(2013) 08 MAD CK 0287

In the Madras High Court

Case No : TC (Revision) . No''s. 407 and 408 of 2011

Prasad Film Laboratories APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 3A, 3A(2)(b)

Citation : (2013) 08 MAD CK 0287

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : S. Ramanathan, for the Appellant; Manoharan Sundaram, Spl. Govt. Pleader (Taxes), for the Respondent

Judgement

Chitra Venkataraman, J.—The above Tax Case Revisions are filed at the instance of the assessee as against the order of the Tamil Nadu Sales Tax Appellate Tribunal for the assessment years 1999-2000 and 2000-01 respectively. The above Tax Case Revisions were admitted on the following substantial questions of law:-

1. Whether there is transfer of right to use the cinematographic cameras as per the terms and conditions put forth in the agreement so as to attract the levy of tax u/s 3-A of the TNGST Act?

2. Whether the Tribunal was correct in holding that there is a transfer of right to use the cameras when the Tribunal has held that the ownership right over the camera was only with the petitioner and only implied possession vest with the lessees?

It is seen from the facts narrated that the petitioner are in the business of printing and processing of cinematographic films and also giving on lease cinematographic cameras and other equipments on hire basis. The assessee contended that Section 3 of the Tamil Nadu General Sales Tax Act would not applicable to the petitioner''s case and the turnover was relating to hire charges received on leasing cinematographic cameras and other equipments. The assessee further contended that possession was not given and hence, there was no transfer of right to use, hence, Section 3-A of the Tamil Nadu General Sales Tax Act would not apply to the facts of the case. The contention of the assessee was however rejected by the Assessing Officer. This led to the assessee filing an appeal before the Appellate Assistant Commissioner, who accepted the case of the assessee, thereby, setting aside the assessment. Aggrieved by the same, the Revenue went on appeal before the Tamil Nadu Sales Tax Appellate Tribunal, on analysis of the agreement, it found that the hire charges received by the assessee is only for hiring cameras to the lessee i.e. producer. The effective control on operating the camera was always with the lessee i.e. producer, during the lease period and the lessee had fully exploited the economic benefit derived from the camera for shooting film during the lease period. Thus, the possession and effective control being with the producer, the assessee could not claim that there was no transfer of right to use, as such Section 3-A of the Act would not attract. Thus, on the totality of the circumstances, the Tribunal held that the transaction in question was liable to be assessed u/s 3-A of the Act.

2. On the claim of deduction u/s 3A(2)(b) of the Act, the Tribunal pointed out that there was hardly any material to show that what were all the equipments that were purchased locally and what was the equipments that were imported. In the absence of any materials to suggest that the hired equipments were locally purchased from the registered dealers and just imported, the question of granting deduction did not arise. Aggrieved by this, present revision by the assessee.

3. We do not find any justifiable ground to take a different view from what the Tribunal had given in paragraph 16 of its order. Taking note of the nature of the execution of the work by the lessee and the purpose for which the cameras were given on hire, as per agreement thereon, we have no hesitation in confirming the view of the Tribunal.

4. It may be noted that on similar contention taken in T.C. (R) NOS. 10 TO 13 AND 38 OF 2010 T.C. No. 38 of 2010 in the case of M/s. Anand Cine Services, Vs. The State of Tamil Nadu, rep. by Joint Commissioner (CT) Chennai, (Central) Division, PAPJM Building, Greams Road, Chennai 600 006, the Division Bench of this Court rejected the plea of the assessee, thereby, confirming the order of the Tribunal in respect of the assessment made u/s 3-A of the Act. In the circumstances, following the above stated order of the Division Bench of this Court, the above Tax Case (Revisions) are also dismissed. No costs.