IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.(R).No.13 of 2018

The State of Tamil Nadu,
rep. by the Joint Commissioner (CT),
Chennai (North) Division,
Chennai - 600 006. .. Petitioner

Vs.

Tvl. Madanlal Steel Industries Ltd.,
47, Morrision Street,
Alandur, Chennai-600 016. .. Respondent

Prayer: Tax Case Revision Petition is filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order dated 10.12.2006 passed a common order in T.A.No.891 of 2001 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For Petitioner : Mr.R.Haribabu
Additional Govt. Pleader (T)

ORDER

(Order of this Court was made by **S.MANIKUMAR, J.)**

Instant Tax Case Revision Petition is filed to revise the common order dated 10.12.2006 passed in T.A.No.891 of 2001 on the file of the

Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. Short facts leading to the revision are that the respondent is a manufacturer of MS ingots, an assessee on the file of the Commercial Tax Officer, Harbour-II Assessment Circle, Chennai. For the assessment year 1992-93, the Assessing Authority disallowed exemption claimed on the entire consignment transactions and levied penalty under Section 9(2A) of the Central Sales Tax Act, 1956 read with Section 12(3) of the Tamil Nadu General Sales Tax Act, 1959.

3. In the appeal by the assessee, the Appellate Assistant Commissioner (CT)-I, Chennai remanded a portion of the turnover to the tune of Rs.1,14,94,649/- in respect of consignment transfer to one Tvl. Tulsyan Udyog, Bangalore and dismissed the rest of the turnover. Pursuant to this, the Assessing Authority again levied tax and penalty on the turnover of Rs.1,14,94,649/-, by treating the same, as interstate taxable sales. In the appeal filed by the assessee, the Appellate Assistant Commissioner (CT), dismissed the appeal.

4. Aggrieved against the above order, the assessee filed a second appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai which went, in favour of the assessee. State has filed the

revision case on the following substantial questions of law:-

" a) In the facts and circumstances of the case, whether the Tribunal is legally correct in not affirming the order of the first appellate authority even while the goods sent to outside the state had not been sold by the agent in the order state in the same form in which they were received but manufactured into entirely new goods and then sold?

b) Whether the order of the Tribunal in deleting the consequential penalty is legally sustainable?"

5. Supporting the substantial questions of law, the petitioner has raised the following grounds:-

"(i) The Tribunal erred by holding that once it was proved by means of Form F declaration that the goods sent on consignment transfer to the agent in the other state has been received by him, it is immaterial as to what happened to those goods thereafter.

(ii) The Tribunal failed to consider that in the instant case that what was transferred as consignment goods to the agent was MS ingots which was manufactured into new products as CTD bars and that they were no longer available with the agent in the original form in which they were sent.

(iii) The Tribunal failed to take note that under Rule 3(A) (d) of the Central Sales Tax (Tamil Nadu) Rules 1957, every principal who claims exemption on sale of goods on consignment account through agents outside the state shall

maintain copies of bills issued by the agents to their purchasers. It therefore follows that the agent ought to have sold, what were received by him as consignment transfer and not any other goods manufactured by them. In the instant case, agent of the assessee had received MS ingots, on consignment transfer, but sold entirely differently goods namely CTD bars.

(iv) The Tribunal therefore ought to have appreciated that the assessee is totally ineligible for exemption from tax, as there is direct violation of the said rule."

6. Heard, Mr.V.Hari Babu, learned Additional Government Pleader (Taxes) and perused the materials available on record.

7. Let us consider the provisions, applicable to the case on hand, Section 9(2A) of the Central Sales Tax Act, 1956, is extracted hereunder:-

"(i) 9*(2-A) All the provisions relating to offences interest and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Sections 10 and 10-A) of the General Sales Tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this*

Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such Sales Tax law."

(ii) Section 12(3) of the Tamilnadu General Sales Tax Act, 1959, is extracted hereunder:-

"Section 12(3) In addition to the tax assessed [under sub-section (1) or (2),] the assessing authority shall, in the same order of assessment passed [under sub-section (1) or (2) or by a separate order, direct the dealer to pay by way of penalty, a sum –

(a) which shall be, in the case of failure to submit return, one hundred and fifty per cent of the tax assessed on final assessment; and

(b) which shall be, in the case of submission of incorrect or incomplete return, -

(i) twenty-five per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as per the return falls short of the tax assessed on final assessment by not more than five per cent;

(i-a) fifty per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as per the return falls short of the tax assessed on final assessment by more than five per cent but not more than fifteen per cent;

(ii) seventy-five per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as

per the return falls short of the tax assessed on final assessment by more than fifteen per cent but not more than twenty-five per cent;

(iii) one hundred per cent of the difference of the tax assessed and the tax paid as per the return, if the tax paid as per return, falls short of the tax assessed on final assessment by more than twenty-five per cent but not more than fifty per cent;

(iv) one hundred and twenty five per cent of the difference of the tax assessed and the tax paid as per the return, if the tax paid as per the return, falls short of the tax assessed on final assessment by more than fifty per cent, but not more than seventy-five per cent;

(v) one hundred and fifty per cent of the difference of the tax assessed and the tax paid as per the return, if the tax paid as per the return, falls short of the tax assessed on final assessment by more than seventy-five per cent;

(c) which shall be, in the case of submission of the prescribed return after ten days after the expiry of the prescribed period, two per cent of the tax payable for every month or part thereof during which the default in the submission of the return continued:

Provided that no penalty under this sub-section shall be imposed after the period of five years from the date of the order of the final assessment under this section and unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Provided further that no penalty under this sub-section or the interest under subsection (3) of section 24 of the Act, shall be imposed on the oil companies as explained in the Explanation-II of the Eleventh Schedule if the difference of tax due as per accounts and the tax paid as per the returns is less than five per cent and revised return is filed along with the difference of tax due within a period of three months from the due date for filling the monthly return."

(iii) Sub-Rule 3-A(d) of Rule 4 of the Central Sales Tax (Tamilnadu) Rules, 1957, extracted hereunder:

"3-A. Every principal, who claims exemption on the sale of goods on consignment account through agents outside the State, shall maintain the following records, namely:-

(a) ....

(b) ....

(c) ....

(d) copies of bills issued by the agents to the purchasers."

8. Let us also consider as to how the authorities, and the Tribunal have applied the abovesaid rules to the case on hand. On 18.04.2001, the Appellate Assistant Commissioner (CT)-I, Chennai, held as follows:-

"At the time of final hearing, the learned Advocate argued that they have sold in the consignment sales and therefore they are eligible for exemption under CST Act and he has produced the assessment order copy of the dealer Tvl.

Tulsyan Udyog, No.79-A/New Banboo Bazaar, Bangalore. A perusal of the assessment order of the above dealer shows that they have sold consignment stock receipt of iron and steel for a turnover of Rs.10,77,67,076.47. However the questions of conversion of M.S.Ingot into CTD Bars etc. remains unanswered. The Advocate is not in a position to produce the proof for payment of tax at the order end with reference to the other remaining five consignment agents. The Assessing Officer is therefore directed to verify the assessment order of Tvl. Tulsyan Udyog, Bangalore and after considering the fact of conversion of M.S. Ingots into CTD bars etc. and to pass fresh orders accordingly. Hence the turnover of Rs.1,14,94,649/- is remanded back to the Assessing Officer for fresh disposal. However the assessment made in respect of the order five Agents are sustained.

Penalty: Inasmuch as the disputed turnover is partly remanded and partly dismissed the penalty levied is also remanded back to the Assessing Officer for fresh disposla.

In fine, the appeal stands partly remanded and partly dismissed."

9. Thereafter, a revised order dated 28.09.2001, has been passed by the Commercial Tax Officer, Harbour-II, Assessment Circle, Chennai, as hereunder:-

"3. The representations of Thiru Dayalan, Authorised Representative were heard. The assessment order of the Agent in Karnataka State by th assessing authority of

Karnataka state was perused. It is seen that the dealers have consigned M.S.Ingots to their Agent (so called) and the dealers in Karnataka converted them into CTD Bars and then sold. Such a type of conversion emerges into a new commercial commodity.

4. The Supreme Court in the decision reported in 37 STC 319, in the case of State of Tamil Nadu Vs. Pyarelal Malhotra held that each item mentioned in several sub-clauses in item 4 of second schedule to the TNGST Act, 59 would constitute a separate class for a series of sales. Therefore, each item is a separate item.

In respect of agency sales, the Agent merely acts pure service by only selling those goods sent for consignment sales. But in this case, this is not so. The so called Agent produced another commodity. According to the terms and conditions, the Principal has got dominion over the goods till it is sold and he can back the goods at any time. But in this case, the term has been violated. Therefore, the transactions are outright interstate sales.

5. Next coming to the point of payment of tax, by the so called Agent, it is seen from the assessment order of the sales tax authorities of Karnataka State, it is seen that the taxable turnover under the TNGST is Rs.61,25,399/- and under the CST Act, 1956 for the relevant year is Nil. The taxable turnover was out of the inter-state purchases and stock transfer receipts from their own branches. The goods said to have been received on consignment basis have been again sent for another consignment basis to other States, which is not *permissible. When the goods were entrusted for agency sales, it is the duty of the so called Agent to sell the goods and remit the proceeds to the Principal, after deducting the expenses, tax, etc., whereas it is not so in this case.*

6. Taking into consideration of the above facts, the disallowance of exemption towards consignment sales already made in this office proceedings first cited is restored. Inasmuch as the dealers have suppressed the inter-state sales, by camouflaging the same as consignment sales, the penalty under Sec.9(2-A) of the CST Act, 1956 read with Sec.12(3) of the TNGST Act 59 already levied is also restored.

Tax due at 8% on Rs.1,50,49,148/-	*Rs.12,03,932/-*
Paid	*Nil*
Balance	*Rs.12,03,932/-*
Penalty levied under Sec.9(2-A) of the CST read with Sec.12(3)n at 150% of the tax due.	*Rs.18,05,898/-*

Form 3 and 54 will be issued."

10. Respondent has filed an appeal before the Appellate Deputy Commissioner (CT)-I, Chennai, who after hearing the learned counsel for the parties and after considering the material on record, passed an order dated 29.08.2002, as hereunder:-

"5. I have heard the arguments of both the sides with connected records. The appellants have disputed the assessment made by the Assessing Officer in his revision order

dt.28.9.2001 on a turnover of Rs.1,50,49,148/-. The revision order of the Assessing Officer is based on the Remanded over of the Appellate Assistant Commissioner (CT)-I in AP.178/98, dt. 18.4.2001. The Authorised Representative who has appeared at the time of final hearing has argued that the agent at Bangalore has converted M.S.Ingots into CTD Bars and sold as consignment sales which is in order and the Authorised Representative has also argued that the conversion made by the agent at Bangalore is a regular phenomena which has not been barred by the Act and he has further argued that there is no loss of revenue to the Department. The Deptl. Representative who has appeared at the time of final hearing has also filed statement as detailed below.

" The appeal is against the disallowance of exemption on alleged consignment sales outside the State to the extent of Rs.1,50,49,148/- for suppressing the Inter-State sales and camouflaging the same as consignment sales. It was seen from the Assessment order of the Assessing Authority in Karnataka that the appellants had consigned M.S.Ingots to their so-called Agent in Karnataka State and the Agent dealers in Karnataka converted them into CTD Bars and then sold. What had been sent on consignment was different from what had been sold by the Agents in Karnataka State. Though the Agent is expected to sell the same commodity sent for sale, since the same had been converted into a different commodity and sold, the exemption had to be disallowed. There had been a violation of the agency agreement and the

Agents cannot convert the goods into a different commodity and selling them. Though the Assessment order in Karnataka State has to be for a taxable turnover of Rs.61,25,399/- the same was declared as NIL because the goods received on consignment by the Agents have again been sent to other States for consignment sales, without the Authority of the Principal. Hence the disallowance of exemption is in order".

The argument of the Dept. Representative is reasonable and justifiable. The Assessing Officer in his revision order dated 28.09.2001 has stated as follows:

"The Supreme Court in the decision reported in 37 STC 319 in the case of State of Tamil Nadu - Vs - Pyaralal Malhotra held that each item mentioned in several sub-clauses in item 4 of second schedule to the TNGST Act '59 would constitute a separate class for a series of sales. Therefore, each item is a separate item.

In respect of agency sales, the agent merely acts pure services by only selling those goods sent for consignment sales. But in this case, this is not so. The so-called agent produced another commodity. Accordingly to the terms and conditions, the Principal has got dominion over the goods till it is sold and he can call back the goods at any time. But in this case, the term has been violated. Therefore, the transactions are outright inter-state sales. Next coming to the point of payment of tax by the so-called Agent, it is seen from the assessment order of the Sales Tax Authority of Karnataka State, it is seen that the taxable turnover under the KGST Act is Rs.61,23,399/- and under the CST Act '56 for *the relevant year is Rs. Nil. The taxable turnover was out of the inter-state purchases and the stock transfer receipts from their own branches. The goods sold to have been received on consignment basis to other states, which is not permissible. When the goods were entrusted for agency sales, it is the duty of the so-called Agent to sell the goods and remit the proceeds to the Principal after deducting the expanses, etc, whereas it is not so in this case."*

The Assessing Officer has disallowed the exemption claimed by the appellants since the agent at Bangalore has not sold the goods as such and the relationship between the principal ie., the appellants and the agent at Bangalore is not the agency transactions in the real sense. The Assessing Officer has also stated that after perusal of the assessment order of the agent at Bangalore the goods sent for consignment sales by the appellants have actually not been sold in Bangalore. In turn, the agent at Bangalore has again sold the same goods sent by the appellants to some other third party in Kerala for sale on consignment basis. The transactions affected by the appellants are not actually the transactions supposed to be between the agent and principle. The goods sold by the agent are different from that of the goods sent by the appellants which is different commercial commodity and the Assessing Officer has rightly relied on the decisions of the Supreme Court of India reported in 37 STC 319. The agent at Karnataka has not sold the goods in Karnataka, and he has in fact again diverted the same to some other dealers at Kerala without permission and

Authority of the appellants. In view of the above the appellants are not eligible for exemptions and the assessment made by the Assessing Officer by disallowing the claim of exemptions towards sale on consignment basis is in order which cannot be interferred with. Therefore the assessment made on the turnover of Rs.1,50,49,140/- at 8% is sustained.

PENALTY: With reference to the penalty the Assessing Officer in his revision order has stated as follows.

"In as much as the dealers have suppressed the inter-state sales, by camouflaging the same as consignment sales, the Penalty under section 9(2-A) of the CST Act '56 read with Section 12(3) of the TNGST Act '59 already levied is also, restored".

The Assessing Officer has assessed the appellants on a total and taxable turnover of Rs.1,76,12,022.00 and 1,50,49,148/- respectively against the reported total and taxable turnover of Rs.1,49,27,378/- and Rs.Nil respectively.

Thus the Assessing Officer has assessed the appellants to the best of his judgment under Section 12(2) of the TNGST Act'59 which is in order.

In fine, the appeal stands dismissed."

11. The Tamilnadu Sales Tax Appellate Tribunal, (Additional Bench), Chennai, has considered the submissions of the parties as hereunder:-

"3.Appellant case (T.A.No.891/2001)

The assessment year relates to 1992-93 *under the Central Sales Tax Act 1956. The appellants/assesses had claimed consignment transfer exemption for a turnover of Rs.1,49,27,378/- with all necessary particulars. But the assessing authority had disallowed the claim made by the appellant/assesses for the reasons that the assesses had not produced any evidence for the payment of tax by the agent in the other states. The appellants have reported a turnover of Rs.1,49,27,378/- only. But contrary to this report, the authorities below have determined the total and taxable turnover of Rs.1,50,49,148/- which was not correct. There was a difference of Rs.1,21,770/-. Though the appellant had agitated the issue before the authorities below, the authorities below have not considered and have not recorded any evidence to this effect also. The rule No.4 of TNGST Rules of CENTRAL SALES TAX Act does not put a condition that the proof for the payment of tax should be furnished. Because the condition was not there, there is no practice or pattern of certificate issued by the Sales Tax Authorities in other State, for the payment of sales tax or on the sale of goods consigned to the agents. Issue of Form F by the concerned sales tax authorities in the other State is the sufficient evidence to prove that the goods sent to the agents have been properly accounted and the tax due thereon is duly paid. As the appellant/assessee had complied with the requirement of Rule No.4 of TNGST Rules to CENTRAL SALAS TAX Act, there is no reason for* *disallowing the entire consignment transaction and levy of penalty at 20% of the turnover.*

CROSS OBJECTION PETITION No.266/02 in TA No.891/2001

As regards the turnover of Rs.1,21,770/- the figures how furnished by the appellant cannot be accepted. On perusal of the assessment file at P.161 in para 2, it is seen that the Enforcement Wing Officials in their report have specially stated as follows:

"Though the goods were actually received by the agents at other states as per their assessment the claim for exemption is not supported by any documents prescribed under sub rule 5(A) of Rule 26".

From the above it is very clear that the Agents of other states have actually received the goods and this was ascertained only with reference to the statement filed by the dealers. Therefore, it is an admitted fact that the total consignment sales made to Tvl. Jalan Sales Agency, Bangalore is Rs.4,43,996/- only and the total consignment sales is Rs.1,50,49,148/-. The contention now raised is only an after thought.

Therefore the contention now raised by the appellants is not acceptable.

As regards the turnover of Rs.34,32,729/- the appellants have not produced any proof for payment of tax in other States in support of their claim of exemption, till the date of hearing of the appeal before the Appellate Assistant Commissioner (CT)-I. Hence, the *order of the first appellate authority is right in sustaining the order of the assessing officer. Therefore, the contention of the appellants are not acceptable. Hence, the T.A. preferred by the appellant be dismissed and CROSS OBJECTION PETITION may be allowed.*

T.A.No.1446/2002

The assessment for the year 1992-93 under the CENTRAL SALES TAX Act, 1956 was passed by the Commercial Tax Officer, disallowing the entire consignment transactions and levied tax at 8% and maximum penalty of Rs.18,05,893/- was levied. On appeal, the first appellate authority had remanded a portion of the turnover of Rs.1,14,94,649/- in connection with the Agent M/s. Tulsyan Udyog, Bangalore. The rest of the turnover was dismissed by the first appellate authority. The remanded case was heard by the Commercial Tax Officer and the turnover is again assessed to 8% tax stating that the agent has converted the ingot into CTD Bars and sold the goods. The Commercial Tax Officer further stated that the agents are not to convert the material and sell but to sell as it is without making any changes. Once again on appeal, the first appellate authority had dismissed the appellant's case and sustained the assessment made by the authorities below. Therefore, this appeal has been emanated;

1. The M.S.Ingot manufactured by the principal cannot be used for construction of Buildings unless the *same is further re-rolled int CTD Bars. CTD Bars cannot be manufactured while pouring from the furnace. First the ingot is made by pouring into the moulds at the melting plant. Then the second stage of process take place by re-rolling into CTD Bars. Then only the CTD Bars can be used for building construction.*

2. The law does not prevent transfer of goods to branches or to Agents and get is converted into saleable condition to the customers.

3. The Steel Authority of India, a Central Government Organization, the main producers of steel from various plant all over India, dispatches the ingot to their branches at other places and get it re-rolled at the place of the branch and sell the goods. For the goods sent by the Head Office, the branches have no obtain Form "F" from the Commercial Tax Officer at the place of the branches. The branches further sends the re-rolled goods to some other branch according to the demand.

The law permits the above transaction in the case of Steel Authority of India Ltd.,

a. Central Government Organization. But here in our case the Commercial Taxes Department is following double standard in assessing the other assesses.

4. Whether the goods are sent to the branches in the other State or to the Agent, in the other Stage, the law does not find any difference between them. The transactions are to be supported by Form F the *assessing authority at the place of the branch or agent.*

5. A manufacturer of M.S.Ingot can send the goods for job-work for Re-rolling to the other State and may bring back the finished goods or direct the job worker to hand over the goods to a nominated Agent in the same State or to another State. Under these circumstances, the law does not operate for levying tax in the hands of the principal.

6. The goods manufactured by the Principal is mild steel ingot, which is talling under second schedule a declared goods, which may suffer one levy of tax any where at any point of sale. The law prevents multiple levy of tax on declared goods.

7. While appointing M/s. Tulsyan Udyog a consignment agents, we have authorized them, to convert the M.S.Ingot into CTD Bars in case of realization of little bit more profit.

8. The Commercial Tax Officer further stated that the goods were again sent by our Agent to some other Agents in some other State. Once the goods leave the Tamil Nadu Territory under Agency transaction, which is covered under Form F. It is up to the Karnataka Government to allow exemption or to levy tax. The Tamil Nadu Government does not get any jurisdiction, over the goods moved out of the State Territory under branch transfer or transfer to Agents.

9. When Karnataka Commercial Taxes Department has passed the assessment order accepting the further *transfer to the other agents, the Tamil Nadu Commercial Taxes Department has no legal right to dispute the assessment of the Karnataka Commercial Taxes Department and levy tax at 8% and maximum penalty under the law of the land on the Principal in Chennai and cause huge financial loss to the Company which remains closed for the past 5 years due to bad marketing condition and huge accumulated loss. Therefore, the appellant prayed to set-aside the order of the first appellate authority and the appeal may be allowed.*

10. The following issue is framed for consideration whether the 1st appellants only are valid in law?

11. Tvl. Madanlal Steel Industries Limited, manufacturers of M.S.Ingots at 218 Linghi Chetty Street, Chennai-1 are the appellants herein. The appellants have reported a total and taxable turnover of Rs.1,49,27,378/- and Nil respectively for the assessment year 1992-93 under the CENTRAL SALES TAX Act, 1956. The appellant/assessee had claimed exemption under consignment transfer of M.S.Ingots to Agents in other states for a turnover of Rs.1,49,27,378/- and claimed exemption on high sea sales of Shredded Scrap for a turnover of Rs.25,62,874/-. The assessing authority disallowed the claim of consignment transfer of M.S.Ingots to agents in other States to the tune of Rs.1,49,27,378/- for the *reasons that the appellant/assessee had not produced any recorded evidence about the difference between the consignment sales figures furnished before the Enforcement Wing Officers and the sales figure as per accounts and the appellants have not denied, but accepted that the goods viz. CTD Bars sold are two different commodities. Further, the appellants have failed to furnish the details of tax paid by their was given. In the absence of the above details, the Appellants are not entitled for to claim exemption under consignment transfer and finally the assessing authority determined the total and taxable turnover of Rs.1,76,12,022/- and Rs.1,50,49,148/- respectively and subjected them to tax besides penalty of Rs.18,05,896/- levied under sec.9(2) of the CENTRAL SALES TAX Act, 1956 read with sec. 12(3)(b) of the TNGST Act 1959. On first appeal in A.P.No. CENTRAL SALES TAX 178/98 dated 18-02-2000 the first appellate authority had partly remanded and partly dismissed the appeal for the reasons that the claim of exemption under consignment transfer was not proved for a portion of turnover of Rs.35,54,499/- and for verification of tax suffered goods in other states remanded a portion of turnover of Rs.1,14,94,649/-. As per remand direction, the assessing authority after complying all the formalities for the reasons that the appellants have not proved the earlier sufferance of tax in other states, had passed revised assessment order thereby restoring the* *assessment order already passed. Aggrieved against the order passed by the first appellate authority in A.P. Central Sales Tax 178/98, the appellant/assessee preferred an appeal before this Tribunal in TA No.891/2001. Aggrieved against the revised assessment order passed as per the remand order, the appellant/assessee has preferred first appeal before the Appellate Assistant Commissioner in AP. Central Sales Tax 73/2001. The learned first appellate authority in Ap.No. Central Sales Tax 73/2001 dated 29-08-2002 had dismissed the appeal for the reasons that the appellants had not proved their claim of exemption on consignment transfer and also the goods sent by the appellants was not sold as it is by the agent in other States and the agent had converted the goods as a new commodity and therefore, exemption cannot be granted. As against the first appellate authority's order the present appeal in A.P.No.1446/2002 have been preferred by the appellants herein. Therefore, since the issue and parties are one and the same, Common order has been necessitated.*

12. At the first instance, the learned Authorised Representative for the appellant, would argue that the appellant/assessee as per books of accounts reported a turnover of Rs.1,49,27,378/- only under the consignment transfer whereas without facts and figures, the assessing authority had fixed a turnover of Rs.1,50,49,148/- under the consignment transfer *thereby leaving a difference of Rs.1,21,720/- was added for which the Revenue has not relied upon documentary evidence. Therefore, without facts and figures, the determination of the disputed turnover as Rs.1,50,49,148/- is not correct instead of Rs.1,49,27,378/-. Therefore, the difference of Rs.1,21,770/- has to be deleted from the disputed turnover.*

13. The learned Additional State Representative would argue and relied upon CROSS OBJECTION PETITION No.266/2000 and reiterated the contentions already raised in the CROSS OBJECTION PETITION and supported the assessment order.

14. Rival submission and connected records were carefully perused.

15. It is admitted facts with reference to the claim of consignment transfer, the appellant/assessee had produced requisite F forms, and transport particulars for entire turnover which are available in the assessment file perused. On perusal of the assessment records produced, it is seen that the appellant / assessee had only claimed exemption under consignment transfer on a turnover of Rs.1,49,27,378/- only. It is seen that the Revenue had relied upon the Enforcement Wing Officer report at page 161 in para 2 of the assessment file. Assessment file at page 161, para 2, it is seen that Entry No.5 the figure has been noted, figure was taken as noted Rs.4,43,966/-. But the *learned Authorised Representative for the appellant had explained that the appellant/assessee had dealt with the sales agent at Bangalore only for a turnover of Rs.3,22,196/- which fact was explained to the assessing authority. As per letter dated 21-9-98 which is available at page 195 of the assessment file. Further, it was also already brought to the knowledge of the assessing authority. Assessment file at page 195 perused, wherein it was seen that*

1. Consignment sales: The consignment sales figure as per books and records is only Rs.1,49,27,378/- and the appellants had filed a detailed list along with sale patti and Form-F from the Consignment Agents. The Officers have recorded excess to the tune of Rs.1,21,770/-. On perusal of the Enforcement Wing Officials report at page 161, para 3, it is not known where the Enforcement Wing Officials have taken this excess turnover for which no evidence was adduced by the Revenue.

Therefore, considering the above facts, it is decided that the appellants had dealt with only for a turnover of Rs.1,49,27,378/-. Further more to emphasize this, it si admitted fact of both sides for the entire consignment transfer, the appellant had produced requisite form-F and transport particulars. No other turnovers under consignment transfer was not left over. Therefore, the excess turnover of Rs.1,21,770/- discussed by the authorities below is without any basis.

Therefore, considering the above circumstances we are of the considered opinion to delete the excess turnover of Rs.1,21,770/- for want of particulars from the taxable turnover. Therefore, the turnover which was dealt with by the appellant under the consignment transfer is only Rs.1,49,27,378/-. Therefore the contention raised in the cross objection petition is hereby rejected for want of evidence.

16. The next contention raised by the learned Authorised Representative for the appellant is that the appellants have claimed exemption for a disputed turnover of Rs.1,49,27,378/- for which as per law and rules, the appellants had produced the entire requisite form F with transport particulars. Therefore, the burden of proving the claim of exemption under consignment transfer was discharged as per the decision rendered in 96 STC 98 in the case of P.DHANDAPANI & CO. Therefore, the assessing authority as well as first appellate authority have failed to appreciate the facts and law and have disallowed the claim of exemption made by the appellant / assessee without any sound reasons which cannot be sustainable under law. The reasons given by the authorities below is not contemplated under the law and therefore the reasons has to be ignored the Revenue is expected to examine the form-F and transport particulars only and there after Revenue has to either to accept the form-F and transport particulars or to reject the Form-F and *transport particulars as envisaged under Section 6(2) of CENTRAL SALES TAX Act. But the Revenue had not rejected the "F" Form and transport particulars but accepted the same will not hesitation. The appellant / assessee had discharged the burden of proof under sec.6-A of CENTRAL SALES TAX Act. Therefore, the appellant is entitled for the claim of the exemption on consignment transfer.*

17. Per contra, the learned Additional State Representative would argue that the appellant/assessee had failed to produce the evidence for the tax sufferance in other States and agent of the appellant in other States and sold the goods after converting into CTD Bars. Because of these violations the appellants are not entitled for exemption under consignment transfer. Therefore, the reasons assigned by the authorities below is sustainable under the law. Therefore, the appeal preferred by the appellant has to be dismissed. By way of reply, the learned Authorised Representative would submit that nowhere under rules and tax laws put a condition that the dealer has to proven early sufferance of tax in other States to claim exemption under consignment transfer. Likewise no prohibition was made for the conversion of goods after termination of consignment transfer. Therefore, the reasons assigned by the assessing authority are unsustainable under the law.

18. Rival submissions and connected records were *carefully perused.*

19. It is admitted facts that the entire disputed turnover of consignment transfer, the appellant had produced the requisite declaration in form-F along with transport particulars. Equally, it is admitted facts that the entire form-F and transport particulars were verified and accepted by the Revenue. Therefore, under the above admitted facts, we have to look into the case laws referred by the learned Authorised Representative. These F forms and transport particulars is available in the assessment file. But the facts are not disputed. At this juncture, it is worth while to refer the decision reported in 96 STC 98 in the case of P.DHANDAPAI VS. State of Tamil Nadu and another wherein it was filed that the assessing authority had to verify the form-F and transfer records and pass suitable orders on the basis of F forms and transfer records produced by the assessing authority. Nothing more is required to verify by the assessing authority". The production of Form F and transport records and other particulars by the appellants have not been disputed by the Revenue. These documentary evidence have not been rejected by the assessing authority. Therefore, the requisite form F and documents for dispatch of goods were admitted by the assessing authority. The alleged instance for disallowing the claim of consignment transfer by the assessing authority was as follows:

"(1) The dealers have not denied, but

accepted that the goods viz.M.S.Ingots sent for sales on consignment sales and the goods viz. CTD Bars sold are two different commodities.

(2) The dealers have failed to furnish the details of tax paid in other states, even after a month's time requested by them, was given. In the absence of the above details, the claim of exemption is disallowed.

These two reasons are not sustainable under law to reject the claim of exemption made on consignment transfer in view of the case law reported in 96 STC 98 in the case of P.Dhandapani Vs. State of Tamil Nadu. Neither the Act nor the Rule insisted like the reasons assigned by the assessing authority in this case. The law expects that the consignment transfer could take working place without any reference to purchase order only. Therefore, the reasons assigned by the authorities below is not sustainable. The consignment agreement in between the appellant/assessee and the agent (Tvl.Tulsyan Udyog) dated 16-8-1991 is seen at page No.45 of the assessment file wherein at condition No.4 is accepted by the parties to the agreement. The agent is authorized by the principals to convert the supplied M.S.Ingots into Tor Steel / CTD Bars on behalf of the principals, in the wider interest of the principals in a reputed rerolling mills and the agent shall act as selling agent for the principals to sell the converted CTD Bars/Tor Steel on behalf of the principals and credit the proceeds to principals account, after deducting the *expenses incurred such as, conversion charges and selling expenses and therefore as per the agreement, condition the principal/appellant/assessee had authorized the agent at Bangalore by name Tvl.Tulsyan Udyog to convert the goods sent under the consignment sale agreement which is not prohibited under the law. The facts of conversion after completion of the consignment transfer would no after the character of the consignment transfer. Therefore the reason assigned by the assessing authority to this allow the claim in unsustainable under law another reason is that the appellant had not produced the proof for tax sufferance in other States. This is also not found correct because no law or rule under the tax laws insisted this kind of proof to grant exemption on consignment transfer. Therefore, under the above discussions the facts of the case and by following the decision rendered in the case of P.Dhandapani vs. State of Tamil Nadu and Another reported in 96 STC 98 the appellant had discharged his burden of proof so as to claim exemption on the consignment transfer. Therefore, for the reasons assigned by the authorities below, the claim of exemption on consignment transfer cannot be rejected. Such rejection cannot be sustainable under the law.*

20. The next dispute is with regard to the penalty under Sec.9(2) of CENTRAL SALES TAX Act 1956 amounting to Rs.18,05,898/- as per the original assessment order passed for the assessment year 1992-

93. the facts of the case would also appear that it was not a best judgment assessment. The exemption claimed by the appellant was disallowed without disturbing the total turnover reported. Under these circumstances, when the total turnover is assessed is based on the books of accounts and in view of the Hon'ble High Court in the case of Appollo Saline Pharmaceuticals Limited reported in 125 STC 505, this is not a best judgment and hence, the penalty portion will not be attracted. The penalty levied under Sec.9(2) of the CENTRAL SALES TAX Act 1956 read with Sec. 12(3)(b) of the TNGST Act 1959, is therefore set-aside.

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Since the claim of exemption on consignment transfer and levy of penalty are set-aside, there i sno necessity to take further action in the CROSS OBJECTION PETITION filed. Accordingly, it is dismissed.

21. In the result, both the TA.891/2001, T.A.1446/2002 appeals stand allowed and CROSS OBJECTION PETITION 266/02 in TA No.891/01 is dismissed."

12. We have given our due consideration to the grounds raised in T.C.(R).No.13 of 2018, and the substantial questions of law raised, which at the risk of repetition, reproduced hereunder:-

"a) In the facts and circumstances of the case, whether the Tribunal is legally correct in not affirming the order of

the first appellate authority even while the goods sent to outside the state had not been sold by the agent in the order state in the same form in which they were received but manufactured into entirely new goods and then sold?

b) Whether the order of the Tribunal in deleting the consequential penalty is legally sustainable?"

13. In the result, the Tax Case Revision is dismissed.

[S.M.K., J.] **[V.B.S., J.]**

05.02.2018

Index : Yes/No

Internet : Yes/No

dm

S.MANIKUMAR, J.

AND

V.BHAVANI SUBBAROYAN, J.

dm

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