IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

T.C. (R) No.40 of 2015

The State of Tamil Nadu represented
by the Deputy Commissioner (CT)
Madurai Division, Madurai. ...Petitioner/Petitioner

Vs

Tvl.Annamalaiar Mills Ltd
Dindigul. ...Respondent/Respondent

Prayer:- This Tax Case (Revision) is filed, against the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai dated 10.6.2002 made in Madurai Tribunal Appeal No.542/99 relating to the respondent Mill for the assessment year 1990-91, against the order of the Appellate Madurai (North) Assistant Commissioner (CT) dated 28.06.1999 in AP 487/92 (86-87) AP 486/92 (87-88) AP 484/92 (89-90) AP 485/92 (90-91) AP 382/97 (91-92)and against the order of the Deputy Commercial Tax Officer (Rural) Dindigul, dated 01.07.1992 in TNGST No. 523086/90-91.

For Petitioner : Mr.Manohar Sundaram, AGP (T)

ORDER

The State in this Tax Case Revision seeks to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal, Madurai dated 10.6.2002 in a batch of Madurai Tribunal Appeals, one among which is MTA No.542/99 relating to the respondent Tvl.Annamalaiar Mills Ltd., Dindigul for the assessment year 1990-91.

2.In all the Madurai Tribunal Appeal Nos.539 to 543/1999 relating to the same Mill for the assessment years from 1986-87 to 1991-92, the issue involved is as to whether the transaction of purchase of cotton between the respondent Mill and one Maharashtra State Co-opertive Cotton Growers Marketing Federation Ltd., Bombay (hereinafter shortly referred to as Federation) is inter state sale or local sale by reason of delivery of goods, after payment of entire sale consideration within Tamil Nadu. While the original Assessing Officer and the Appellate Assistant Commissioner (CT), Madurai have, for the reasons recorded in the order, negatived the contention raised on the side of the assessee regarding the nature of the transaction as inter state sale and arrived at a conclusion that it is only a local sale and accordingly imposed levy of surcharge, additional surcharge and penalty etc., Tamil Nadu Sales Tax Appellate Tribunal has, in the impugned order, reversed the findings of the Authorities below and treated the transaction as inter state purchase and accordingly, set aside the assessment made on the transaction and hence set aside the corresponding levy of penalty under section 16(2) for the years 1986-87, 1987-88, 1989-90 and under section 12(3) of the Act for the Assessment year 1991-92 as levied by the Assessing Officer and as sustained by the Appellate Assistant Commissioner. Aggrieved against the same is the present Tax Case Revision by the State before this court.

3.The learned Additional Government Pleader (Taxes) appearing for the Revision petitioner has, in support of his contention that the transaction in question is only the local sale, reiterated the same points as raised before Authorities below that the goods remained the property of the Federation and the sale was completed in Tamil Nadu, after the payment was made and thereafter, the goods were delivered.

4.Whereas, the respondent/assessee, in support of their case that the transaction in question is only inter state sale and not local sale, reiterated the following points: (i)the contract entered into between the parties is for sale of specified goods of cotton for specified quantity. (ii)the Federation moved the goods from Maharashtra to Tamil Nadu ie., the godown of the assessee Mill, only in pursuance of the contract. (iii)in the lorry way bill accompanied the goods, the name of the buyer and seller are mentioned as Annamalaiyar Mills and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Bombay respectively. (iv) the movement of goods of the seller is not with reference to any buyer and they were not in search for buyers after storing the goods in the godown at Tamil Nadu. In this case, the goods have been moved with reference to the firm purchase order placed by the buyer specifying the quantity and variety of cotton. The respondent Mill has also in support of their contention regarding the nature of the transaction as inter state sale, relied on the following documents: contract, delivery order, sales bills issued by the Federation, Transport invoices etc.

5.The Tamil Nadu Sales Tax Appellate Tribunal, after verifying the facts stated above by the assessee, in the light of the documents referred to above and by applying the principles laid down by the Hon'ble Supreme Court in South India Viscose Ltd v. State of Tamil Nadu, reported in 48 STC 232 and also by applying the view of the TNTST, Chennai in the case in TC(A) Nos.2803 to 2805 of 1997 and TC (R) Nos.112 and 114 of 1998 etc dated 1.11.1999, was of the firm view that the transaction cannot be considered as local sale, but only as inter state purchase and the same was not liable to tax under the TNGST Act 1959 at the point of last purchase in the State and accordingly allowed all the five appeals.

6.For better appreciation, the findings of the Tribunal in paras 6 to 8 of the impugned order are extracted below:

> "6.We heard the arguments put forth by the learned Authorised Representative and the learned Additional State Representative and carefully examined the records produced at the time of hearing along with the assessment records. The only point for consideration is:
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> Whether the disputed transactions in all the five years is an interstate purchase at the hands of the appellants or a local purchase liable to be taxed under the TNGST Act, 1959 i.e., whether the transactions fall under the definition of section 3(a) of the CST Act, 1956 or 2(n) of the TNGST Act 1959. The points involved in these cases are that the appellants/mill have placed an order with the Maharashtra State Co-operative Cotton Growers Marketing Federation vide their letter dated 11.2.1993 and further by a letter dated 19.2.1983, the Federation confirms the letter and as per that letter the specified quantity of cotton have been moved from Maharashtra to the godown of the appellants mill. The godown was under the Joint Custody of the appellants and sellers (Federation). It is also found that only after the payment of the sale price the goods have been delivered to the appellants. On the facts available as above, we examined whether the transactions fall under the category of (i)mentioned under section 3(a) of the Act or not. We have also examined the fact whether the transactions which falling under section 4 of the CST Act 1956. Regarding the first point whether the transaction is falling under section 3(a) of the CST Act, 1956, the relevant section is extracted below.
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> "Section 3(a) of the CST Act, 1956:
>
> A sale or purchase of goods shall be deemed to take place in the course of interstate trade of commerce if the sale or purchase-
>
> a) Occasions the movement of goods from one State to another; or
>
> b)Is effected by a transfer of documents of title to

the goods during their movement from one state to another.

Explanation: 1 where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation: 2 Where the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State".

We examined whether the appellants' transactions fall under the above mentioned section 3(a) of the CST Act 1956. If it falls under the above section, the local Act and the section 4 of the CST Act, 1956 need not be applied. Section 3(a) of the CST Act, 1956 states that

"if the sale or purchase occasioned the movement of goods from one State to another".

So, we have to verify where the movement has been occasioned by any document. In this case, the appellants have already entered into a contract with the Federation for the supply of cotton bales with quantity and quality. In this case, the appellants have already entered into a contract with the Federation for supply of specific number of cotton bales. The Federation moved the goods from Maharashtra to Tamil Nadu only in pursuance of that contract. It has been categorically held by the Supreme Court in various decisions. In the case of South India Viscose Ltd., v. State of Tamil Nadu, reported in 48 STC 232, "that if there is a conceivable link between the contract of sale and movement of goods from one State to another in order to discharge the obligation under the contract of sale the inter-position of an agent of the seller, who may temporarily intercept the movement, will not alter the interstate character of the sale". In this case, even considering the said depot as a branch of the Federation, the real fact that there is a movement in pursuance of contract from one State to another cannot be denied. Another point relied on by the learned Additional State Representative and the Appellate Assistant Commissioner is that since the property in goods have been transferred to the appellants in this state and as long as the payment was made the ownership of the goods remains with the Federation. Hence, the disputed transactions have to be considered as local sales. We have given careful consideration with reference to the facts of these cases. It is an admitted fact that the Federation has delivered the goods only after receipt of the payment in Tamil Nadu from the Godown. Because of this factor, the disputed transaction cannot be considered as local sale as per the decision of the Hon'ble Supreme Court in the case of Oil India Ltd. v. Superintendent of Taxes reported in 35 STC 445 wherein it has been held that a sale which occasions movement of goods from one state to another is a sale in the course of interstate trade, no matter in which State the property in the goods passes. It is not necessary that the sale must precede the inter statement movement in order that the sale may be deemed to have occasioned such movement. In this specific case the movement is in pursuance of the contract even if the goods have been transferred to the buyer in Tamil Nadu, the transactions cannot be considered as a local sales and very well fall under the definition of interstate sales defined under section 3(a) of the CST Act, 1956. The implication of section 4 and 4(a) of the CST Act 1956 has also been examined by the Hon'ble TNTST, Chennai in the case relied on by the appellants. We also have examined the fact since the transit insurance has been paid by the Federation for the goods where the transactions can be considered as a local sale. In this regard the learned Authorised Representative contended that the transit insurance charges have been paid by the appellants to the Federation. Anyhow this is not a vital point to decide the transaction whether it is a local sale or interstate sale.

7.We have examined the contract, delivery order, sales bills issued by the Federation, transport invoices etc. These records clearly show that the movement is in pursuance of the agreement entered into by the buyers regarding specific quantity. In the sale bill, the buyer has been mentioned as Annamalaiyar Mills Ltd., (the buyers) the sellers (Federation). In the lorry way bill accompanied the goods also has been mentioned the buyer as Annamalaiyar Mills and seller as Maharashtra State Co-operative Cotton growers Marketing Federation Ltd., Bombay. The above records clearly show that there is an interstate movement of cotton, which has been termed as local purchase by the Assessing Officer. The transactions are similar to the case decided by the TNTST, Chennai, in the case reported in TC(A) 2803 to 2805 of 1997, TC (R) no.112 and 114 of 1998 etc. Dated 1.11.1999.

8. We have also verified the fact with reference to the point mentioned in page 10 of TNTST, Chennai's order whether the disputed transactions relate to the movement of goods by the sellers without referring to any buyers and they have searched for buyers after storing the goods in the godown at Tamil Nadu. The verification of the records revealed that the case is not so. In all the

years, the goods have been moved with reference to the firm purchase order placed by the buyers specifying the quantity and variety of cotton. In these circumstances, this transaction cannot be considered as one brought from outside the State without referring to any buyers and for selling after receipt in Tamil Nadu. In this regard also, the disputed transactions cannot be considered as a local sale. In the above circumstances, we have no hesitation to decide the transactions as an interstate purchase not liable to tax under the TNGST Act, 1959 at the point of last purchase in this state and thereby we allow all the five appeals."

As the findings rendered by the Tribunal are based on material facts and supportive documents and sustained by sufficient reasoning, we find no reason to interfere with the same.

7.In the result, the Tax Case Revision is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Appellate Assistant Commissioner (CT)
Madurai North.

3.The Deputy Commissioner (CT)
Madurai Division, Madurai.

4.The Deputy Commerical Tax Officer (Rural)
Dindigul.

Copy to

The Secretary,
Sales Tax Appellate Tribunal, Madurai.

1 CC to the Spl. Government Pleader (Taxes), SR.No. 26976

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UG (CO)PSI (23.06.2015)