payments as provided therein. In the present case, there was neither a contract to sell the material used in the construction of building nor the property passed therein as a movable. It is well settled that transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be deemed to be a sale as per the principles laid down in the case of Builders Association Vs. Union of India reported in 73 STC 370. The mere execution of a works contract does not by itself imply liability to tax under the Act, unless it is accompanied by a Transfer of Property, in goods involved in the execution of a works contract. In the instant case, the transfer of property said to be involved in the execution of works contract do not belong to the land of others. The appellants had purchased the materials for their own use in constructing the buildings. The appellants had constructed the buildings on their own hands. In such being the case, the tax liability under Section 3B of the Act does not arise. Apart from that it was crucial points of considering the elements of a .... (sic) was totally absent in this transactions. Therefore, it is unfortunate that the Assessing Officer instead of examining the contract with reference to various causes of the memorandum has thoroughly mislead*

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itself into making on assessment relates to works contract without first making sure that there is a contract which come within the category of works contract. Thus, it is clear from a reading of the Memorandum of the Association and the impugned orders, the appellants had never enter into any contract with third parties and no transfer of property involved in the execution of works as alleged by the learned Assessing Officer on the ground that no one can transfer the goods to himself. In the light of the principles laid down in the above said case, the assessment made by the learned Assessing Officer on the above disputed turnover are not in order and are not sustainable as it suffers from legal infirmity."

5. Since the order of the Appellate Assistant Commissioner was found to be prejudicial to Revenue, the State filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), disputing the relief granted to the respondent and seeking restoration of the Assessing Officer's order. After hearing both sides, the Tribunal dismissed the Revenue's appeal, stating:

"7. We have gone through the entire records relating to this appeal in detail. A perusal of records revealed that the dealer had been assessed on a total and taxable turnover of Rs.37,03,414/- and Rs.16,92,674/- as against the 'nil' reported turnover for the year 1995-96 based on the results of check of accounts. For the year 1994-95 the dealers had been assessed on a total and taxable turnover of Rs.42,36,878/- and Rs.28,57,109/- respectively as against the reported 'nil' turnover. On Appeal, the Appellate Assistant Commissioner allowed the appeals against which the appellant State filed the present Appeals before the Tribunal.

8. The close scrutiny of the appeal records revealed that the Appellate Assistant Commissioner (CT) considering the facts and circumstances of the case had come to a logical conclusion and accordingly

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deleted the assessment made. We are not inclined to interfere with the orders of the Appellate Assistant Commissioner (CT). Moreover, the Department has not placed any additional evidences and also not pinpointed any specific materials to set aside the orders of the Appellate Assistant Commissioner (CT). In the light of the above observations and facts, the orders of the Appellate Assistant Commissioner (CT) is upheld and consequently, the appeals filed by the State stand dismissed."

6. Aggrieved by the Tribunal's order, the Revenue has filed this Tax Case Revision.

7. The learned Government Advocate for the petitioner submits that the Tribunal failed to recognize that two distinct legal entities were involved viz., one executing work for the other on a contractual basis. Just because the Directors in both entities are the same, it does not mean that both legal entities are one and the same. A sale from one to the other should be treated as a transaction taxable under Section 2(a) of the TNGST Act. The learned Government Advocate further argues that the Tribunal overlooked the fact that the Assessing Authority did not seek to tax the sale of a constructed building but rather assessed the materials purchased from interstate sources, which had not suffered tax and were utilized in the execution of civil works contracts. Therefore, the learned Government Advocate prays for the Tribunal's order to be set aside and for the restoration of the Assessing

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Officer’s order.

8. Per contra, the learned counsel for the respondent contends that the respondent is not a building contractor or flat promoter engaged in construction for commercial purposes. The materials purchased were used solely for the construction of their own building, which was subsequently utilized for hotel and lodging operations. Since no works contract existed, and no sale of materials to third parties took place, the transaction does not attract tax liability under Section 3B of the Act. The assessing authority erred in treating it as a taxable works contract, and the Tribunal correctly upheld the Appellate Assistant Commissioner's order, which found no legal basis for taxation.

9. Heard the learned counsel on either side and perused the materials available on record.

10. This Tax Case Revision was admitted on the following questions of law:-

> *(i) Whether the Tribunal is correct in upholding the order of the Appellate Assistant Commissioner who deleted the*

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assessment made by the Assessing Officer on transfer of property of building, stating that it suffers from legal infirmity?

(ii) Whether the Tribunal is correct in confirming that two different companies with two different Memorandum of Association but with same Directors are one and the same legal entity?

11. The admitted facts are that Hotel Tamilagam (P) Ltd. is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). It had purchased construction materials both from within the State and from other States. The building constructed using these materials was later transferred to another concern, Hotel Mayas, which obtained a separate registration under the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 (Luxuries Act). It is not in dispute that both concerns have separate registration certificates under different laws. It is a settled legal principle that a private limited company is a separate legal entity, distinct from its shareholders or directors. Therefore, the fact that the same persons were directors in both companies does not make them a single entity.

12. Once it is shown that one registered dealer purchased materials from other States, used them for constructing a building, and that the building was later given to another separately registered company, the transaction

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clearly amounts to a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract as per Section 3B of the TNGST Act. It must be noted that the assessment is not on the transfer of the completed building as immovable property but only on the value of the goods used in its construction. The respondent's plea that it was for self-use cannot be accepted, because the company which purchased the materials is legally different from the company which now owns the building. Such transactions are treated as works contracts under Section 3B, even between related companies, as long as each is legally separate. Both issues are decided in favour of the Revenue and against the respondent.

13. The Appellate Assistant Commissioner erred in treating the two concerns as one and the same merely because they had common directors, and the Tribunal also fell into the same error by affirming that view. This approach runs contrary to the well-settled principle that a company has a legal identity distinct from its directors. Therefore, the conclusion that there was no works contract cannot be sustained.

14. For these reasons, this Court holds that the Tribunal was not correct in confirming the order of the Appellate Assistant Commissioner, and that the Assessing Officer was right in bringing to tax the value of the goods

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used in the execution of the works contract under Section 3B of the TNGST Act.

15. Accordingly, this Tax Case Revision is allowed. The order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 10.01.2001, is set aside, and the assessment order passed by the Assessing Officer is restored. No order as to costs.

(P.V., J.) (K.K.R.K., J.)
22/09/2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

1.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Madurai

2 .The Deputy Commissioner of
Commercial Taxes,
Tiruchirappalli Division,
Tiruchirappalli.

3.The Commercial Tax Officer,
Rockfort Circle.

P.VELMURUGAN, J.

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and
K.K.RAMAKRISHNAN, J.

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