

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
11.07.2017	27.07.2017

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.9394 and 9395 of 2004
and W.P.M.P.Nos.10964 and 10965 of 2004

M/s.Premier Instruments and Controls Ltd.,
Avinashi Road,
Coimbatore - 641 037.

.. Petitioner
in both W.Ps.

vs

1.The State of Tamil Nadu represented
by the Secretary to Government,
Department of Commercial Taxes and
Religious Endowments, Fort St. George,
Chennai - 600 009.

2.The Union of India represented by
The Secretary, Ministry of Finance,
Department of Revenue, New Delhi.

3.The Commercial Tax Officer (FACT),
Avinashi Road Circle, Coimbatore - 18.

4.The State of Haryana,
rep. by the Secretary to Government,
Department of Revenue,
Chandigarh, Haryana.

.. Respondents
in both W.Ps.

Prayer in W.P.No.9394 of 2004: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records of the third respondent above named in CST No.267413/1995-96 on his file quash the order of assessment dated 05.03.2004 made therein, in the light of the law laid down by the Apex Court in 134 STC 473.

Prayer in W.P.No.9395 of 2004: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records of the third respondent above named in CST No.267413/1996-97 on his file quash the order of assessment dated 05.03.2004 made therein, in the light of the law laid down by the Apex Court in 134 STC 473.

For Petitioner
in both W.Ps.

: Mr.R.L.Ramani
Senior Counsel
for Mr.B.Raveendran

For Respondents
in both W.Ps.

: Mr.K.Venkatesh
Government Advocate (For R1 & R3)
Mr.A.Thiyagarajan
Senior Counsel
for Mr.S.V.Vijay Prashanth (For R2 & R4)

COMMON ORDER

This writ petition has been filed for issuance of writ of of Certiorari, to call for the records of the third respondent above named in CST Nos.267413/1995-96 and 267413/1996-97 on its file, quash the order of

assessment dated 05.03.2004 made therein, in the light of the law laid down by the Apex Court in 134 STC 473.

2.The petitioner is a manufacture of dash board instruments and is registered on the file of the third respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and the Central Sales Tax Act, 1956 (CST Act). The petitioner's registered office and factory is located at Coimbatore and they state that they have a branch at Haryana where there is a factory. The petitioner would state that they are engaged in manufacture of dash board instruments in a semi-finished condition at their factory in Coimbatore after which they are moved to the branch at Haryana. The semi-finished goods are received by the Haryana branch and after further process of manufacture, the semi-finished goods are converted into finished dash board instruments and sold to the customers within the State of Haryana. The applicable rates of taxes are collected and remitted before the 4th respondent, in State of Haryana. It is stated that the factory at Haryana employs 150 workers. The semi-finished goods requires further process of manufacture before it is sold. The petitioner filed their returns for the assessment years 1995-96 and 1996-97 under the CST Act and claimed exemption in respect of the stock transfer made to the branch/factory at Haryana. They filed Form F

declaration to prove the dispatch of goods, the details of tax payment in the State of Haryana and the copy of the assessment order passed by the sales tax authorities in the State of Haryana.

3. The third respondent passed an order under Section 6(A) of the CST Act, accepting Form F declaration vide orders dated 30.09.1999 and 29.10.1999. After about one month, there was an inspection by the Enforcement Wing Officers in the business premises of the petitioner in Coimbatore on 23.11.1999, during which, certain slips were recovered. This inspection led to the issuance of the pre-revision notice for both the assessment years 1995-96 and 1996-97 proposing to disallow the exemption already granted on the turnover relating to stock transfer. The allegation made in the notice is that the goods manufactured at Coimbatore were intended for sales to specified customers only and no manufacturing activity was done at Haryana. Further, the Haryana branch obtain purchase orders from three automobile manufacturers and based on the purchase orders, the annual production plan is tentatively programmed for production of components at the Head Office at Coimbatore to be supplied to the branch at Haryana. The petitioner did not file their objections to the pre-revision notice, but approached the Hon'ble Supreme Court by filing a writ petition in

W.P(Civil).No.187 of 2001 which was tagged along with other connected matters and pending further orders, stay of collection of CST by State of Tamil Nadu was granted provided the petitioner satisfies the Tamil Nadu authorities that in respect of the same transaction, they have paid tax in another State under that State's enactment. The writ petition filed by the petitioner along with other connected matters were disposed of by the Hon'ble Supreme Court on 19.08.2003 directing the petitioner to submit their reply to the show cause notice before the concerned authority by granting six weeks time. It was held that if in case any adverse orders are passed, no recovery shall be made provided the applicants have satisfied the Assessing Authority that they have already paid tax to another State in respect of the same transaction pending further appeal.

4.The petitioner thereupon filed objections dated 22.09.2003 for both the assessment years 1995-96 and 1996-97. The gist of the objections being that the 169 slips recovered at the time of inspection has no nexus with the assessment order in question and cannot be relied on as all the slips are dated subsequent to the assessment order. Every assessment year being a separate unit, each year returns has to be scrutinized separately and record of one assessment year cannot be used for the purpose of assessment for another

assessment year. Form F declarations produced by them were also relied upon. Apart from the above, the petitioner explained about the manufacturing activity done by them in Coimbatore to state that what was manufactured at Coimbatore is only a semi finished goods which are stock transferred to their branch at Haryana. They contended that the goods are general goods and not tailor-made. Further, it was pointed out that there may be some marking related to the ultimate customers name in the general goods, still the transaction will be a stock transfer. The petitioner also objected to the levy of penalty. After the decision of the Hon'ble Supreme Court in the case of *Ashok Leyland Limited vs. State of Tamil Nadu* reported in **134 STC 473**, the petitioner by letter dated 29.01.2004 brought to the notice of the respondent about the decision of the Hon'ble Supreme Court and the effect of it and contended that once Form F declaration was accepted and an order passed, then it is conclusive and cannot be reopened on the basis that there has been a mere error of judgment and the reopening can be only on a small set of grounds such as fraud, misrepresentation or collusion. The Assessing Officer rejected the contentions raised by the petitioner and passed the impugned assessment orders dated 05.03.2005 which are challenged in these writ petitions.

5.Mr.R.L.Ramani, learned senior counsel assisted by Mr.B.Raveendran, learned counsel for the petitioner made elaborate submission on the factual aspect and invited the attention of this Court to the assessment order passed by the sales tax authorities in Gurgaon, Haryana State dated 09.02.1998 for the relevant assessment years and submitted that though the petitioner omitted to show branch transfers in their returns, they voluntarily disclosed the same and the claim of transfers were verified and allowed. Apart from that, the petitioner had submitted a list of goods received from its head office and also submitted a list of purchasers which were properly reckoned and assessment was completed. Learned senior counsel referred to the original assessment order passed by the respondent dated 30.09.1999 and pointed out that the Assessing Officer has recorded that on verification of records produced by the petitioner, it was revealed that the stock transfer effected by the petitioner to their factory at Haryana is found to be in order and allowed exemption. Further emphasis was made on the aspect that the goods stock transferred by the petitioner from Coimbatore are general goods and not tailor-made to suit the needs of any particular customer and the goods are physically received by their factory at Gurgaon, taken into stock and further manufacturing activity is done on the same and only thereafter, final product can be sold to the customers comes into existence.

6.Learned senior counsel also referred to the assessment made by the respondent for the year 2007-08, where they have accepted the stock transfers covered by Form F and given due credit. That apart, the learned senior counsel referred to the assessments made by the Taxation Department, Haryana for the year 1996-97 dated 26.03.1999 and 29.10.1999. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Ashok Leyland Limited** (supra) and in particular paragraph Nos.61, 67, 83 and 91. Reliance was also placed on the decision of the Central Sales Tax Appellate Authority in the case of **Steel Authority of India Limited vs. Secretary, Finance Department, Government of Karnataka** reported in (2007) 10 VST 451 (CSTAA-New Delhi).

7.Mr.K.Venkatesh, learned Government Advocate appearing for the respondent submitted that the case as projected by the petitioner is incorrect since based on specific customer purchase order, the goods were moved from Coimbatore to Gurgaon and where it was further sent to ultimate buyer within the Haryana State and the CST Act empowers the first State Authority where movement of goods across the State borders has commenced to tax the transaction and as such, it is a clear case of misrepresentation of facts and therefore, re-assessment was done and there is no error in the order. Further,

the learned Government Advocate referred to the deposition of the Manager (Stores), Head Office, Coimbatore, who had stated that no manufacturing activity was done at Gurgaon and assuming it is an inadvertent admission, still the petitioner themselves established that there was manufacture in Haryana and payment of additional excise duty was actually made in Haryana which the petitioner had failed to prove. Further the existence of incriminating evidence in the slips has not been denied by the petitioner. The petitioner has admitted that they have paid local tax in Haryana but did not prove any one instance of further movement across the Haryana State border to qualify for CST assessment in that State. Hence, the claim for two CST levy for a single transport has not been proved. Thus, it is submitted that since no manufacturing activity is done in Haryana, if manufacture is claimed, it is not supported by payment of central excise duty in Haryana and no raw materials were purchased in Haryana and used in assembling atleast or to make it finished goods. Therefore, it is submitted that if the petitioner has proved that manufacturing activity took place in Haryana, they should have produced the records pertaining to the assessments under the Central Excise Act and having failed to do so, the impugned assessment orders cannot be permitted to be questioned in a writ petition, more particularly, when incriminating evidence was recovered from the petitioner's premises.

8. Heard the learned counsels for the parties and carefully perused the materials placed on record.

9. This Court has elaborately set out the factual matrix in the preceding paragraphs for the purpose of showing as to what is the modus adopted by the petitioner in the transaction between their factory in Coimbatore and their establishment in Haryana. The specific case of the petitioner is that the goods which are in semi finished condition are stock transferred to their branch factory at Haryana where local purchases are made and the product is made into finished product and sold to the customers in Haryana who are three automobile giants in India. The Assessing Officer initially accepted the stand taken by the petitioner and completed the assessment. There is also corresponding assessment orders passed by the Commercial Tax Department, Haryana stating that they have verified the list of goods received by the petitioner at Haryana from their head office and also submitted a list of purchasers.

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10. On a reading of the assessment orders passed by the Haryana authorities, it is evident that the orders do not certify as to whether the goods are in a semi finished condition or fully finished condition but only states that

the goods have been received from the head office. The Assessing Officer who did the initial assessment by passing an order dated 30.09.1999 states that on verification of the records produced, it revealed that stock transfer effected by the petitioner to their factory at Haryana is found in order and allowed the exemption of turnover. The proposal made by the officer earlier in his notice dated 13.05.1999 is to levy tax on the turnover which was claimed by the petitioner as a stock transfer on semi finished goods. I find that there is no specific mention by the Assessing Officer in his order dated 30.09.1999 that the goods which are stock transferred were semi-finished goods. The allegation against the petitioner is that purchase orders are placed by the purchasers in Haryana, the entire manufacturing activities are carried out in Coimbatore transferred to Haryana where there is no manufacturing done and the goods are sold in Haryana and it is not a case of stock transfer but a case of interstate sale and the State of Tamil Nadu is eligible to tax the transaction. This allegation has cropped up on account of an inspection which was conducted in the business premises of the petitioner on 23.11.1999 in which 169 slips relating to their business transactions were recovered. This inspection ultimately led to the issuance of a revision notice dated 20.03.2001.

11. On perusal of the revision notice, it is seen that the authority has dealt with the slips which were recovered by clubbing them together depending on the nature of contents of the slips and made observations with regard to the slips. Finally, a general finding has been given stating that the concept in the case is nothing but an interstate movement of goods from Coimbatore to other State appears in pursuance to prior orders through the Gurgaon, Haryana branch and the transaction being direct interstate sale are camouflaged by the assessee as stock transfer and the records recovered confirms the said concept. Further, the Haryana branch has no role of its own and the goods were moved from the head office, Coimbatore to Haryana except to watch the supply of goods so received and account for it. The objections given by the dealer were not considered and the impugned assessment orders have been passed confirming the proposal in the pre-revision notice. If this Court is called upon to decide the factual aspect, the effect of the slips recovered whether at all there is a manufacturing activity in Gurgaon, Haryana, etc., this Court will outrightly decline to do so as such exercise can be done only before the appellate authority and not in a writ petition under Article 226 of the Constitution of India. However, the contention of the petitioner is based upon the decision of the Hon'ble Supreme Court in the case of *Ashok Leyland Limited* (supra).

12. The Hon'ble Supreme Court pointed out that in the case before it has to be determined whether the sale in question is an interstate one. If through the means of legal fiction, it is determined that this is not an interstate sale, then it amounts to a transfer of stock. This finding is made by a statutory authority who has jurisdiction to do so and there was no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there has been a mere error of judgment. It also cannot be reopened under another statute, for example, the Sales Tax Act of the concerned State when the order has been made under the Central Act. The order is conclusive for all purposes and it can be reopened only on a small set of grounds such as fraud, misrepresentation, collusion, etc. Further, it was pointed out that all the requisite particulars are to be stated in Form F and once a determination is made that such statements are correct, the curtain is drawn keeping in view of the expression "thereupon". The said word is of great significance and must be given its full effect. The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods are factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the Assessing Authority. Further, it was pointed out that the purpose of verification of the declaration made in Form F is whether

branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State.

13. In the light of the decision of the Hon'ble Supreme Court, the legal position is that when all requisite particulars are stated in the Form F and once a determination is made that such statements are correct, the curtain is drawn. An exception which has been carved out by the Hon'ble Supreme Court is by observing that such order is conclusive for all purpose and it can be reopened on a small set of grounds such as fraud, misrepresentation, collusion, etc. Admittedly, such strong expressions or allegations have not been made against the petitioner. What has been alleged against the petitioner is that an interstate transaction has been camouflaged as a stock transfer. The authority who issued the Form F verified the details and found them to be correct that the goods transferred from Coimbatore were semi-finished goods. The Sales Tax Authorities at Haryana have also confirmed the receipt of the stock transfer goods from Coimbatore. The assessments have been completed under the local laws of the State of Haryana. The respondent relies on a statement given by one of the Manager of the petitioner to state that there was no manufacturing activity at Gurgaon. The petitioner's case is that the factory at

Gurgaon employs 150 persons. Thus, by merely stating that the goods are not semi-finished goods but tailor-made would not be sufficient to disbelieve or remove the conclusivity attached to Form F declaration. This is precisely so in the light of the observation of the Hon'ble Supreme Court in the case of **Ashok Leyland Limited** (supra). Therefore, in the given facts and circumstances, the question of reopening the assessment would not arise. We have seen that for the subsequent assessment years, there is no such query raised on the petitioner and the assessments have been completed.

14. The decision in the case of the **Ashok Leyland Limited** (supra) was followed by the Division Bench of this Court in the case of **Ashoka Sweets vs. State of Tamil Nadu** reported in **2011 46 VST 275 (Mad)**, wherein it was held that after verifying the details contained in Form F and other records that the goods had moved through delivery notes in Form XX, the assessing authority granted the relief accepting the return and that the entire turnover was exempted under Section 6A of the Central Sales Tax Act. In the reassessment order there was hardly any reference to the form F declaration, which was originally accepted by the officer as true and whose contents were checked with the other relevant records, nor had it, in any manner, disturbed the acceptance of Form F. Once a declaration had been accepted and acted upon

by the Revenue, unless and until on further enquiry made thereto, the particulars furnished were found to be incorrect or untrue, the assessment once made based on form F, could not be reopened. Unless the details were found to be writ with fraud, collusion or misrepresentation or suppression of material facts, on a mere change of opinion, the findings could not be disturbed under Section 16 of the Act. When the original assessment rested on the findings of enquiry with reference to the details in Form F and the finding on Form F thus remained undisturbed even in the reassessment proceedings, the reassessment order revoking the exemption granted under Section 6A of the Central Sales Tax Act could not sustained.

15.The above decision makes it clear that mere mentioning of the words that the particulars were incorrect or untrue is not sufficient and what is required to be done is to conduct an enquiry and unless details are found to be writ with fraud, misrepresentation or collusion or suppression of material facts, on a mere change of opinion, the findings could not be disturbed under Section 16 of the Act.

16.Before the Central Sales Tax Appellate Authority in the case of

Steel Authority of India Limited (Supra) on facts, the Appellate Authority was against the assessee and held that the Tribunal is right in holding that the stock transfers effected by VSIL to its Pune branch are really in the nature of interstate sales within the meaning of Section 3(a) of the CST Act. However, in view of the acceptance of Form F after due verification as recorded in the original assessment orders, the deeming fiction and the conclusive presumption adumbrated by sub-section (2) of section 6(A) of the CST Act comes into play and in such situation, having regard to the law laid down by the Hon'ble Supreme Court in the case of **Ashok Leyland Limited** (supra), it is not open to the Assessing Authority to reopen the concluded assessment and make re-assessment even if new material came to light subsequently pointing to the inference that the transactions shown as stock transfers were in fact interstate sale.

17. The Appellate Authority applying the legal position in the case of **Ashok Leyland Limited** (supra) held that re-assessments were illegal and without jurisdiction. The Appellate Authority made an observation that there is a need to re-look at the contents of Form F and the provisions of Section 6(A)(2) of the CST Act, especially in view of the interpretation placed by the Hon'ble Supreme Court in the case of **Ashok Leyland Limited** (supra). This has

led to the incorporation of sub-section (3) in Section 6(A) of the CST Act. However, the impugned assessments are much prior to the said amendment.

18. Thus the legal position enunciated by the Hon'ble Supreme Court as mentioned in the preceding paragraphs is an answer to the respondents to hold that the impugned re-assessment proceedings are without jurisdiction. In the light of the said conclusion, it is not necessary for any other exercise much less a fact finding exercise.

19. Thus, for all the above reasons, the writ petitions are allowed and the impugned re-assessment orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

cse/pbn
Index : Yes/No

27 .07.2017

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To

- 1.The State of Tamil Nadu represented
by the Secretary to Government,
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Religious Endowments, Fort St. George,
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T.S.SIVAGNANAM, J.

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Pre-Delivery Order in

W.P.Nos.9394 and 9395 of 2004
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