IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21432 of 2003 &
W.P.M.P.No.26609 of 2003

M/s. Narayan Industries
rep. by its Partner Mr.Narayan Singh ...Petitioner

Vs.

1. The State of Tamilnadu
represented by
the Deputy Commissioner (CT),
Chennai (Central Division)
Greams Road, Chennai - 600 006.

2. The Commercial Tax Officer
Redhills Assessment Circle,
Kuralagam Annexe, I Floor,
Chennai - 600 108.

3. The Sales Tax Appellate Tribunal
Additional Bench, Chennai,
High Court Campus,
Chennnai - 600 104. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the third respondent in S.T.A.No.52/99 dated 4.3.2003, partly reversing the order in AP CST No.140 of 1996 dated 12.9.1997 in CST No.630955/94-95 dated 18.10.1996 and quash the same.

For Petitioner : Mr.Pramodkumar Chopda

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.Pramodkumar Chopda, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondents.

2. The learned counsels on either side submitted that since a very narrow issue arises for consideration in this writ petition, this Court may consider the submission and dispose of the writ petition. In the light of the same, this Court heard the learned counsels elaborately.

3. The issue which falls for consideration is whether the agency agreement entered into between the petitioner and M/s Saroj Sales Corporation and M/s Kulliyath Steel Traders in Kerala and the transactions of consignment transfer made by the petitioner to the said agent can be disbelieved for the reason assigned by the third respondent. The Appellate Assistant Commissioner, while reversing the order of assessment the petitioner pointed out, in my view rightly that in the absence of any specific period being mentioned in the agreement for it, to come to an end, the agreement is to be taken as to be existing till it is cancelled mutually or in terms of the covenants of the agreement.

4. The Appellate Assistant Commissioner, pointed out that as per the requirements of the consignment agency, there should be an agreement which may be oral or writing. So when there is an agreement entered into in a particular date, it will not change the nature of transactions effected with a particular dealer.

5. Further the Appellate Assistant Commissioner(CT) pointed out that the Assessing Officer was satisfied with the transactions effected by the petitioner as consignment sale, as the relevant record namely Form 'F' was produced. Further more, the assessing Officer did not point out that the transactions were not effected and that the Sales pattiyal, Accounts copy, Statement of stock, Form 'F' and other related details were produced before the Appellate Assistant Commissioner (CT) and, he has, on verification, recorded a finding that it is in accordance with the provisions of Section 6 (A) of the Central Sales Tax Act.

6. Further more, there was evidence to show that the consignment was taken delivery by the agent and thereafter sale was effected by the agent to the ultimate buyer and they have remitted tax in the State of Kerala, and a Copy of the certificate given by the Assistant Commissioner of Sales Tax Office, Spl. Circle, Tirur, Kerala State has been produced and also enclosed in the Typed set of papers.

7. Thus, the Appellate Assistant Commissioner set aside the assessment made on the petitioner. When the matter went before the third respondent at the instance of the first respondent, the third respondent granted relief to the petitioner in so far as one of the agents M/s BM Steel Agency, but, when it came to

other two namely M/s Kaliyath Steel Traders and M/s Saroj Sales Corporation, the only reason assigned by the third respondent is that the agent is stated to have disposed of the goods within two or three days with an identical quantity and no records available for payment of godown rent etc.,. The most important aspect that should have been considered by the third respondent is that the Appellate Assistant Commissioner has specifically recorded that the Assessing Officer was satisfied as regards the transaction which was effected on production of Form 'F'. Not stopping there, the Appellate Assistant Commissioner verified the Sales patiyal, Accounts copy, Statement of stock, Form 'F' and other related details produced before him and confirmed that, it was a consignment transaction.

8. The legal issue is well settled and has been answered in favour of the assesse in the decision of the Honourable Division Bench in the case of State of Tamil nadu Vs Cocoa Products and Beverages Limited, wherein the Court examined the fact of Form 'F' declaration and held as follows:-

> "16. Section 6-A of the Principal Act had been inserted for the purpose of providing that the burden of proving that movement of goods from one State to another was occasioned otherwise than by way of sale shall be on the dealer making the claim. For the purpose of discharging its burden, the dealer may produce a declaration in the prescribed form from the person in the other State, to whom the goods have been sent, along with the evidence of such despatch of goods. Therefore, what is requisite and necessary for the dealer to claim exemption in respect of the transaction of despatch of goods from one State to another for sales on consignment basis through agent is to produce declaration in the prescribed form, that is to say, form ''F'' , with the evidence of the despatch of such goods, and nothing further. To put it otherwise, the section does not at all require any written agreement or contract evidencing appointment of agent for the purpose of effecting sales on consignment basis through agent by the principal moving the goods for such sale to another State. A perusal of form "F'' clearly indicates that the agent must be a registered dealer under the CSTA, where he transacts his business. It is also made clear by the first proviso to rule 12(5) that a single declaration may cover transfer of goods, by a dealer, to any

other place of his business or to his agent or principal, as the case may be, effected during a period of one calender month.

17. The information required on the body of form "F" as to "date from which registration is valid" and the first proviso to rule 12(5) of the Rules, we rather feel, must have to be construed in a liberal way so as to foster or develop inter-State trade or commerce. If liberally interpreted, we are of the view that it is permissible for the dealer to obtain declaration form "F" from appropriate tax officer, even in respect of consignments received during the period he was not registered.

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21. No doubt, as we have earlier indicated, they got themselves registered as "registered dealers" under the CSTA at Bombay, only with effect from January 30, 1984. While interpreting the salient provisions adumbrated under sub-section(1) of section 6-A of the CSTA and form "F" prescribed under sub-rule(5) and the first proviso thereto of rule 12 of the Rules, it is seen that there is no need or necessity at all under the CSTA for the agency to be always evidenced by a document in writing; but it may also be oral and such an agency is deducible from the very nature of the transaction that took place between two different individuals at different ends in the process of effecting despatch of goods from one end to the other end, for open market sale, that is to say, from one State to a different State on consignment basis and the person effecting despatch of the goods being considered as principal and the person to whom goods were despatched being considered as agent of the said principal. It is further said that a liberal interpretation has to be given to the first proviso to sub-rule (5) of the rule 12 and form "F" prescribed under the said Rule. We also quoted the interpretation, as given by learned authors K.Chaturvedi and M.K.Chaturvedi in their book on Central Sales Tax Laws, as stated above. We affix out seal of approval to the interpretation so given by the said learned authors."

9. As pointed out by the Honourable Division Bench, under sub-section 1 of section 6(A) Central Sales Tax Act and Form 'F' prescribed under Rule 12 (5) of the Central Sales Tax (Registration and Turnover Rules), 1957, there is no need or necessity for the agency to be always evidenced by a document in writing, but, it may also be oral and such an agency is deducible from the very nature of the transaction that took place between two different individuals and that the information required on the body of Form 'F' as to the date from which registration is valid and the first proviso to Rule 12(5) of Rules construed has to be considered in a liberal manner so as to foster or develope inter-state trade or commerce.

10. Thus, the legal issue having been settled by the Division Bench by the aforementioned decision, the finding rendered by the Tribunal in so far as the transactions done by the petitioner on the M/s Kaliyath Steel Traders, Cochin and M/s Saroj Sales Corporation calls for interference. Accordingly, the writ petition is allowed and the impugned order is set aside. The respondent is directed to adjust the tax paid by the petitioner pursuant to the interim order granted by this Court on 01.08.2003 in subsequent assessments. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jer/vsm
To
1. The Deputy Commissioner (CT),
The State of Tamilnadu
Chennai (Central Division)
Greams Road, Chennai - 600 006.
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3. The Sales Tax Appellate Tribunal
Additional Bench, Chennai,
High Court Campus,
Chennnai - 600 104.
+ 1 cc to Mr.T. Promod Kumar, Advocate Sr.51553
+ 1 cc to Special Government Pleader Sr.51254

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EU 18.08.17