IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.2275 of 2008

Cauvery Traders
2, Madurai Road,
Trichy - 620 001. ...Appellant

versus

The Joint Commissioner, C.T.
SMR Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk,
Chennai. ...Respondent

PRAYER:

Tax Case Appeal filed before the Tamil Nadu Taxation Special Tribunal, Chennai, to revise the order dated 21.05.1998 made in Ref.No.MM2/64432/94 SMR.II/483/96 on the file of the respondent for the assessment year 1992-93, as against the order passed by the Appellate Assistant Commissioner (CT) Tiruchirappalli, dated 29.06.1994 in Appeal No. year 221/94 as against the order passed by the Commercial Tax Officer, Palakkarai, dated 07.02.1994 in Assessment Number and year TNGST 360323/92-93.

For Appellant : Mrs.Lakshmi Sriram

For Respondent : Mr.AN.R.Jayapratap, AGP

J U D G M E N T

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the assessee as against the order dated 21.05.1998 passed by the Joint Commissioner in the suo motu revision.

2. The appellant was a dealer in edible oil and aluminium vessels and the assessment in this case relates to the assessment year 1992-93. The appellant filed its return of income for the assessment year in question seeking exemption on second sales of oil made by him. The Assessing Officer rejected the books of accounts and passed a best judgment assessment. According to the Assessing Officer, the consignment of 25 tins of gingely oil were transported to the appellant with a bill issued by one Sankaran Traders, Virudhunagar, but on verification, it was found that the said Sankaran Traders was not in existence. Hence, the Assessing Officer treated the sales as first sales and estimated the taxable turnover. The Assessing Officer also disallowed the claim with regard to the purchase from M/s.Vijayalakshmi Traders holding that they were only bill traders. Consequently, the Assessing Officer levied tax and penalty.

3. Aggrieved by the same, the assessee had filed an appeal before the Appellate Assistant Commissioner, who allowed the appeal holding that the Assessing Officer had made a best judgment assessment solely on the basis of enforcement reports and since the goods have passed through the check-post along with the seal of the check-post officer, the Department had to find out the first seller as the impugned sales were liable to be taxed at the first stage only. With regard to addition of Rs.4,900/-, the Appellate Assistant Commissioner held that the mere statement from the dealer would not be the basis for concluding that the appellant had not effected any purchase from him. He further held that as the assessee was entitled to claim exemption on its sales as second sales, it was not necessary to prove that the earlier sale had actually suffered tax. Relying on the decision in the case of State of Tamil Nadu V. C.K.Gajapathy & Co. reported in 57 STC 137, the Appellate Assistant Commissioner was of the view that the appellant had discharged the onus by proving that the seller was a registered dealer in the books of the Commercial Tax Officer. Accordingly, the Appellate Assistant Commissioner set aside the order of the Assessing Officer.

4. Finding that the order of the Appellate Assistant Commissioner prejudicial to the interests of the Revenue, in exercise of power under Section 34 of the TNGST Act, the Joint Commissioner issued suo motu notice to the assessee proposing to revise the order passed by the Appellate Assistant Commissioner. After due process of law, the Joint Commissioner revised the order passed by the Appellate Assistant Commissioner, thereby restored the order of the Assessing Officer.

5. Aggrieved by the said order of the Joint Commissioner, the assessee has filed the present appeal.

6. Learned counsel appearing for the appellant contended that the goods purchased from Sankar Traders had passed through several check-posts and had been checked by the Department Officials, who had found them in order. Hence, it is for the Department to take action against the sellers, who issued the bills. She further submitted that once the assessee had claimed exemption on the ground that the sales effected are second sales showing that the earlier sale is taxable sale, the assessee need not show that the sellers have in fact paid tax. In this regard, she relied on the decision of this Court in the case of A.S.Ganapathy Chettiar v. The State of Tamil Nadu reported in (1976) 38 STC 455, wherein, this Court followed the decision reported in (1975) 35 STC 50 (Govindan & Co. v. The State of Tamil Nadu), which was affirmed by the Supreme Court.

7. Learned Additional Government Pleader appearing for the respondent reiterated the contentions raised before the Joint Commissioner and supported the order of the Joint Commissioner.

8. Heard learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondent and perused the materials placed before this Court.

9. In the decision reported in (1975) 35 STC 50 (Govindan & Co. v. The State of Tamil Nadu), this Court held that to claim benefit of exemption on the ground that the sales effected by the assessee are second sales, the assessee need not show that the sellers have in fact paid tax. It is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers.

9. The above-said decision of this Court was subsequently affirmed by the Apex Court in the decision reported in (1994) 93 STC 185 (State of Tamil Nadu V. Raman & Co. and others and State of Tamil Nadu V. Govindan & Co.).

10. Applying the above-said decision to the facts of the present case, we have no hesitation in allowing the Tax Case (Appeal) filed by the assessee. Accordingly, the order of the Tribunal stands set aside and this Tax Case (Appeal) stands allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Commissioner III(SMR)
Commercial Taxes,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Madras - 5.

2.The Appellate Assistant Commissioner (CT),
Tiruchirapalli.

3.The Commercial Tax Officer,
Palakkarai.

4.The Tamil Nadu Tanation Special Tribunal,
Chennai.

2CCs to Spl.Government Pleader (Taxes), SR.No. 35284, 35052

Tax Case (Appeal) No.2275 of 2008

PUR (CO)
PSI (21.08.2015)