IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.15514 of 2002 and
WAMP.No.20780 of 2002

The State of Tamil Nadu
Represented by
The Deputy Commissioner (CT),
Chennai (North) Division,
Chennai-600 006. .. Petitioner

-vs-

1.Tvl.,Raja Metal Corporation
No.239, Mint Street,
Chennai-600 003.

2.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Addl.Bench), Chennai-104. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to the order of the Second Respondent made in T.A.No.414 of 1998 dated 31.01.2000 and quash the same.

For Petitioner : Mr.V.Haribabu Additional Government Pleader (Taxes)

For Respondents : Mr.Chandra Karuppiah (R1)
Tribunal (R2)

O R D E R

(Order of the Court was made by The Hon'ble Acting Chief Justice)

This Writ Petition has been filed by the petitioner aggrieved against the impugned order passed by the learned Tamil Nadu Sales Tax Appellate Tribunal on 31.01.2000, whereby the the Assessee's Appeal against the levy of Additional tax and penalty came to be allowed. The relevant portion of the order passed by the learned Tamil Nadu Sales Tax Appellate Tribunal is quoted below for ready reference:

> "5.The stand of the department is that as per the bill of entries the goods imported were hot rolled sheets of different dimension unsuitable for the manufacture of S.S.Wares. The contention of the learned counsel was that the respondent imported only Cold Rolled Stainless Steel Sheets AISI 304 grade for which purpose the respondent possessed valid licences. However it was admitted that the entry in the import documents filed were inadvertently made by their clearing agent. At that time of hearing, the learned counsel filed copies of duty entitlement certificate issued by the Controller of imports and exports and the connected copies of duty exemption entitlement certificates showing the export of stainless steel vessels. That apart the copies of bill of entry filed by the respondent through Tvl.Guru Shipping Clearing Services showing the import of steel Coils. In this context, the respondent filed a copy of letter from Tvl.Guru Shipping and Clearing Services. Clearing and Forwarding agent wherein the said Clearing and Forwarding agent admitted that by oversight typing error the bill of entries filed by them before the custom authority, they have mentioned the Customs Tariff Sub Heading as No.7119.12 instead 7219.31 but the customs authority have assessed at the duty applicable as Cold Rolled Stainless Steel under sub heading 7119.31. The learned counsel argued that the materials imported were only cold rolled Stainless Steel Sheets and merely based on the tariff number wrongly noted by the

clearing agent it cannot be assumed that really there was an importeration of the hot rolled sheets. We find all the documents filed before us were already examined in detail by the learned Appellate Assistant Commissioner held that the respondent imported only cold rolled stainless steels/sheets/coils. Having regard to the facts and circumstances of the case we do not find any reasons to interfere with the order of the learned Appellate Assistant Commissioner. In this context we find that this Bench in Sales Tax Appellate Tribunal (Additional Bench) STA.No.41/98 dated 15.3.99 held the same view in the case of State of Tamil Nadu vs.Tvl.Sha Moolchand Kasthurchand which involved the same set of facts. The learned counsel filing a copy of the said order drew our attention to the finding of this Tribunal at page no.11 that even Hot Rolled products can be converted into cold rolled steel strips and thereafter it can be issued as a raw material in the manufacture of stainless steel goods. We find that the Tariff sub heading number which was inadvertently mentioned will not be a sound basis for fastening such a huge liability on the respondent assessee. The learned counsel, at the time of hearing filed copies of records for proof of movement of imported goods from Bombay to Madras and also the connected copies from the Bombay party for having done job work on the imported materials and the return of the same. The learned counsel also filed copies of labour bills issued by Tvl.Joshi Slitters Pvt.Ltd. And also the copies of lorry consignment notes showing the movement of goods from Bombay to Madras. These documents prove the contentions that the imported materials were sent to the State of Maharashtra and after the job of cutting the same was returned to Madras to the respondent assessee. Admittedly, the respondent manufactured S.S.Goods and exported the same abroad and in this context the connected copies of invoices, packing lists, bill of lading to prove their

contention were filed before us. On the basis of the documents we find that the respondent assessee.....................................
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.... have exported the finished goods which were manufactured out of the cold rolled sheets imported and sent to Bombay for cutting and which were returned duly. Therefore, we do not find any reasons to fasten a liability on a turnover of Rs.1,12,48,033/- and a connected penalty of Rs.8,42,988/- under Central Sales Tax Act. Accordingly we do not find any reason to interfere with the order of the learned Appellate Assistant Commissioner. In fine, we dismiss the appeal filed by the Sales Tax Appellate Tribunal."

2. The learned counsel for the Respondent/Assessee pointed out the finding of fact as arrived at by the learned Tribunal that the import of the Assessee is cold rolled stainless steels sheets and not hot rolled stainless steel sheets and merely wrong mentioning of the tariff number in the custom documents could not result in the mis declaration on the part of the Assessee and therefore, the learned Tribunal has rightly held in favour of the Assessee.

3. This Court heard the submissions of the learned counsel appearing on either side and perused the materials on record.

4. As the finding of fact arrived at by the learned Tribunal appears to be justified, we do not find any merits in this Writ petition filed by the Revenue.

5. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arr
To:

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Addl.Bench), Chennai-104.

2.The Deputy Commissioner (CT),
Chennai(North) Division,
Chennai.

+1cc to Mr.B.Raveendran, Advocate SR.88851
+1cc to Spl Government Pleader(Taxes) SR.89258

SJ(CO)
CB(27/11/2019)