IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.10.2017

CORAM:

THE HONOURABLE **MR. JUSTICE S.MANIKUMAR**
AND
THE HONOURABLE **MR. JUSTICE R.SURESH KUMAR**

Tax Case (Revision) Nos.21 and 22 of 2017
C.M.P.No.8148 of 2017

The State of Tamilnadu,
rep. by the Joint Commissioner (CT),
Chennai (East) Division,
Chennai. ... Petitioner in both TCRs.

Vs

Tvl.IVRCL Infrastructure and Projects Ltd.,
No.9, Plot No.16, Manjolai 1st Main Road,
Kalaimagal Nagar, Ekkatuthangal,
Chennai-97. ... Respondent in both TCRs.

Prayer: Tax Case Revisions filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to set aside the order of the Tamilnadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 01.09.2015, passed in T.A.Nos.180 of 2007 and 92 of 2011.

For Petitioner in both TCRs : Mr.Kanmani Annamalai,
Addl. Govt. Pleader (Taxes)

For Respondent in both TCRs : Mr.V.Sundareswaran

COMMON ORDER
(Common order of the Court was made by **S.MANIKUMAR, J.**)

Tax Case Revisions are filed against the order, dated 01.09.2015, passed in T.A.Nos.180 of 2007 and 92 of 2011, passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, for the assessment years 2003-04 and 2004-05 respectively.

2. Both the Tax Case Revision Petitions have been filed, on the following substantial questions of law,

> "1. Whether manufacturing of new product out of inter-State purchase of Iron sheets into pipes in the State of Tamil Nadu by way of job work, would attract tax in the contract of supply and erection of pipes under section 38 of the TNGST Act, 1959?
>
> 2. Whether interstate purchase of Iron sheets would be eligible for exemption under sub-section (a) of section 38 of the TNGST Act 1959 even after conversion into new product of pipes to fulfill the obligation under contract?
>
> 3. When the respondent taken delivery of Iron sheets and handed over the same to job works for conversion of the same into spiral pipes, whether it would confer the transaction still under inter-State trade or commerce after

taking delivery of the goods so purchased from interstate?

4. Is the inter-State purchase has been terminated when delivery is taken by the respondent, whether the State of Tamil Nadu is competent to levy tax or subsequent sale of pipes involved in the contract executed in terms of provision of section 9 of the TNGST Act 1959?"

3. As pleadings and submissions are common, both the Tax Case Revision Petitions are disposed of, by a common order.

4. Short facts leading to the revisions are that Tvl.Gammon India Ltd., was awarded a tender, by Tvl.CMWSSB, Chennai and in turn Tvl.IVRCL Infrastructre and Projects Limited, Chennai, respondent herein, was awarded sub-contract by Tvl.Gammon India Ltd., to execute the work. The respondent herein purchased goods, like HR coil etc., from Tvl.SAIL, in other States. The goods viz., HR Coil, etc., purchased from Tvl.SAIL, situated in other States, were dispatched to Tvl.PSL Ltd, Madurantakam (sub-contractors of the respondent) and Tvl.PSL Ltd, Madurantakam used these goods, after converting them into spiral pipes, as per the terms of the work contract.

5. According to the petitioner, at the time of assessment of Tvl.lVRCL Infrastructure and Project Limited, respondent herein, the Assessing Authority, viz., erstwhile CTO, Guindy, did not accept the contention of the respondent herein that the above said transactions, would fall under Section 3-B(2)(a) and therefore, they are not liable to tax in the State of Tamil Nadu, under Section 3-B of the TNGST Act 1959, as the goods were purchased from Tvl.SAIL, to meet the specific requirements of the tender, awarded to Tvl.Gammon India Ltd., by Tvl.CMWSSB, Chennai and assessed to tax, under Section 3-B of TNGST Act 1959, for the assessment years 2003-04 and 2004-05 respectively.

6. Being aggrieved by the same, the respondent herein preferred First Appeal, before the Appellate Assistant Commissioner(CT), Kanchipuram, who sustained the tax, levied on the above transactions. Against which, the respondent herein preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in T.A.No.180/2007 and vide common order, dated 01.09.2015, the Tribunal has allowed the contention of the respondent and set aside the orders of the first appellate authority, as follows:

Assessment Year	Turnover involved (In Rupees)	Revenue Involved (In Rupees)
2003-04	177,53,68,256	7,10,14,730
2004-05	82,00,408	3,28,016

7. The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, in T.A.Nos.180/2007 and 92 of 2011, dated 01.09.2015, held that assessments made on the turnovers represented as deemed sale value of Steel pipes used in Works Contract for the assessment years 2003-04 and 2004-05, under TNGST Act 1959, are not in order and accordingly, set aside the order of the first appellate authority, in respect of turnover relating to the above works contract. Being aggrieved by the same, the present Tax Case (Revision) petitions have been filed.

8. In support of the substantial questions of law raised, Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) submitted that the order of the TNSTAT(MB), dated 01.09.2015, is not sustainable, as per the section 3(B) of the TNGST Act 1959. He further submitted that the Tribunal has failed to consider the fact of change of the identity and emergence of a new commodity, and thus, failed to accept the stand taken by the department and exempted under Section

3-B(2)(a) of TNGST Act. 1959. According to him, commodity "Iron and Steel (HR Coil)" would fall under Section 14 of CST Act, 1956, classified in Entry iv(vi), which states that, "sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition". Whereas Steel Pipes would fall under Section 14 of CST Act, 1956, classified in Entry iv(xi), which states that, "(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings".

9. Placing reliance on a decision of the Hon'ble Supreme Court in **State of Tamil Nadu v. Pyare Lal Malhotra** reported in **(1976) 37 STC 319 (SC),** learned Additional Government Pleader (Taxes) submitted that each item so specified, forms a separate species for each series of sale although they may all belong to the genus "iron and steel" and therefore, the Tribunal has erred in allowing the exemption treating the transfer of property of steel pipe and steel, as one and the same.

10. learned Additional Government Pleader (Taxes) for the petitioner further submitted that the inter-state purchase of goods was HR Coil, but the transfer of goods was steel pipes, for which, the respondent has paid conversion charges to Tvl.PSL Holdings, Chennai, who made such conversion of HR Coil into Steel Pipes. According to him, conversion is liable for Central Excise, but for the exemption, vide Notification No.47 of 2002/CE, dated 6.9.2002, as the supply was meant for CMWSSB Project.

11. Therefore, learned Additional Government Pleader (Taxes) submitted that it is proved beyond doubt that inter-State movement got terminated as soon as conversion took place and Tamil Nadu is the appropriate State to levy tax on the transaction taking place immediately after the termination of inter-state movement, as per Section 9(a) of TNGST Act, 1959.

12. On the emergency of new goods and taxability, learned Additional Government Pleader placed reliance on a decision of the Tamil Nadu Taxation Special Tribunal reported in **(2003) 131 STC 334,**

wherein, it has held as follows:

> "the taxable event has taken place after receiving the goods from outside the State for executing the works contract and the axable event has taken place at the lime of incorporation of the ceramic tiles and paints in the execution of the works contract in Tamil Nadu. Therefore, there is no case to claim any exemption under Section 3-B(2)(a) of the Tamil Nadu General Sales Tax Act, 1959 and we find that the Tribunal has not erred in law in assessing the relative value with reference to inter-State purchase of goods. The tax levied on the value of goods involved with reference to unregistered purchases and used in the works contract also is proper."

He therefore submitted that the order of TNSTAT(MB), Chennai, is contrary to the law and that the Tribunal also failed to take note of the transfer of goods in the form of spiral pipes, after losing the identity of HR Coil, purchased from outside the State.

13. Repelling the abovesaid submissions, Mr.V.Sundareswaran, learned counsel appearing for the respondent in both the cases, submitted that the issue is squarely covered by a decision of the Hon'ble Division Bench of this Court in **The State of Tamil Nadu v. M/s.Sun Paper**

Mill Ltd., reported in **2009 (23) VST 191 (Mad.),** wherein, this Court negatived the very same submissions, made by the State.

14. Heard the learned counsel appearing for the parties and perused the materials available on record.

15. Before adverting to the rival submissions of the parties, it is relevant to extract Section 3 of the Central Sales Tax Act, as follows:

> "3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce:-
>
> A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or 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."

16. In T.A.Nos.180 of 2007 and 92 of 2011, the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, after considering the pleadings and submissions, framed the following point for consideration,

"Whether the order of the first appellate authority sustaining the assessment made on the impugned turnover of Rs.1,89,03,82,381/- for the year 2003-04 and Rs.82,00,408/- for the year 2004-05, at the appropriate rate of tax under the Tamil Nadu General Sales Tax Act, 1959, for the year 2003-04 and 2004-05, by the Assessing Officer, is correct or not?

After considering the rival submissions, materials on record, statutory provisions, decisions made in **Oil India Ltd., v. Superintendent of Taxes [1975] 35 STC 445, English Electric Company of India Ltd., v. Deputy Commercial Tax Officer [1976] 38 STC 475, Union of India v. K.G.Khosla and Co. Ltd., [1979] 43 STC 457, Rc.Sahney Steel and Press Works Ltd., v. Commercial Tax Officer [1985] 60 STC 301, Re. 20th Century Finance Corpn. Ltd., v. State of Maharashtra [2000] 119 STC 182, Thomson Press (India) Ltd., v. State of Haryana [1996] 100 STC 417, State of Tamil Nadu v. Tvl.Hindustan Dorr Oliver Ltd., Chennai [15 TNCTJ 180], ECE Industries Ltd., v. State of Tamil Nadu [66 VST 163]** and **Sun Paper Mill Ltd., v. State of Tamil Nadu [136 STC 380]** and on the facts and circumstances of the case, at Paragraphs 17 to 21, the Tribunal held as follows:

"17. Respectfully following the above decisions, we find that goods moved from a place outside State of Tamil Nadu to this State is pursuant to the tender awarded by CMWSSB and there was a link in between the works Contract executed by the appellants and that too, the import of goods effected by the appellants with regard to specifications of CMWSSB. The one of the materials passed in Works Contract and the property in the materials passed in importing state do not any way effects inter-State character of the transactions as per the decisions reported in **82 STC 89** in the case of **Project and Services Centre and another v. State of Tripura.** Hence, tax could be levied on those inter-State sales by the State from which these goods were purchased and not by the State of Tamil Nadu and hence deduction has to be allowed on the impugned turnovers being the value of inter-State purchase by the appellants and moved to be work site in Tamil Nadu. In view of the foregoing discussions, it is clear that the liability to tax in respect of Works Contract under Section 3-B of Tamil Nadu General Sales Tax Act, 1959 is on the value of goods transport and the goods may be either in the form, in which it was purchased or in some other form. In the present case, HR sheets in coils were purchased from M/s.SAIL in pursuance of the contract entered with CMWSSB and the entire movement of goods were in connection with its contract only. The item of HR sheets in coils used as raw-materials by the appellants are incorporated into the Works Contract the same form except the same may be fashioned to shoot their requirement of CMWSSB before the same merge into the works which is thereafter identified as immovable property. At the time of incorporation, HR sheets in coils do not lose their nature or form and therefore cannot be subjected to tax, as the said goods are already subjected to tax as declared goods under the CST Act. The activity carried out by the appellants under the contract was procurement of the steel materials with the specifications ordered by CMWSSB and preparation of pipes by cutting, rolling and welding into pipes to be incorporated into the works. If the goods are moved as inter-State nature in character, such movement of goods is in a pursuance of the contract entered into by the dealer locally, and therefore, the deduction under Section 3-B (2)(a) of the Tamil Nadu General Sales Tax Act 1959 has to be allowed. Considering the facts & circumstances of the case, we are of the considered view that the assessment made on the impugned turnovers represented as deemed sale value of steel pipes used in a Works Contract for the disputed years by the Assessing Officer is not in order and correct and therefore we hereby order to set-aside the order of the first appellate authority on the impugned turnovers for the disputed years

2003-04 and 2004-05 as not sustainable. Accordingly, the point is answered.

18. With regard to assessment made on the turnover of Rs.3,32,59,834/ - taxable at 1% and Rs.2,44,79,601/ - taxable at 1% represented as re-sale turnover, it is seen that the Assessing Officer had levied tax at 1% under Section 3-H of Tamil Nadu General Sales Tax Act 1959 on the turnover of Rs.3,32,59,834/ - since the appellants had purchased goods from registered dealers within the state for Rs.3,11,89,955/- and used the same in the execution of Works Contract. After deducting the value of declared goods like MS plates, MS steels etc., amounting to Rs.3,31,748/ -, the remaining turnover of Rs.3,32,59,834/ - was brought to levy of tax at 1% under Section 3-H of the Tamil Nadu General Sales Tax Act 1959. At the time of hearing, the learned counsel for the appellants did not file and produced any supporting documents in support of the claim of exemption and therefore we see no valid reasons to interfere with the order of the lower authorities on the assessment made on the impugned turnover. Hence, we hereby order to sustain the order of the first appellate authority in this regard. Accordingly, the point is answered.

19. With regard to assessment made on the turnover of Rs.83,03,324/ - taxable at 4% represented as deemed sale value of CI Pipes used in the execution of Works Contract, it

is seen that the Assessing Officer had levied tax at 400 on the deemed sale value of CI pipes used in the execution of Works Contract by adding 7.70% gross profit on the purchase value of CI pipes. Admittedly, even at the time of hearing before this forum, the learned counsel for the appellants did not file and produce any supporting documentary evidence on record to the effect that they were exempted from tax. In the circumstances,. we find no valid reasons to interfere with the order of the lower authorities on the assessment made on the impugned turnover. Hence we hereby order to uphold the order of the first appellate authority in this regard. Accordingly, this point is answered.

20. With regard to the assessment made on the turnover of Rs.2,51,347/- taxable at 16%, Rs.44,500/- taxable at 10%, Rs.3,99,636/- taxable at 12%, Rs.1,84,500/- taxable at 4% and Rs.9,92,428/- taxable at 4%, it is seen that the Assessing Officer had levied appropriate rate of tax on the deemed sale value of Metal, RCC pipes, MH cover, Bricks etc., used in the execution of Works Contract. Even at the time of hearing before this forum, the learned counsel for the appellants did not produce and file any documentary evidence on record to the effect that they were not taxable and exempted from tax. In the circumstances, we find no valid reasons to interfere with the order of the lower authorities on the assessment made on the impugned

turnover. Hence we hereby order to sustain the order of the first appellate authority in this regard. Accordingly, this point is answered.

21. With regard to assessment made on the turnover of Rs.24,17,776/- taxable at 2% and Rs.4,06,64,170/- taxable at 2%, it is seen that the Assessing Officer has levied 2% rate of tax on the turnover of Rs.24,17,776/ - represented as transport charges incurred by them and civil work executed at Lakshmipuram Anaicut Project. Even at the time of hearing before this forum, the learned counsel for the appellants did not produce and file any documentary evidence on record to the effect that the sub-contractor had paid the tax due on the above civil work and the transport charges incurred do not relate to purchase of any materials / goods. In the circumstances, we find no valid reasons to interfere with the order of the lower authorities on the assessment made on the impugned turnover. Hence, we hereby order to sustain the order of the first appellate authority in this regard. Accordingly, this point is answered."

17. Brief facts and submissions of the parties in **The State of Tamil Nadu v. M/s.Sun Paper Mill Ltd.,** reported in **2009 (23) VST 191 (Mad.),** are as follows:

"2. The brief facts are as follows:

The assessee/first respondent is a public limited company, which is engaged in the business of manufacture and sale of papers. They are dealers in newsprint and assessed on the file of the Deputy Commercial Tax Officer, Ambasamudram, in TNGST 802529/93-94. The relevant assessment year is 1993-1994. The assessee has effected sales of newsprint to the tune of Rs. 25,07,671/- during the assessment year to Tvl. Kerala Sabdam and Tvl. Kollam Muthari, Kollam and claimed that those sales as inter-state sales. But the assessing Officer rejected their claim on the ground that the newsprints sold to them were not moved to other State. They were moved only to Sivakasi and later the said newsprints were converted into news magazine in Pioneer Press (P) Limited, Sivakasi and then the same were moved to Kerala. Therefore, the assessing Officer assessed the said turn over under the Tamil Nadu General Sales Tax Act, 1959. Aggrieved by that order, the assessee has filed an appeal before the Appellate Assistant Commissioner(CT), Tirunelveli in CST AP No.345/95. The Commissioner allowed the appeal on the ground that the movement of goods from the State of Tamil Nadu to Kerala would certainly form an inter-state transaction. Later, the Joint Commissioner (CT)(SMR) suo motu revised the order of the Appellate Assistant Commissioner and treated the transaction as local sales and held as follows:

"Looking at the above circumstances, it is found that the goods moved from the assesee to Sivakasi as a result of the sale. What happened later is that the concern of the assessee had no connection what so ever after the dispatch of paper to given basis. What moved out of the state were only news magazines and not news print with which the assessee is concerned. Therefore, the sales would fall under the local Act,s purview and the order of the Appellate Assistant Commissioner is not proper, therefore, liable to be set aside. Appellate Assistant Commissioner's order is set aside and the Assessing Officer's order is restored."

Aggrieved by that order, the assessee has filed the appeal before the Tamil Nadu Taxation Special Tribunal, Chennai, in T.C.A.No.141 of 1999. The Tribunal, by its order dated 28.03.2003, while allowing the appeal, held that all the sale transaction would fall within the ambit of Section 3(a) of the Central Sales Tax Act, 1956 and therefore, they are inter-state sales, which do not attract the provisions of the Tamil Nadu General Sales Tax Act, 1959 or Kerala General Sales Tax Act, 1963. Aggrieved by that order, the Revenue has filed the present writ petition to quash the order passed by the second respondent/Tribunal.

3. The learned Special Government Pleader appearing for the revenue submitted that the newsprint were

despatched to Sivakasi by the assessee. Even though the destinations were mentioned as Calicut Trivandrum, Tiruchur and other places in Kerala, in the bills, admittedly, the news prints were despatched to Sivakasi by the assessee as per the instruction of the purchasers from Kerala. So there is no inter-state sale. Thereafter only the goods were transferred from Sivakasi to Kerala. It is further contended that the goods were unloaded and after printing, the magazines were despatched by the printers from Sivakasi to Kerala. Therefore, the transaction is nothing but local sales when the goods were delivered to the printer at Sivakasi, the agent of the buyers. He further contended that the sale was actually concluded within the State of Tamil Nadu by delivery of the goods to the buyers agent within the State itself and the buyer or their agents transported the goods thereafter to Kerala. Therefore, such a movement to the other State will not amount to an inter-state sales as the sale cannot be said to have occasioned the movement..."

After considering the decisions in **South India Viscose Ltd., v. State of Tamil Nadu** reported in **(1981) 48 STC 232, Union of India and another v. K.G.Khosla and Co. Ltd.,** reported in **(1979) 43 STC 457, Commissioner of Sales Tax, U.P. Lucknow v. Suresh Chand Jain** reported in **(1988) 70 STC 45, SLP (C Nos.14757 of 1983 dated**

20.07.1995 in the case of State of **Tamil Nadu v. HVL.Hercules Rubber Co. Ltd; State of Orissa and another v. K.B.Saha and Sons Industries Pvt. Ltd., and others** reported in **(2007) 7 VST 214** and **A&G Projects and Technologies Ltd., v. State of Karnataka** reported in **(2009) 19 VST 239** and on the facts and circumstances of the case, at Paragraph 10, a Hon'ble Division Bench of this Court in **Sun Paper Mills'** case (cited supra), held as follows:

> "10. After taking note of the principles enunciated in the above Supreme Court judgments, we have to find out whether there is movement of goods. The present case falls under Section 3(a) of the Act. There are two ingredients in the section. i.e. (i) it must be a sale of goods; (ii) the sale occasions the movement of goods from one State to another. In respect of sale, there is no dispute. We have to see here whether there is sale occasioning the movement of goods. In the case on hand, the seller and the buyer contemplated in movement of goods from Tamil Nadu to Kerala. At the instruction of the buyer, the goods were despatched to Sivakasi, wherein conversion took place and after conversion, the goods were moved to Kerala. Because of conversion, it cannot be held that there is no movement of goods. It is only for the purpose of Section 5(3) of the Act that any goods undergoing commercial change is relevant. It

is not for the purpose of determining the inter-State sale under Section 3(a) of the Act. Mere stoppage at Sivakasi and conversion would not alter the character of the transaction. The stoppage and conversion occurred only at the instance of the buyer at Kerala. There is no dispute in respect of the contract. The goods were moved in pursuant to the contract. The goods despatched to Sivakasi were not meant to be sold in the open market. There is no restriction that the goods should be moved intact. It is not for the revenue to suggest that the goods must reach as it is. The authorities, who are acting as guardian of the revenue, must examine and consider the transaction from that of a businessman. The yardstick is that of a prudent businessman. Otherwise, first, the goods has to go to Kerala and then transported back to Sivakasi for conversion and once again after conversion, it must go to Kerala. To avoid multiplicity of transaction, the seller sent the goods to Sivakasi at the instance of the buyer and after conversion, the same was sent to kerala. There is no material available to show that the goods are meant to be in Sivakasi. It is not the contention of the petitioner that the goods were not moved from Tamil Nadu to Kerala. Stoppage and conversion do not make the transaction a local sale. After applying the principles enunciated in the judgments cited supra and also taking into consideration of the facts involved, we are of the view that the transaction involved is only an inter-State sales. On this ground also, we are of the view that there is no merit in the writ petition and same is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected W.P.M.P.No.5643 of 2005 is also dismissed."

18. Decision of **Sun Paper Mills'** case (cited supra), is squarely applicable to the case on hand. Substantial questions of law, raised in the instant Tax Case Revisions are answered against the revenue. Both T.C.Nos.21 and 22 of 2017 are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (R.S.K., J.)
10.10.2017

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To

The Tamilnadu Sales Tax Appellate Tribunal
(Main Bench), Chennai.

S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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Tax Case (Revision) Nos.21 and 22 of 2017

10.10.2017