IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM :

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

W.P.No.15659 of 2002

Erbis Engineering Company Limited,
Having office at
No.39, 2nd Main Road, R.A.Puram
Chennai 600 028 .. Petitioner

-vs-

1.State of Tamil Nadu Rep by
The Secretary to Government,
Commercial Taxes Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. State of Tamil Nadu rep. by
The Deputy Commissioner (CT),
Chennai Central Division,
Chennai - 600 006.

3. The Appellate Assistant Commissioner of
(Commercial Taxes), CT-III Chennai,
Kuralagam, Chennai 600 108.

4. The Commercial Tax Officer,
Egmore-II, Asst. Circle,
Egmore, Chennai- 600 008.

5. Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench,
Chennai-104
Rep. by its Registrar .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for records of the Fifth Respondent in common order dated 7.12.2001 in STA 135/01 and quash the same in so far as Central Sales Tax concerned as being arbitrary and passed without proper application of mind.

For Petitioner	Mr.Rahul Balaji
For Respondents	Mr.Mohammed Saffiq (R1 to R4) Special Government Pleader (T)

ORDER

(Order of the Court was made by DR.VINEET KOTHARI,J.

The petitioner has filed this petition aggrieved by the order dated 07.12.2001 passed by the learned Tamil Nadu Sales Tax Appellate Tribunal in STA.135/01 by which the Appeal filed by the State was partly allowed and partly remanded with the following observations:

> "STA.135/01
> The State Tribunal is directed against the relief granted by the Appellate Assistant Commissioner (CT) III in his common order Chennai under Central Sales Tax Act disputing a turnover of Rs.80,13,000/- and connected penalty. The disputed turnover comprises of the following items. Based on the results of inspection and recovery of records the assessing authority added a turnover of Rs.55,13,000/-. Secondly, the assessing authority subjected to tax on a turnover of Rs.25,00,000/- as direct inter-state sales rejecting the claim of exemption as in the course of import under Section 5 (2) of the Central Sales Tax. We find the learned Appellate Assistant Commissioner granted relief on both the above said turnover. In respect of the first item the finding of the Appellate Assistant Commissioner was that the impugned transactions related to the Pondicherry Branch Office. A perusal of the records revealed that the Appellate Assistant Commissioner did not examine the records of movement from Madras to Pondicherry subsequent to the import. Based on the Form XXA which were recovered at the time of inspection which did not bore the same of the checkpost the state contended that the transactions were not genuine. We find that the Appellate Assistant Commissioner erred by filing to scrutinize the connected records. Accordingly as aforesaid in the

earlier STAs we set aside the orders of the Appellate Assistant Commissioner and remand this portion of turnover for a detailed scrutiny. With this direction turnover of Rs.55,13,000/- is remanded back to the assessing authority for fresh disposal bearing in mind the directions given in STA 1764/00.

9. In respect of other items of dispute the conclusion of Appellate Assistant Commissioner was that the Madras Office function only as liaison office and therefore the impugned transaction was only an import sale which is eligible for exemption under Section 5 (2) of the Central Sales Tax Act. We find that the respondent did more than the so-called liaison work on behalf of head office at Japan by not only clearing the goods themselves but also by making an inter-state sale. As already discussed in the earlier cases it has been well settled by higher forums of law that once an import stream is cut off by an intermediary by virtue of payment of duty and by clearing the goods the said transaction can no longer be treated as a sales in the course of import. At the time of hearing, the learned Sales Tax practitioner although contended that the said transaction was an import sale did not let in any evidence to the effect that the goods were cleared by the ultimate buyer and the goods directly reached the said buyer. Therefore, as earlier said we do not see any merit in the contention of the learned Sales Tax Practitioner. Accordingly, we set aside the orders of the Appellate Assistant Commissioner in so far as the turnover of Rs.25,00,000/- and direct the assessing authority to assess the same as inter-state sales. In this context we also direct the assessing authority to levy appropriate penalty. In fine, we partly remand the State appeal and partly allow the State appeal. "

2. The only contention raised on behalf of the petitioner/Assessee is that the Tribunal erred in partly allowing the Appeal and partly remanding back to the First Appellate Authority instead of completely remanding the case

back for holding fresh enquiry so that the issues could be decided afresh by the Appellate Authority.

3. The learned counsel for the Revenue however supported the impugned order.

4. Having heard the learned counsel for the parties we are of the opinion that there is considerable force in the contention raised by the learned counsel for the petitioner/Assessee. Therefore, the matter ought to have been remanded for passing denovo order by the First Appellate Authority.

4. We allow this Writ Petition and the order passed by the Sales Tax Appellate Tribunal dated 07.12.2001 in STA.No.135/01 is set aside and the matter stands restored to the concerned first appellate authority. Since, the proceedings were stayed by way of interim order of this Court and pendency of the writ petition for a long period i.e, from the year 2002, we request the First Appellate Authority to pass orders denovo, within a period of six months from today. The petitioners shall appear before the First Appellate Authority at the first instance on 10.12.2019

In the result, this Writ Petition is allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To:

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Additional Bench,
Chennai-104
Rep. by its Registrar

+1cc to Mr.R.Parthasarathy, Advocate SR.No.93835

+1cc to Special Government Pleader (Taxes) SR.No.94235

W.P.No.15659 of 2002

RP(CO)
GMY(09/12/2019)