IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27499 of 2004

The State of Tamil Nadu,
rep.by the Deputy Commissioner(CT),
Coimbatore Division,
Coimbatore ... Petitioner

vs.

1.Tvl.Sree Moogambigai
Textiles (P) Ltd.,
Anthiyur,
Poolankinar(PO),
Udumalpet

2.The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal(Additional Bench),
Coimbatore .... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the second respondent pertaining to the order dated 29.4.2002, made in C.T.A.No.195 of 1998 and quash the same as illegal.

For Petitioner : Mrs.S.Kanmani Annamalai,A.G.P.

For Respondents : Mr.S.Arjun for R1

ORDER

The writ petition by the State of Tamil Nadu, represented by the Deputy Commercial Tax Officer, Coimbatore Division, challenges an order passed by the Tamil Nadu Sales Tax Appellate Tribunal in an appeal in C.T.A.No.195 of 1998. This appeal was preferred by the first respondent herein against the order of the Appellate Assistant Commissioner (CT), in Appeal No.CST.83/96, dated 16.12.1997.

2. The Commercial Tax Officer, Udumalpet (North) Assessment Circle, passed an assessment order under the provisions of the Central Sales Tax Act for the year 1994-95 dated 18.4.1996 and determined the total and taxable turnover, by disallowing the claim on consignment sales. Aggrieved by such assessment, appeal was preferred, by the first respondent, before the Appellate Assistant Commissioner (CT), Pollachi, who in turn dismissed the appeal. Challenging the same, the first respondent filed an appeal before the Tribunal.

3. The Tribunal, which is the last forum, which can re-appreciate the facts elaborately, considered the matter both on factual as well as legal grounds and allowed the appeal. Challenging the same, the Department has preferred this writ petition, contending that the Tribunal failed to take into consideration that the assessing authority has rightly acted in treating the turnover as direct interstate sales under the guise of consignment sales. Further, it is contended that the Tribunal did not take into consideration that no go-down rent was incurred by the so called agent in the other State and hence, the finding of the assessing officer is correct.

4. I have heard the learned Additional Government Pleader for the petitioner and the learned counsel appearing for the first respondent and carefully considered the materials placed on record.

5. The findings recorded by the Tribunal are cogent and elaborate reasons have been assigned by the Tribunal. What is important to know is that the Tribunal, after considering the entire documents, pointed out that the assessing officer himself accepted the documents submitted by the first respondent and he was unable to contradict the same and therefore, committed a mistake in concluding that the movement of goods from this State to another as a character of interstate sales. The Tribunal has rightly pointed out that interstate sale has to be proved not by way of general observation and surmises, but with reference to the specific movement as to whether they were sent in pursuant to a specific contract of sale or not. Further, the Tribunal held that the Revenue has failed to let in any concrete evidence to state that the goods were sent in pursuance of a specific contract of sale.

6. In the light of the factual finding recorded by the Tribunal, This Court is not inclined to interfere with the impugned order. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

msk

To

1.The Deputy Commercial Tax Officer,
Shevapet Circle, Salem.

2.The Commissioner of Commercial
Taxes, Ezhilagam, Chepauk,
Chennai-600 005

+ 1 cc to Mr.P. Inbumathi, Advocate S.34605
+ 1 cc to Special Government Pleader SR.34868

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PPA(CO)
Eu 14.7.16