(2013) 08 MAD CK 0233

In the Madras High Court

Case No : Tax Case (Revision) Nos. 69 of 2009 and 80 and 81 of 2011

State of Tamil Nadu APPELLANT

Vs

S.S.M. Processing Mills RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2014) 69 VST 445

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

Bench : Division Bench

Judgement

Chitra Venkataraman, J.—The Revenue is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment years 1989-90, 1994-95 and 1987-88, respectively raising the following questions of law:

(1) Whether, in the facts and circumstances of the case, the Tribunal has failed to consider that in dyeing works contract, the goods to be incorporated may either be as goods or in some other form similar to the accretion or occasions due to the application of dyes and chemicals?

(2) Whether the Tribunal has failed to distinguish dyes and chemicals from that of consumables like fuel or welding electrodes, which are exhausted or disappeared after the work executed?

Since all the tax cases (revision) are related to the very same assessee and the common questions of law arise, it is suffice to refer the general facts as are available.

2. The assessee herein is carrying on the business in bleaching and dyeing of fabrics. The chemicals involved therein were purchased outside the State. On the question of liability on the works contract executed under the Sales Tax Act as the deemed sale, the Sales Tax Appellate Tribunal held that the nature of transaction in the dyeing contract or in bleaching was not "transfer of property" or "sale" simpliciter; consequently, levy of sales tax treating it as deemed sale

did not arise. Aggrieved by the order passed by the Sales Tax Appellate Tribunal, the present tax case revisions are preferred by the Revenue.

3. As far as dyeing contract is concerned, both sides agree that the said issue is covered by the unreported decision of this court dated July 1, 2011 passed in T.C. (R) Nos. 842, 817, 818, 819 to 823, 826, 841, 843, 849, 850, 870, 982, 987, 990, 1036, 1038 and 1040 of 2006, wherein, this court followed the decisions reported in M/s. Rainbow Colour Lab and Another Vs. The State of Madhya Pradesh and Others [OVERRULED], and M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, , held that the chemicals used in the execution of works contract on the dyeing of cloth attracted sales tax.

4. As far as bleaching of the grey cloth as job-work done by the assessee herein is concerned, in the decision reported in Apparels and Handloom Exporters Association and Others Vs. State of Tamil Nadu and Others, in the case of (Apparels and Handloom Exporters Association v. State of Tamil Nadu), this court considered the scope of expression "whether as goods or in some other form" in section 3B of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called as "the Act") which are found in parenthesis in article 366(29A) and pointed out that the object of amendment in article 366(29A) of the Constitution was to bring to tax the items, which otherwise could not have been brought to tax, and it was not meant to be a sieve through which goods liable to be taxed are allowed to escape tax. This court further pointed out in paragraph 13 as under (page 171 in 129 STC):

13. The change in the form referred to in article 366(29A) of the Constitution is not change in the form of the goods to other commercially distinct and taxable goods. The change of form referred to therein, is the change of goods into another form which by itself would not have been taxable but for the use of that expression in article 366.

5. Thus, in the context of expression used in "a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract", this court held that the provisions of the Sales Tax Act stood attracted.

6. In the decision reported in Enviro Chemicals Vs. State of Kerala, , the Full Bench of the Kerala High Court considered the case similar to the one in hand. The facts were that the petitioner/assessee developed a chemical product by name "envirofloc", used as a chemical for effluent treatment. The assessee carried out pollution control treatment for Madura Coats Limited, Koratty, in the manufacture of yarn. In the process of such treatment, the assessee applied the chemical envirofloc and in that it either got used up in the treatment of effluent water by neutralising colour, odour, etc. On the question whether there was sale of materials involved in the execution of works contract in the services rendered in the form of chemical treatment of effluent water at the factory of customer, the Full Bench of the Kerala High Court held that the moment, the chemicals

were put into effluent plant by the petitioner, the property in the goods passed on to the customer and its subsequent consumption was after sale. This did not detract from the factum of sale and consequently, the exigibility to tax was held as unquestionable. Thus, there was sale of chemical involved in the execution of works contract. On this, the Full Bench of the Kerala High Court upheld the decision of the assessing officer and held that the assessee was liable to be assessed under the provisions of the Sales Tax Act. The Kerala High Court however, held that even after insertion of article 366(29A), under the 46th Amendment to the Constitution, there cannot be any sales tax on a works contract per se; there must be transfer of property in goods, as goods or in any other form.

7. We are in respectful agreement with the decision of the Full Bench of the Kerala High Court. Applying this decision and read in the context of the decision of this court reported in Apparels and Handloom Exporters Association and Others Vs. State of Tamil Nadu and Others, , we do not find any justifiable ground to uphold the order of the Sales Tax Appellate Tribunal to hold that the transaction are not liable to tax.

8. The fact that the chemicals used for bleaching is washed away in the process, by itself, would not be a justifiable ground to accept the case of the assessee that there was no transfer of property of any goods. The very fact of the yarn being bleached by a chemical process, by applying the chemical, will clearly point out that there is transfer of property of the chemical, hence, bleaching contract attracts sales tax as in the case of dyeing contract, when the chemicals are purchased from outside the State. Consequently, this court allow the tax case (revisions) filed by the State.

9. As far as levy of penalty is concerned, we cancel levy of penalty in all the above tax cases (revision) following the unreported decision of this court dated July 24, 2013 since reported in [2014] 69 VST 443 (Mad.) passed in Tax Case (Revision) No. 523 of 2006 (State of Tamil Nadu, rep. by the Deputy Commissioner, (Commercial Taxes), Salem Division, Salem v. Tvl. Jansons Textile Processors, No. 68/A1, Namakkal Road, Tiruchengode), since there was no suppression of sale in the turnover and that the claim of the assessee was rejected only on the interpretation placed on section 3B of the Act. In the result, the tax case (revisions) are ordered on the above terms. No costs.