

*** THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

TAX REVISION CASE No. 52 of 2002

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30.06.2015

Between

The State of Andhra Pradesh

...Petitioner

\$ M/s The Indian Hume Pipe Co., Ltd., Hyderabad

...Respondent

! Counsel for the Petitioner : Mr. Anil Kumar, Special Govt. Pleader

^ Counsel for the Respondent : Mr. S. Dwarakanath

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? CITATIONS:

T.C. (R) No.1213 of 2006
AIR 1961 Supreme Court 1633

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ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

This tax revision case at the instance of Revenue, arises from the order dated 06.06.2000 in Tribunal Appeal No.583 of 1995 of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad. The substantial questions of law raised are as under:

“1) Whether disputed transaction is a sale covered by A.P.G.S.T Act or C.S.T Act?

2) Whether the Hon'ble S.T.A.T., A.P., Hyderabad is justified in setting aside the orders of the A.D.C. (CT) Secunderabad Division?”

2. The matter relates to the Assessment Year 1993-94. The assessee is a manufacturer and dealer in P.S.C. pipes. The Tribunal recorded in its order that the assessee had entered into an agreement dated 09.06.1991, wherein the assessee had undertaken to supply, erect and commission stressed concrete pipes for Prawn Aquaculture Project at Nellore. Pursuant to the agreement, the assessee transported pipes and other goods from its Bangalore Depot to Andhra Pradesh State and thereafter completed the work. The assessee claimed the said transaction to be the one falling under the CST Act, as, pursuant to the agreement, the goods have moved from the State of Karnataka to the State of Andhra Pradesh. On the other hand, the Commercial Tax Officer treated the transaction as branch transfer intra-State Sale and thus while recording a finding that goods from Bangalore in Karnataka State to Nellore in Andhra Pradesh State. The assessee filed an appeal. The appellate authority confirmed the order of the assessment made by the Assessing Officer. The assessee approached the Tribunal. The Tribunal, on analysis of the record, allowed the appeal holding that the transaction would fall under the CST Act, and considering the fact that at relevant point of time there being no tax liability on the Works Contract, set aside the assessment order and demand. In the above set of facts, the questions of law referred to

in paragraph 1 above, are raised before this Court.

2. Learned Special Government Pleader, Mr. Anil Kumar, submits that the Tribunal, while recording the findings, had taken into consideration of the evidence which has been produced by the dealer without following the procedure and as such the findings recorded by the Tribunal are questionable and should not be relied on. He further attempts to place on record a set of documents before this Court to buttress his argument that the order of assessment is improper and it is the Tribunal which has erred in appreciating various documents and thus came to a wrong conclusion. The learned counsel also places reliance on the judgment of the Madras High Court in the case of **The State of Tamil Nadu v. A.M. Zaina Labdeen Musaliar**^[1].

3. On the other hand, learned counsel for the respondent-dealer, Mr. S. Dwarakanath, contends that the Tribunal, as a matter of fact, on verification of the material on record, recorded a finding that there was an agreement for execution of Works Contract entered into between the dealer and TWBC and pursuant to the agreement, there was movement of goods from Bangalore to Nellore, which goods got incorporated in the execution of Works Contract. The factum of there being an agreement and also movement of goods from Karnataka State to Andhra Pradesh State are not in dispute. As such, the learned counsel contends that the basic requirement as required to be satisfied for a transaction to be an inter-State one is satisfied. The learned counsel further submits that the question of 'perversity' has not been raised, specifically raising that there was no inter-State Sale, and hence it is impermissible for the Revenue to contend otherwise. He would also object to the filing of any papers by the Revenue before this Court and the Court looking into the same, as the scope of Revision under Section 22 of the APGST Act, as applicable to CST transactions, is limited to consideration of questions of law. He further, by placing reliance on the judgment of the Supreme

Court in **Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd.**^[2] AIR 1961, submits that the High Court is required to decide the questions of law raised on the facts as found by the Tribunal.

4. Heard both the learned counsel, and perused the order of the Tribunal.

5. At the outset, it may be noted that consequent to the Constitutional amendment, levy of Sales Tax on the Works Contract came to be introduced in the State of Andhra Pradesh with effect from 01.07.1985. However, the definition of 'Sale' in Section 2(g) of the CST Act was amended only with effect from 13.05.2002, by virtue of the amendment brought in the Finance Act 20/2002. In the present case, the Tribunal had examined the agreement dated 09.06.1991 and also the letter of intent dated 05.11.1990 issued in favour of the dealer by TWBC. The Tribunal also examined the specimen excise gate passes showing dispatch of goods from the factory at Yelahanka in Bangalore (Karnataka State) to the work spot of TWBC at Nellore (Andhra Pradesh State). The Tribunal has also recorded a finding that the dealer has entered into an agreement with TWBC at Yelahanka for the work entrusted to do and the goods were moved from Yelahanka to Nellore, and thereby the Works Contract came to be executed. The Tribunal found no supporting material which would advance the case of the Revenue that there was a stock transfer from the dealer's Branch at Yelahanka to their office at Nellore. There was also no Form 'F' filed by the dealer and it was never their contention that there was a stock transfer. The Tribunal had also taken into consideration of the affidavit filed by the Manager in-charge of the ultimate beneficiary M/s TWBC. In the light of the statutory provision bringing the execution of Works Contract, in CST only from 15.05.2002, the submission made on behalf of the dealer that no tax was liable to be paid, even in the State of

Karnataka under the CST Act, is unassailable. The Tribunal, on appreciation of the facts, had come to a positive conclusion that the goods have moved consequent to the agreement for the execution of Works Contract and thus satisfying all the conditions of a transaction under the CST Act. In other words, as a matter of fact, the Tribunal found the transaction is the one which is required to be assessed under the CST Act and not under the APGST Act.

6. In the light of the above discussion of facts and considering the well settled principles laid down in the case of **Scindia (1 supra)**, the questions of law which are raised in the present case are required to be answered in favour of the dealer and against the Revenue. Insofar the reliance placed by the learned counsel on the judgment of the Madras High Court, the same is required to be considered on the point of questions raised in the said judgment. Before the Madras High Court, the following three questions of law said to be arising from the order of the Tribunal were raised.

“(i) Whether in the facts and circumstances of the case, the Tribunal is correct in accepting the explanation given and documentary evidence adduced for the first time before it contrary to section 39-B (3) of the TNGST Act and in the absence of leave obtained as per Regulation 12(i) of the Tamil Nadu Sales Tax Appellate Tribunal Regulations?

(ii) Whether in the facts and circumstances, the Tribunal is right in setting aside the estimation suppressions based on documents produced at the stage of second appeal and without appreciating the materials on record independently?

(iii) Whether in the facts and circumstances, the consequential reduction in penalty levied under Section 12(3) at 50% by the Tribunal is legally sustainable?”

7. In the context of specific questions of law raised before the Madras High Court, the Court found as under:

“10. It may be noted that the documents produced before the Tribunal were only photocopies. Thus, the Tribunal should have tested the claim of the assessee with reference to the originals and with reference to the accounts. Without verifying the originals and with the entries in the account, we feel, the Tribunal committed a serious legal flaw in allowing the appeal by accepting the case of the assessee as a matter of course thereby, granting the relief. As a final fact finding body, the Tribunal should have either called for a report on the materials produced and the account checked or at least remanded the matter for fresh consideration, as had been done by the Appellate Assistant Commissioner. In the absence of any of these courses adopted with perversity writ large, the order of the Tribunal, hence, calls for interference by this court. We have no hesitation in setting aside the order of the Tribunal and that the proper course herein would be to direct the Assessing Officer to get at the details furnished by the assessee, check them with entries in the D7 records and regular books and arrive at the correct value for the purpose of assessment.”

8. In our considered opinion, in the facts and circumstances of the present case, the said judgment has no application. In the said judgment, virtually, the method and manner in which the documentary evidence which was placed before the Tribunal was found fault, in the context of a specific question of law having been raised before the Court. In the present case, the order of the Tribunal does not reveal any objection having been raised by the Department before the Tribunal. There was no argument advanced before the Tribunal and there was no discussion by the Tribunal one way or the other. In that context, the argument which was sought to be advanced by the learned counsel for the Revenue, that the Tribunal erred in entertaining the material documents, does not stand to reason. It may be remembered that the Tribunal is the last fact-finding authority and the parties are not prevented from placing material before the Tribunal by adhering to the procedure prescribed. The crucial aspect whether the dealer made an

application before the Tribunal and whether there was any objection raised for the document and record being looked into by the Tribunal, are not borne out of the Tribunal order. In that view of the matter, it is difficult for us to express any opinion and take into consideration of the argument of the learned counsel for the State.

9. The revision is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this revision, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

30th June, 2015
Note: LR Copy to be marked.
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