IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

C O R A M

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

Tax Case No.80 of 2018

The State of Tamil Nadu
Represented by the Deputy Commissioner
(Commercial Taxes),
Coimbatore Division, Coimbatore-18. ... Petitioner

v.

Tvl.Ragavendra Associates,
96, East Lokamanya Street,
R.S.Puram, Coimbatore. ... Respondent

Prayer: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order dated 11.03.2002, passed in Coimbatore Tribunal State Appeal No.21 of 1998, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

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

O R D E R

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

Instant Tax Case Revision is filed to revise the order dated 11.03.2002, passed in Coimbatore Tribunal State Appeal No.21 of 1998, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

2. Facts as deduced from the material on record are that Tvl.Ragavendra Associates, were finally assessed, turnover of Rs.24,10,608/-, for the assessment year 1992–93, under Tamil Nadu General Sales Tax Act, 1959, on the basis of the inspections conducted in their place of business and in the place of business of Tvl.M.M. and Sons (Cones), Sowripalayam. At the time of inspection, it was noticed that Tvl.M.M. and Sons had purchased craft papers from the respondent on E1 basis, without any endorsement. There were also delivery notes issued by the respondent, for the delivery of goods to Tvl.M.M. and Sons. Therefore, the assessing officer, had disallowed the claim of the respondent towards transit sales and assessed the tax at 6% under the TNGST Act, 1959.

3. Aggrieved over the assessment, the dealer has filed an appeal before the Appellate Assistant Commissioner, Coimbatore, on the ground that delivery note is for entrustment of document of title and it was not a delivery note, with which, goods were consigned from one place to another, as alleged by the assessing authority. It was further contended that the assessing authority has failed to establish conclusively that local sales had taken place, after taking delivery of goods, but on the other hand, the transfer of property was made while the goods were in transit. Placing reliance on G.O.Ms.No.423, dated 31.12.1993, the respondent submitted that for the assessment years 1987-88 to 1992-93, remission of tax has to be given even where the sale took place after the arrival of goods and that the assessing authority has erred in disallowing the transit sales for the year 1992-93, on the basis of non-availability of endorsement in four way bills, relating to the year 1993-94 and that each assessment year is a separate unit. Considering the facts and circumstances of the case, the appellate authority, vide order, dated 26.12.1997, allowed the appeal, as hereunder:-

> *"I heard the arguments of both the representatives and also verified the records produced*

me. The Assessing Authority has disallowed the consignment sales on the basis of the an inspection conducted in the place of business of Tvl. M.M.& Sons, Sowripalayam, Coimbatore. At that time the Enforcement Wing Officers had detected unendorsed four way bills dated 14.7.93 and 24.8.93. They also noticed the delivery notes issued by Sri Raghavendra Associates during the year 1992-93. Hence they inspected the place of business of Sri Raghavendra Associates also. They found that the goods moved from Vapi and immediately on reaching Coimbatore the lorry driver had contacted the appellants and the appellants had directed the driver to deliver the goods to the ultimate buyers. He had raised invoice No. in the name of the ultimate buyer and handed it over to the buyer along with his delivery note wherein he has specified the L.R.NO, quantity, description of the goods and the lorry freight to be paid by the ultimate buyer. Holding that the interstate movement is terminated as soon as it has reached Coimbatore. As the transporter has no godown at Coimbatore and therefore no chance for keeping the goods, there is no delivery at a later date. Hence subsequent sale effected by the appliant is only first sales in his hand as the movement is terminated. The non-endorsement in the way bill as the token of having transferred the title to goods confirm the same. He has quoted the decision reported in 89 STC 493 and stated that the interstate movement has stopped as soon as the *goods had reached the place specified in the lorry receipt and the appellants have sent the goods to the ultimate buyer along with his own delivery notes. He disallowed the consignment sales for this, in the reply to the pre-assessment notice the appellants have raised the same contentions raised before me in the grounds of appeal. But the Assessing Authority has not accepted the contention. Quotation the decision reported in T.A. 1743/84 dated 26.3.1986 in the case of Voltas Limited wherein the sales Tax Appellate Tribunal, (Main Bench), Madras he has upheld the proposals. In this following the decision in 54 STC 85 the appeal was dismissed holding the transaction as only local sales and not E1 sales. Quoting the decision in T.A. 204 and 205/81 dt. 29.10.81 of the sales Tax Appellate Tribunal (Add. Bench), Madras he has held that the subsequent sales must be effected by TRANSFER OF DOCUMENTS before the goods were taken delivery by the last buyer from carriers or other bails. He has mainly relied on the proof of transfer of documents of title. He has not accepted the delivery order. He has held that the interstate movement is terminated at Coimbatore and further movement by the appellant is to be treated only as first sales at his hands.* ***I verified the records produced and also the arguments put forth by the Assessing Authority and the Authorised Representative. The only point to be decided is whether the appellants have taken delivery of the goods and subsequently effected sales. As*** *rightly contended by the Authorised Representative as per G.O.even 40 days time is granted after the receipt of goods in a particular place to effect subsequently sales. In the case on hand the movement of goods has not ended at Coimbatore and has ended only at Sowripalayam and before the goods are delivered, the appellants have raised sales bills on the ultimate customer. They have raised sales bills on the ultimate customer. They have sent one delivery note along with the lorry driver with the instruction to the ultimate customer to pay the lorry freight. A verification of the delivery notes reveals that there is nothing to prove that it is delivery note for delivery of the goods. It is only an intimation to the ultimate buyer to pay lorry freight. There is also description about the quantity of the goods, the rate per kg. etc. A verification of all the records reveals that the movement has not stopped at Coimbatore and it has stopped only in the premises of the ultimate buyer and the delivery note issued by the appellants does not in any way interfere with or interrupt the intestate movement of goods to the ultimate buyer. Neither the Enforcement Wing Officers not the Assessing Authority has proved with any evidence that the appellants had taken delivery of the goods and after that effected sales. The un-endorsed way bills related to the year 1993-94. On the basis of unendorsed way bills relating to the year 1993-94 the*

E1 sales cannot be disallowed for the year 1992-93. For this disallowance the Assessing Authority has relied on the delivery notes written by the appellants only. As already discussed the delivery notes do not prove that the appellants have taken delivery of the goods and effected subsequent sales. As rightly contended by the Authorised Representative the case on hand is different from the judgment reported in 89 STC 493. Here there is no taking delivery of the goods and subsequent despatch along with form XX delivery note. I hold that it is only a sale effected by transfer of document of title during the movement of goods from one state to another pursuant to an earlier interstate sale. Hence this subsequent interstate sale effected by the appellants is eligible for exemption under Section 6(2) of the CST ACT 1956. Moreover the assessment made is against the spirit of the G.O. cited. *With the above observation I set aside the assessment made and allow the appeal.*

S.T. conclude, the appeal is allowed."

4. Being aggrieved by the same, the State has preferred C.T.S.A.No.21 of 1998, before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18, on the ground that the goods intended for the respondent moved from other state consignors and arrived at Coimbatore and afterwards the driver of the goods

vehicle approached the respondent and therefore, it could be inferred that as soon as the goods reached, a construed delivery was taken by the respondent and then, delivered to the ultimate buyers. Vide Order, dated 11.03.2002, the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18, dismissed the appeal, as hereunder:

> *"4. We have heard the arguments of both the sides and perused the connected material records. The Assessing Authority has disallowed the entire 6(2) transaction and treated the transaction asoutright purchase and sales of craft paper by the respondent. The assessing Officer has mainly relied on the inspection result, wherein 4 unendorsed way bills were recovered on 13.9.93 by the Enforcement Wing Officers during the inspection in the place of business of M.M. and Sons(Cones) Sowripalayam. Based on the 4 delivery challans and other self made delivery challans issued by the respondent. The Assessing Officer has disallowed the entire transactions claimed as transit sales.*
>
> *5. The learned appellate Assistant Commissioner had discussed in length the tenability of claim of relief and has rendered a positive finding in pages 7 of the proceedings, which runs as follows:-*
>
> *"A Verification of the deliver notes reveals that there is nothing to prove that it is delivery note for delivery of the goods. It is only an intimation of the*

ultimate buyer to pay lorry freight. There is also description about the quantity of the goods, the rate per kg. etc. A verification of all the records reveals that the movement has not records reveals that the movement has not stopped at Coimbatore and it has stopped only in the premises of the ultimate buyer and delivery note issued by the appellant. Does not in any way interfere with or the gods to the ultimate buyer, Neither the Enforcement Wing Officer not the assessing authority has proved with any evidence that the appellants has taken delivery of the goods and after that effected sales. The unendorsed way bills related to the year 1993-94. On the basis of unendorsed way bills, relating to the year 93-94 the E1 sales cannot be disallowed for the year 92-93. For this disallowance, the assessing authority has relied on the delivery notes written by the appellants only. As already discussed, the delivery notes do not prove that the appellants have taken delivery of the foods and effected subsequent sales. As rightly contended by the Authorised Representative, the case on hand is different from the judgment reported in 89 STC P. 493."

6. In the concluding portion, the learned Appellate Assistant Commissioner has also passed another positive finding, which runs as follows:

"Moreover, the assessment made is against the spirit of the G.O. Cited". (G.O.423 dated 31.12.93).

The learned Authorised Representative for the respondent argued that as the assessment relates to the year 1992-93 an as the facts of the case are distinguishable from these dealt the decision reported in 89 STC P.493, where the seller in the State of Tamil Nadu has taken possession of the goods, used own Form XX issued by the Sales Tax Authorises for redespatch of the goods to the ultimate buyers the Hon'ble High Court of Madras was therefore pleased ton observe that there was constructive delivery and consequently liability accrued. In the case on hand, there was no utilisation of any From XX issued by the Department. As rightly pointed our, the self delivery notes are not from XX neither is there any proof for handling or handing over of the goods by the respondent to the ultimate buyer.

7. The written submission given at the time of argument it is stated by the Authorised Representative the respondent that the case on hand ralls within the ratio of the decision reported in 55 STC P. 286, wherein the Hon'ble High Court of Madras has held in clear terms that the inter-state movement stands terminated only the delivery of the goods to the ultimate buyers and before such termination, the sales ought to have taken place, so as to make ineligible to claim exemption u/s.6(2) of the CST Act 1959.

8. Moreover the benign Government of TamilNadu have ordered remission of Sales Tax, *Additional Sales, surcharge and Additional Surcharge payable by the dealers, who have effected sales u/s.6(2) of the CST Act in respect of the period 1987-88 to 1992-93 on the ground that the sales had taken place, after the arrival of the goods in the State of TamilNadu (vide 93 STC-Statutes, Rules and Notification-page 15). Thus the state appeal filed by the learned Deputy Commissioner (CT), coimbatore against the order of the learned Appellate Assistant Commissioner allowing the appeal of the respondent, merits no consideration.*

No proper or valid grounds has been put forth by the Department calling for no interference with the order of the Appellate Assistant Commissioner.

To conclude, the State Appeal stands dismissed."

5. Being aggrieved, the State has preferred the instant Tax Case Revision.

6. Mr.V.Haribabu, learned Additional Government Pleader (Taxes) submitted that the Inspecting Officers, during the time inspection on 13.09.1993, have recovered four unendorsed way bills in the place of business of M.M.& Sons (Cones), Sowripalayam. Based on the recovered records and other self made delivery challans, the assessing officer disallowed the claim of transit sales on the entire

transactions, which is quite in order and valid in law.

7. He further submitted that the goods were delivered to the ultimate buyers on the oral directions of the penultimate seller which cannot be treated as a valid transfer of title of the goods, as no records as defined in the Sales of Goods Act were used by the dealers. Any endorsement made subsequent to the delivery of the goods cannot be said to be a transfer, while the goods are in transit. He also submitted that recovery of D7 records is enough to sustain the stand that the goods in question were sent to the ultimate buyer's place, only subsequently and that too at the link of the dealer.

8. He further submitted that way bills were also endorsed, after the goods were delivered and in some case, no endorsement was made which was revealed on the verification of the record. Therefore, he contended that the sales effected by the dealers should be termed as local sales liable to tax, as per the decision reported in **89 STC 493 (Ramu Bros. Vs. State of Tamil Nadu).**

Heard the learned Additional Government Pleader (Taxes) and perused the materials available on record.

9. Whether the sales effected were local sales or not and thus, liable for tax, has been considered on facts and material evidence, including D7 records, by both the Appellate Authority and the Tribunal and the fact finding authorities have assigned valid reasons, for arriving at a finding in favour of the assessee. Yet another important factor to be taken note of, is that the unendorsed way bills related to the year 1993-94, and sales cannot be disallowed for the year 1992-93. There are no valid grounds to interfere with the concurrent finding of fact nor there is any perversity.

10. Hence, the Tax Case Revision is dismissed. No costs.

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

26.03.2018

Index : Yes/No

Internet : Yes/No

dm/skm

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

skm

T.C.R.No.80 of 2018

26.03.2018