IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case No.94 of 2018

The State of Tamil Nadu
Represented by the Deputy Commissioner (CT)
now redesignated as Joint Commissioner (CT),
Chennai (North) Division ... Petitioner

v.

Tvl.P.S.Sambandam Mudaliar & Co.,
No.33, Elakandappan Street,
Chennai - 600 003. ... Respondent

Prayer: Tax Case Revision is filed under Section 38 (1) of the TNGST Act, 1959, to revise the order dated 28.02.2007, made in T.A.No.38 of 2003 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For petitioner ... Mr.V.Hari Babu
Addl. Govt. Pleader (Taxes)

O R D E R

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

Instant Tax Case (Revision) is filed by the Revenue against the order of the Sales Tax Appellate Tribunal dated 28.02.2007 made in

T.A.No.38 of 2003, on the file of the Sales Tax Appellate Tribunal (AB), Chennai.

2. The brief facts of the case are as follows:

Tvl.P.S.Sambandam Mudaliar & Co., the respondent herein, is a dealer in waste paper and an assessee on the file of the Deputy Commercial Tax Officer, Moore Market (North) Assessment Circle, Chennai. For the assessment year 1998-99, the Assessing Authority disallowed the exemption claimed on interstate sales of old newspaper made by the assessee for Rs.7,61,710/- and levied tax at 10% in respect of these sales not covered by 'C' declaration forms and allowed tax at 4%, in respect of sales covered by 'C' declaration forms.

3. Aggrieved over the same, the assessee/respondent filed appeal in CST No.154 of 2004 before the Appellate Assistant Commissioner (CT) I, Chennai. Vide order, dated 19.09.2001, the appellate authority, has confirmed the assessment and dismissed the appeal, as hereunder:

"5. I have heard the arguments of both the sides with connected records. The Assessing officer has assessed the appellants on a turnover of Rs.7,61,710/- at 10% towards the sale of waste paper. The Authorized Representative who has appeared at the time of final hearing has argued that the sale of old newspaper is not liable to tax and he has also relied on the judgment reported in 85 STC 1 (SC) 1992 dated 31.8.98 wherein it was held that "old news paper in also news paper". The Departmental item waste paper has been included in the First Schedule under item 83-A of Part-B of the First Schedule. Therefore the same is liable to tax. The arguments of the Departmental Representatives that the old news papers were sold in weight along with other waste papers and sold in bulk. Therefore the same cannot be treated as newspapers. The arguments of the Departmental Representative are reasonable and justifiable. the case laws relied by the Authorized Representative is different from that of the facts and circumstances of the case on hand. Therefore the assessment made by the Assessing Officer on the sale of wast paper on a turnover of Rs.7,61,710/- at 10% is in order.

6. With reference to the turnover of Rs.70,134.00 which has not been covered by C-Form the Assessing Officer has levied tax at 10%. The Authorized Representative has not produced any C-Form even at the time of final hearing. I therefore sustain the assessment made on this turnover of Rs.70,134/-.

In fine, the appeal stands DISMISSED."

4. Against the said order, the assessee has filed a second appeal in T.A.No.38 of 2003, before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai and on a careful consideration of the submissions made, vide order dated 28.02.2007, the Tribunal held as follows:

> "Rival submissions and connected records were perused. There is some force in the arguments of the learned counsel that the goods sold by the appellants is eligible for exemption as per the provisions of the Act. On perusal of the records it is observed that the appellants have sold old newspaper which is not liable to tax. Hence the sales turnover of the old news paper sold for the value of Rs.7,61,710/- is not liable to levy of tax.
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> In the case of Tvl. Sait Rikhaji Furtarnal and Another v. State of Andhra Pradesh [AIR 1991 SC 354 : 1991 Supp (1) SCC 202], the Supreme Court has held that,
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> "Old newspapers when sold as such would be covered by the world "newspapers" in entry 54 of List II and entry 92 of List 1 of the Seventh Schedule to the Constitution of India and it is, therefore beyond the competence of the State Legislature to impose sales tax on sale of old newspapers. Sale of old newspapers sold as such will be exempt from sales tax imposed by the State.
>
> In regard to old newspapers, it is the submission of counsel that even if the newspapers are not of the sale date or of a current period their contents had news value

and thus they continued to be the newspaper and the mere fact that they were out of date did not take away the news element therefrom. This Court in a recent judgment held a law journal to come within the meaning of newspaper though not carrying news of contemporary period. On the ratio of that decision the contention of the appellant that old newspapers are also "newspapers" and would be entitled to the exemption provided under the Constitution is acceptable. We accordingly uphold the contention of the appellant and direct that old newspapers when sold as such would be covered by the exemption provided in the Constitution and sale thereof would not be liable to sales tax. The appeals are allowed so far as the sale of old newspaper is concerned."

From the decision cited supra of the higher judicial forums and respectfully following the decisions cited supra, we are of the considered opinion that the sales turnover of old newspapers effected by the appellant is covered by the exemption provided in the constitution and therefore, the sale thereof would not be liable to sales tax. Hence the assessment by the learned Assessing Officer on the sales turnover of Rs.7,61,710/- on the old newspapers is not warranted and therefore not sustainable in law. Hence the assessment is set aside and deleted. Naturally, interference is called for on the learned Appellate Assistant Commissioner's order in respect of the turnover of Rs.7,61,710/- on the sales turnover of old newspapers and we are categorically and unanimously taken view that the sales turnover of old newspaper is not liable to sales tax as per the decision cited supra and hence exempted from tax liability in the assessment proceedings made on the turnover of Rs.7,61,710/- is therefore not warranted and hence set aside and deleted. Thus we consider that the order of the learned Appellate Assistant Commissioner in this regard is not sustainable in the eye of law. Hence, the learned Appellate Assistant Commissioner order is set aside and deleted.

On perusal of records it is seen that the appellants have sold old newspapers to the outside dealers of Tamil Nadu and claimed exemption. However the learned Assessing Officer rejected their contention of the claim of exemption on the inter-state sales of old newspapers and treated the sales as inter-state sales only and demanded the appellants to file 'C' form declaration. But th appellants have filed 'C' forms for the value of Rs.50,042/- out of the sales turnover of Rs.1,20,176/- with protest. Thus we have seen from the records that the sales effected to inter-state dealers also exempted from tax as the goods namely old news papers is naturally exempted from sales tax as per the decisions of higher judicial forums cited supra. Therefore, we are of the considered view that the sales turnover of Rs.70,134/- sold outside the state of Tamil Nadu is fully exempted from tax liability as the commodity is clearly as exempted goods. Therefore, the assessment made by the learned Assessing Officer levying tax at higher rate of tax at 10% without 'C' form Declaration is not correct and proper and hence the assessment made is not warranted. Therefore, the assessment made by the learned Assessing Officer is set aside and deleted. Further, it is observed from the records that the learned Appellate Assistant Commissioner order in this regard naturally requires our intervention and we are interfering with his order. The learned Appellate Assistant Commissioner order in this regard is not based on facts of this case on hand. Respectfully following the decisions of the higher judicial forums cited supra, the learned Appellate Assistant Commissioner order on the turnover of Rs.70,134/- is not warranted. hence we are setting aside the orders of the learned Appellate Assistant Commissioner in this regard.

9. In the result, the appeal is allowed. "

5. Aggrieved over the order of the Tribunal, the State has filed the instant Tax case (Revision), on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal is legally correct in having held that sale of old newspaper would be covered by the Entry 54 of List II and entry 92 of List of the Seventh Schedule to the Constitution of India even when old newspapers were sold as waste paper and not with reference to their news content or for the purpose of reading?"

6. In support of the above substantial question of law, the petitioner has raised the following grounds:

> "1. The tribunal has failed to appreciate that the intention between the parties was to sell and purchase waste paper, even though they were old newspaper.
>
> 2. The tribunal has failed to consider that there was no evidence to the contrary that the purchases were effected in relating to the news content in the old newspapers and for the purpose of reading as both the selling dealer and the purchasing dealer were exclusively dealing in waste papers.
>
> 3. The Tribunal ought to have appreciated that the decisions of the Apex Court cited in favour of the assessee were rendered in a different context, namely, even the old newspapers or magazines when purchased with reference to their news content whether be old or upto date news, then alone they would be eligible for exemption from tax.
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> 4. The Tribunal has erred in not considering that as per entry 82 of Part B of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, waste paper and waste paper (old) are taxable at 4% and the said entry did not distinguish between old waste paper and old news paper being sold as waste paper"

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

7. In **Indian Express (P) Ltd. vs. State of Tamilnadu** reported in **67 STC page 474**, the issue before the Hon'ble Supreme Court was whether the sale of Old Newspapers is exempt from payment of tax. It was argued that when surplus copies of the news papers were sold, they possessed the character of newspaper and were exempt from sales tax. However, it was held by the Supreme Court that when newspapers are sold to the reading public, they are sold as medium containing information regarded as news. They are purchased by members of public to acquaint themselves with the current news. Information is news when it is fresh and new. So when newspaper becomes old, it loses its characteristic as newspaper. When unsold surplus copies of newspapers are disposed of by weight, their sale cannot be regarded as the sale of newspapers.

8. However, in a later decision in **Sait Rikhaji Furtarnal v. State of Andhra Pradesh** reported in **AIR 1991 SC 354 : 1991 Supp (1) SCC 202,** the issue of sale of old newspapers came up before the Supreme Court and it was the submission that even if the newspapers

are not of the same date or of a current period, their contents had news value and thus, they continued to be newspapers and the mere fact that they were out of date did not take away the news element therefrom and the old newspapers are also 'newspapers' and would be entitled to the exemption provided under the constitution. The contention was upheld and it was held that old newspapers would be covered by the word 'newspapers' in entry 54 of list II and entry 92 of list I of the Seventh Schedule to the Constitution of India and it is, therefore, beyond the competence of the State Legislature to impose Sales Tax on the sale of old newspapers.

9. When there are two decisions, on the same point of law, the judgment rendered at a later point of time, proximate and which has considered the decisions of the Hon'ble Apex Court, will prevail over the former. Reference can be made to few decisions,

(i) In **D.V. Lakshmana Rao Vs. State of Karnataka** reported in **2001 (4) KAR.L.J. 185,** the Karantaka High Court has held thus:

> "It is now well-settled that if there are two conflicting judgments of the Supreme Court, of Benches with equal number of Judges, then the latter will prevail over the earlier. But where the earlier judgment is of a

larger Bench and the latter judgment is of a smaller Bench, then the decision of the larger Bench will be binding..... When there is divergence between decisions of two co-ordinate Benches of the Supreme Court, the latter decision should prevail. The exception arises where the first decision specifically considers a particular question and lays down the principles relating to the question and the subsequent decision, without noticing the earlier decision or the principles laid down therein, and without examining the question, renders an assumptive decision. In such a situation, the earlier decision which considered the question and lays down the principle will apply."

(ii) A Full Bench of this Court in **R.Rama Subbarayalu Reddiar v. Rengammal (AIR 1962 Madras 45)** has examined the question with regard to High Court decisions. At Paragraph 4 of the judgment, this Court held that,

"4. Before we deal with the question, involved in the appeal, it is necessary to examine the propriety of the procedure adopted by the learned District Judge, The normal rule as to the precedents is that Subordinate Courts are bound in the absence of any decision of the Supreme Court to follow the decision of the High Court to which they are subordinate. Where, however, there is a conflict between two decisions of the High Court, the rule to be adopted is as follows : where the conflict is between the judgment of a Single Judge and a Bench or between a Bench and a Larger Bench, the decision of the Bench or Larger Bench as the case may be, will have to be followed. But where the conflict is between two decisions both pronounced by a Bench consisting of the same number of Judges and the subordinate Court after a careful examination of the decision came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one."

(iii) A Full Bench decision of Allahabad High Court in **U.P.State Road Transport Corporation v. State Transport Appellate Tribunal, U.P., Lucknow and Ors., (AIR 1977 Allahabad 1)**, held that,

"12. It is noteworthy that the Supreme Court's decision in Mysore State Transport Corporation is later in time. Even if there is some conflict in the two Supreme Court decisions, we have to follow the law as declared in the later case of Mysore State Transport Corporation."

(iv) In **Vasant Tatoba Hargude and Ors., v. Dikkaya Muttaya Pujari (AIR 1980 Bom. 341),** it is held that in case of conflict between earlier and later decisions of Supreme Court, each consisting of equal number of Judges, later decision prevails. A Full Bench of

Karnataka High Court (Five Judge Bench) in **Govindanaik G.Kalaghatigi v. West Patent Press Company Ltd and Anr., (AIR 1980 Karnataka 92),** at Paragraph 5, held that,

> "If two decisions of the Supreme Court on a question of law can not be reconciled and one of them is by a Larger Bench while the other is by a Smaller Bench, it is earlier or later in point of time, should be followed by High Courts and other Courts. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Court."

10. After considering the facts and circumstances of the case, and taking note of the decisions of the Hon'ble Supreme Court and the clarification issued in K.Dis.Acts.Cell/V/97174/92, dated 19.11.1992, we do not find any manifest illegality, warranting reversal of the order of the Tribunal. Tax Case (Revision) is dismissed. No costs.

(S.M.K., J) (V.B.S.,J)

06.04.2018

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S.MANIKUMAR,J
and
V.BHAVANI SUBBAROYAN,J

skm

To

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

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