IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2017

Coram

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

Writ Petition No.15858 of 2006
and
W.P.M.P.No.15635 of 2006

Tvl. Sagittarians International Ltd.,
rep. by its Managing Director,
Mr. Vikram Kumar. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road,
Chennai - 600 028. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the files of the respondent, in CST /689067/1999-00, dated 15.03.2006, and to quashthe same as being contrary to the principles laid down by the Hon'ble Supreme Court of India, in the judgment reported in (2004) 134 STC 473 (Ashok Leyland Ltd. Vs. State of Tamil Nadu).

For Petitioner : Mr.R. Senniappan
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr. R. Senniappan, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of both Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as 'TNGST Act') and Central Sales Tax, 1956 (in short 'CST Act') is before this Court, by way of this Writ Petition, being aggrieved by the re-opening of the assessment after a prolonged period of 15 years, which resulted in the impugned order being passed on 15.03.2006 for the assessment year 1999-00 under the CST Act.

21. Though they are several issues raised in the impugned order, the challenge in this Writ Petition is only with regard to the re-determination of the turnover in respect of the stock transfer, which was arrived at Rs.79,58,112.00.

2.2 The respondent, while completing the assessment, accepted the fact that the petitioner has filed Form 'F' Declaration for the entire turnover. However, the assessment has been revised on the ground that mere submission of Form 'F' Declaration is not sufficient, and the dealer has to produce the photo copy of the Stock Transfer Invoice, Transport Documents, Extract of Stock Book showing receipt of goods etc. Therefore, the respondent had disbelieved the Form 'F' Declaration produced by the petitioner, but has directed the petitioner to produce certain other contemporaneous record to support Form 'F' Declaration.

2.3 Now, the question would be as to whether such documents can be insisted upon, and what would be the scope of enquiry that could be conducted by the Assessing Officer on submission of Form 'F' Declaration. This issue has been set out by the Hon'ble Supreme Court, in the case of (Ashok Leyland Ltd., Vs. State of Tamil Nadu and another) reported in (2004) Vol. 134 SC 473, wherein, it has been held that, if, through the means of a legal fiction, it is determined that the transaction in question is not an inter-state sale, then, it amounts to a transfer of stock. This finding is made by the statutory authority, who has the jurisdiction to do so and there is 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 cannot also be reopened under the sales tax law of the State concerned, when the order has been made under the Central Sales Tax Act. Section 9 (2) of the Central Sales Tax Act is subject to the other provisions of the Act, which would include section 6 -A (2). ''Subject to'' is an expression, whereby, limitation is expressed. The order, in which, a finding is given that the movement of the goods was occasioned by reason of transfer otherwise than by reason of sale, is conclusive for all purposes: it can only be reopened on a small set of grounds, such as fraud, misrepresentation, collusion, etc..

2.4 In other words, if a declaration is filed and on an inquiry made pursuant thereto, or in furtherance thereof, the particulars furnished are found to be correct by the Assessing Authority, the result thereof, which is evidenced by the expression ''thereupon'' shall, in view of the legal fiction created, would be a transaction otherwise than as a result of an inter-state sale. Once such a legal fiction is drawn, the same would continue to have its effect, not only while making an order of assessment in terms of the State law, but also for the purpose of invoking the powers of the assessment contained in section 9 (2) of the Central Sales Tax Act. The legal fiction continues to have effect even in relation to the powers of reassessment contained in the State Tax Law. e.g., Section 16 of the Tamil Nadu General Sales Tax Act,1959.

3. If the above decision is applied to the facts and circumstances of the present case, it is pointed out that there is no allegation of fraud, misrepresentation, collusion levelled by the respondent against the petitioner/dealer. In the absence of such allegation, the scope of enquiry cannot be extended to conduct roving enquiry in the matter and such, enquiry, at best, can be conducted only on the ground of fraud, or misrepresentation, or collusion, etc. In the absence of any such allegation in the petitioner's case, it has to be held that the impugned order revising the assessment in respect of stock transfer effected by the petitioner has to be necessarily set aside. Accordingly, the Writ Petition is partly allowed, the impugned order with regard to the turnover, which has been re-assessed to tax on the stock transfer in spite of the petitioner producing Form 'F' Declaration is set aside. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

sd

To

The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road,
Chennai - 600 028.
+1 CC Mr.R. SENNIAPPAN Advocate SR.No.55550
+1 CC THE SPECIAL GOVT. PLEADER (TAXES)
HIGH COURT MADRAS,Advocate SR.No.54980

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BR(CO)
EGR 11/10/2017