IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.36619 of 2002

M/s.Sreevaree Textile Machinery,
Private Limited,
Sitra - Kalapatti Road,
Nehru Nagar, Coimbatore - 641 035. ... Petitioner

Vs.

The Tamil Nadu Sales Tax Appellate
Tribunal (Addl. Bench), by its
Secretary,
Commercial Tax Building,
Balasundaram Road,
Coimbatore - 600 018. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of the writ of certiorari to call for the records of the respondent above named in its proceedings in C.T.A.No.382 of 1999 and quash the order therein dated 20.06.2002.

For Petitioner : Mr.Ravindran
For Mr.Chandran Karuppiah

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

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

The Assessee - M/s.Sreevaree Textile Machinery Private Limited has filed this writ petition aggrieved by the concurrent orders passed by the three authorities below under the provisions of the Central Sales Tax Act, 1956 whereby the Assessing Authority as well as the learned Tribunal upheld the imposition of tax on the Assessee on the alleged suppressed turnover of Rs.6,44,118/- for the Academic Year 1995-96.

2. The Assessee, a Manufacturer of Textile Machineries sold three Doubling Machines to the purchasing Company M/s.Anand Cotspin Limited, Ahmedabad, out of which, two machines were sold during the year in question, Academic Year 1995-96 under Invoice

No.43 dated 10.01.1996 and Invoice No.46 dated 05.02.1996 and both the Invoices were of the same identical amount of Rs.6,44,118/-. The third sale under Invoice No.3 dated 29.06.1996 took place in the next year, Academic Year 1996-97, for which a proforma invoice for the same amount of Rs.6,44,118/-, was issued in current year, Academic Year 1995-96, but during the course of survey conducted at the business place of the Assessee in the statements (Slip No.4) recorded by the Assessing Authority, the said third sale was shown as Proforma Invoice amounting Rs.6,44,118/-, but final Invoice No.3, dated 29.06.1996 only was issued upon the actual sale of third Doubling machine taking place.

3.The Assessing Authority as well as the Appellate Authorities below treated the amount of the said Proforma Invoice to the extent of Rs.6,44,118/- as the suppressed taxable turnover in the hands of the Assessee for the year 1995-96 itself and imposed the tax and penalty in question on the Assessee.

4.The relevant observations of the three authorities below are quoted below for ready reference.

(i) Assessment Order dated 15.12.1998:

"As the dealers have deliberately evaded the turnover for 95-96. Penalty under Section 9(2) of the CST Act 1956 read with section 12(3) of the TNGST Act 1959 is proposed at 1505 of the tax due on the actual suppression.

Penalty proposed Rs.96,618-00

To a notice issued, the dealers have filed objection on 20.11.98. They have contented that the Slip No.4 is a proforma invoice copy sent to M/s.Anand Cotspin Limited, Ahamadabad for arrangement of payments and it takes from 12 weeks to 6 weeks in some case to the complete the sale process.

Explained the contentions raised by the dealers carefully. In slip No.4, the dealers have sold 3 numbers of Doubling machine to Tvl.Anand Cotspin Limited, Ahamadabad during 95-96 through invoice No.43/10.1.96 and 46/5.2.96 and another one through proforma invoice for Rs.6,44,118.00. Out of 3 cases 2 cases in bill No.43/10.1.96 and 46/5.2.96 have been accounted for in the account. But the sales through proforma invoice for Rs.6,44,118.00 has not been accounted for in the account. In the objection the dealers have not clearly mentioned the reason for not accounted for the sales of Rs.6,44,118.00. The dealers have wilfully and wantenly suppressed the turnover for Rs.6,44,118.00. But for inspection the turnover suppressed would not come to light. In the above circumstances, the objection filed by the dealers could not be considered.

The proposal were confirmed and final orders passed accordingly.

Sales suppression	Rs.6,44,118.00 at 10%
Tax due	Rs.64,412.00
Tax paid	Rs. NIL
Balance	Rs.64,412.00

A notice in form 3 is issued.

Penalty under Section 9(2) of the CST Act '56 read with section 12(3) of the TNGST Act '59 levied at 150% of the tax due on the actual suppression."

(ii) Order of the First Appellate Authority dated 30.04.1999:

"3.This appeal coming on for orders before me on 22.4.99, I heard Thiru.A.Shanmugam, Authorised Representative for the appellants and Thiru C.Murugesan, Departmental Representative for revenue and also verified the records produced before me. On the basis of entries in slip No.4, which is a statement account of Tvl.Anand Cotspin Ltd., Ahamedabad, the Assessing Authority has concluded that they have sold 3 numbers of doubling machines and accounted for 2 sales made. For the sales raised through proforma invoice for Rs.6,44,118/-, no sale invoice was raised during March 1996. Hence he has proposed to treat this as suppressed sales and issued notice on 10.11.98. In their letter dated 20.11.98, the appellants had claimed that it was only a proforma invoice given to enable the purchaser to arrange for payment for supply/bank loan. It takes 2 to 6 weeks to complete the sale process. Even after nearly 2 1/2 years they have not given the sale bill details. Before me they contended that they had raised bill number 3/29.6.96 for Rs.5,21,277/-. This is rather strange. At the time of filing reply on 20.11.98, they have not mentioned about raising of sale bill on 29.6.96. They had not produced this sale invoice copy and convinced the Assessing Authority about the genuine of the transactions. They have not produced the copy of the sale invoice, the Sales Journal, the correspondence for changing the size and mass, the details of reduction of excise duty etc. before me also. In view of the above I am not inclined to accept their contention of raising sale invoice during 1996-97 since it is not supported by any evidence whatsoever. Moreover a verification of the entries in slip Number 4 reveals that there is a credit of Rs.25,00,000/- to the account of Anand Cotspin Ltd. The two invoices raised are debited to their account and they are shown as deletion for Rs.23,864/20. "Payment for 3rd M/C Proforma Invoice" - RS.6,44,118/- is also debited as on 5.2.1996 and the total balance due to the appellants is shown as Rs.6,67,982.20. All these prove that they have, infact, effected sales of one machine, out of accounts, for Rs.6,44,118/- in the guise of proforma invoice. Otherwise there is no necessity to debit this amount to the account of the purchaser. If it were only a quotation given where is the necessity to include this as payment due to the appellant? I hold that they have effected one interstate sales out of accounts, but have tried to give different reasons, one at the time of Final Assessment and another before me. These reasonings given are not acceptable. All their contentions fail since they have not produced any evidence at all for the same. I sustain the revision made and dismiss the appeal. I sustain the levy of penalty also.

4.To conclude the appeal is DISMISSED."

(iii) Order of the Sales Tax Appellate Tribunal dated 20.06.2002:

11.With regard to slip no.4, he would argue that for the goods sold in invoice no.3 dt.29.6.96 for Rs.5,21,277/- earlier, a proforma invoice was given for Rs.6,44,128/-. It is stated that while taking delivery, the customer had not taken certain accessories mentioned in proforma invoice and also due to the different in ED 5%, there is a variation between final invoice value and proforma invoice value. He would state that as per the appellant's ledger folio 447 of Anand Cot Spin A/c the opening balance on 1.4.96 was Rs.23,631/- and Invoice No.3/29.6.96 for Rs.5,21,277/- (Slip No.4) and invoice no.6/6.9.96 were accounted for. As a proof for the above sales made, the appellant has already filed the copy of statement filed before the Deputy Commissioner of Income Tax, Company Circle 7(1), Ahamedabad along with the copy of the invoice nos.43/10.1.96, 46/5.2.96 Invoice No.3 dt.29.6.96 Invoice No.6 dt.6.9.96 copy of the statement of accounts of M/s.Anand Cotspin Limited, Ledger copies and such other correspondence as a proof in support of his contention.

12.The learned Authorised Representative would argue that the appellant never said the quotation (Proforma invoice) were not materialised and the sale was effected and entries were made in the books and also affirmed in his letter to Income Tax Department. He would also emphasis that the customer had not taken certain accessories and hence there is small difference between the proforma invoice and the final invoice.

13.The vital point to be noted is that the entire issue is revolved around the alleged proforma invoice issued for Rs.6,44,188/-, which the appellants failed to produce for perusal and necessary verification. Secondly, in their objection letter dt.20.11.98, to the proposal of the Assessing Officer, the appellants had claimed that it was only a proforma invoice given to enable the purchasers to arrange for payment, bank loan. But after lapse of 2-1/2 years, at the time of hearing of the first appeal, they contended that they had raised bill no.3 dt.29.6.96 for Rs.5,21,277/- in respect of the proforma invoice. If it were true, the above fact could have been brought to the notice of the Assessing Officer when they filed their objections before the Assessing Authority on 20.11.98. The learned Appellate Assistant Commissioner has also rightly observed that they have not produced the copy of the sale invoice, proforma invoice, sales journal, correspondence for change in size and mass, details of reduction of excise duty etc., at the time of hearing of the appeal. Even now, the appellants failed to produce the copy of the proforma invoice against which the entire issues are evolving around. Therefore, under the given facts and circumstances of the case, we are not inclined to accept the contention of raising sale invoice during 1996-97 since it was not supported by any strong evidence, whatsoever. Hence, the reasoning given now are found to be not acceptable and hence we sustain the oder passed by the learned Appellate Assistant Commissioner."

5.Aggrieved by the same, the Assessee has preferred this writ petition before this Court under Article 226 of the Constitution of India.

6.The learned counsel for the Assessee Mr.Ravindran submitted that the Assessee had duly explained before the Assessing Authority that the third sale of the Doubling Machine to the same Company viz., M/s.Anand Cotspin Limited, took place in the next year 1996-97 vide Invoice No.3 dated 29.06.1996, but merely because in the Slip No.4, in the statements recorded during the course of survey proceedings, the same was shown as

"Proforma Invoice" to be an extent of Rs.6,44,118/- and the said Proforma Invoice could not be produced by the Assessee as such before the authorities concerned, the same was treated as 'suppressed sale' in the hands of the Assessee for Academic Year 1995-96 itself. He submitted that upon the enquiry made by the Income Tax Authority, with regard to the Purchasing Company M/s.Anand Cotspin Limited, the Assessee had furnished the details of all the three sales made by the Assessee to the said Income Tax Authority vide letter dated 30th November 1998 and the details of the Statement of Account of the M/s.Anand Cotspin Limited in the Books of Accounts of the Assessee were also furnished to the said Income Tax Authority. The details of the Statement of Account are also quoted below for ready reference:

30.11.98

STATEMENT OF ACCOUNT OF M/S.ANAND COTSPIN LTD.

		DEBIT	CREDIT
12.12.95	By D.D. Recd.		24,96,250.00
"	To. D.D. Issued	10,00,000.00	
"	To D.D. Charges	1,500.00	
"	To D.D. Issued	2,30,145.00	
10.1.96	To Invoice No.43	6,44,118.00	
5.2.96	To Invoice No.46	6,44,118.00	
24.6.96	By Draft Recd.	10,59,000.00	
29.6.96	To Invoice No.3	5,21,277.00	
6.9.96	To Invoice No.6	5,48,009.00	
20.2.97	To Cheque No.607996	1,37,744.00	
		37,26,911.00	35,55,250.00
		1,71,661.00	

7.The learned counsel for the Assessee submitted that since all the sales in question were duly recorded for and Invoice No.3 was to the lesser extent than the Proforma Invoice value of Rs.6,44,118/- was to the extent of Rs.5,21,277/-, as some spare parts of the machinery were not finally purchased by the Purchasing Company, therefore, this explanation with the information given to the Income Tax Authority was duly furnished before the Assessing Authority himself vide letter dated 20.11.1998, but the learned Assessing Authority failed to appreciate the said contention of the Assessee and brought the said amount of Proforma Invoice to tax and the Appellate Authorities have also erred in confirming the said findings.

8.Per contra, the learned Additional Government Pleader Mr.V.Haribabu, appearing for the Revenue submitted that in the absence of the Proforma Invoice produced by the Assessee on the basis of the statement (Slip No.4), the Assessing Authority could conclude that the same was suppressed taxable turnover in the hands of the Assessee to the extent of Rs.6,44,118/- and the authorities below were therefore justified in imposing tax and penalty thereon.

9.We have heard the learned counsels at length and we have summoned the Original Assessment Record from the learned Additional Government Pleader for the Revenue, which was produced before this Court during the course of hearing and we have perused the same.

10.Having heard the learned counsels and on perusal of the record of the case, including the original records producing before us, we are of the clear opinion that the learned Authorities below have erred in imposing the tax on the alleged suppressed taxable turnover of the third machine on the basis of a Proforma Invoice claimed to have been raised by the Assessee on the Purchasing Dealer M/s.Anand Cotspin Limited. The said Slip No.4 produced in the course of survey does not refer to any final Invoice, but the fact remains that the Assessee has produced the said explanation before the Assessing Authority as well as Statement of Account of said purchasing dealer independently before the Income Tax Authority of the Purchasing Dealer M/s.Anand Cotspin Limited under section 133(6) of the Income Tax Act giving the third sale under the Invoice No.3 dated 29.06.1996. Merely because the Proforma Invoice shown in the Slip No.4 could not be produced by the Assessee before the Assessing Authority and the same, in our opinion, could not be treated as suppressed sale taxable turnover in the hands of the Assessee. The proforma invoice per se does not result in any taxable sale. No actual third sale during 1995-96 was established by Revenue before bringing it to tax. The burden lies upon the Revenue to prove that a taxable sale has taken place in the hands of the Assessee during the year in question on which the tax is sought to be imposed.

11.From the record, it is very clear that the Assessee had entered into a series of sale of Doubling machines to the same Company viz., M/s.Anand Cotspin Limited and two Invoices were duly recorded for in the assessment period in question for the year 1995-96 and the third sale took place under Invoice No.3 dated 29.06.1996. The Proforma Invoice included in the Slip No.4 was neither serially numbered nor any date has been mentioned and therefore, merely on the basis of mention of the Proforma Invoice in the said statement, the Assessing Authority could not have imposed tax on the same as suppressed sale. The explanation furnished by the Assessee that the Proforma Invoice is indicated in the said statement to send the same to the Purchasing Dealer, so that the funds can be arranged by him and due payment can be made when the final Invoice is raised, was a plausible and reasonable explanation, for which there was no controverting evidence available with the Revenue to hold otherwise. The fact that the statement of a series of transactions with the same Purchasing Dealer were produced by the Assessee before the Income Tax Authority also under Section 133(6) of the Income Tax Act was not disputed anywhere. The third party like the Selling Dealer, the Assessee, would not produce a false information to the Income Tax Authority of the Purchasing Dealer. The said information furnished by the Assessee is based on the Books of Accounts maintained in the ordinary course of business by the Assessee. There is no evidence on record adduced or brought on record by the Revenue that any sale of machinery by the Assessee to M/s.Anand Cotspin Limited took place, besides aforesaid three Invoices raised accounts of the Purchasing Dealer, during Academic Year 1995-96. Therefore, merely on the alleged failure to produce the said Proforma Invoice as indicated in Slip No.4, the authorities below cold not have arrived at the conclusion of a suppressed taxable turnover in the hands of the Assessee during the year 1995-96. The third machinery was admittedly sold by the Assessee in the next year 1996-97 under Invoice No.3 dated 29.06.1996 which has been accounted for in the next year and there is no dispute on that issue.

12.Therefore, in our opinion, all the three authorities below have erred concurrently in holding that the Assessee had suppressed a turnover to the extent of Rs.6,44,118/- on the basis of the alleged Proforma Invoice not produced by the Assessee.

13.The Writ Petition therefore deserves to succeed and the same is allowed and all the orders passed by the three authorities below are liable to be quashed and set aside and accordingly, the orders before us are quashed. The tax and penalty if any recovered from Assessee on this account shall be refunded back to the Assessee forthwith with up to date interest at 9% p.a., from date of payment till date of refund. No order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Sgl

To

1.The Secretary
  Tamil Nadu Sales Tax Appellate
  Tribunal (Addl. Bench),
  Commercial Tax Building,
  Balasundaram Road,
  Coimbatore - 600 018.

2.The Government Advocate,
  High Court, Madras.

+1 CC to The Spl. Govt. Pleader sr 106581.

W.P.No.36619 of 2002

VGII(CO)
SP(28/02/2020)