(1995) 06 MAD CK 0014

In the Madras High Court

Case No : Tax Case No''s. 462 and 463 of 1995 (Revision No''s. 148 and 149 of 1995)

State of Tamil Nadu APPELLANT

Vs

Vijayakumar Mills Limited RESPONDENT

Date of Decision : 23-06-1995

Acts Referred:
Constitution of India, 1950 — Article 366

Citation : (1995) 06 MAD CK 0014

Hon'ble Judges : K.A. Swami, C.J;Raju, J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—The view expressed by the Tribunal accords with the view expressed by a Division Bench of this Court reported in Tamil Nadu Mosaic Manufacturers Association v. State of Tamil Nadu 1995 97 STC 503. The relevant portion of the judgment is as follows :

"The contention of Mr. V. Ramachandran, learned senior Counsel for the appellant, in W.A. No. 1093 of 1994 is that the members of the appellant-association in the said writ appeal are doing job-work in printing, that the ink used in the course of the printing work is consumed in the execution of the works contract of printing and therefore the cost of the ink which is consumed in the execution of the works contract would come under the expression, ''the labour charges and other like charges not involving any transfer of property in goods'' occurring in sub-section (2)(e) of section 3-B and therefore, the ink used in the execution of the works contract being a consumable item, the cost of the ink must be deducted from the total turnover of the dealer for the purposes of levying of tax u/s 3-B(1) of the Act. Similarly, Mr. K. J. Chandran, learned counsel for the appellant in W.A. No. 1467 of 1994 submitted that the members of the appellant-association in that appeal are doing job-work in dyeing, that the dyes used in the works contract of dyeing is consumed in the course of execution of the works contract of dyeing and therefore, the dyes being a consumable item fall within the purview of the expressions ''labour charges and other charges not involving transfer of property in goods'' and therefore, the cost of the dyes used in the execution of works contract must be deducted under sub-section (2)(e) of section 3-B in calculating the taxable turnover of the dealer for the purposes of levying u/s 3-B(1) of the Act. On the other hand, learned Additional Government Pleader (Taxes) relying on the decisions reported in 1993 91 STC 504 (sic) and 1991 83 STC 420 Mad (State of Tamil Nadu v. Everest Copiers) contended that printing or dyeing as the case may be results in the transfer of property in goods by the principle of accretion and therefore, the ink used in printing in the execution of the works contract and the dyes used for the purpose of dyeing in the execution of the works contract are taxable under the provisions of the Act.

The apex Court in cannon Dunkerley''s case 1993 88 STC 204, has held that the tax and transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract falling within the ambit of article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in the execution of the works contract would constitute the measure for imposition of the tax. The apex Court further held that the value of the goods involved in the execution of the works contract will have to be determined by taking into account the value of the entire works contract after deducting therefrom the charges towards labour and services which would cover among other things cost of consumables such as water, electricity and fuel, etc., used in the execution of the works contract, the property in which is not transferred in the course of execution of the works contract. In view of the above decision of the apex Court, it has to be held that the cost of the consumables used in the execution of works contract, the property in which is not transferred in the course of the execution of the works contract, will certainly come within the purview of ''labour charges and other like charges'' contemplated under sub-section (2)(e) of section 3-B of the Act. Therefore, such cost of consumables has to be excluded from the total turnover of a dealer in calculating the taxable turnover for the purposes of levy of tax u/s 3-B(1) of the Act."

2. Accordingly, following the said decision, these tax cases are dismissed.

3. Petitions dismissed.

