IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.12.2019
CORAM:

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

W.P. No.36906 OF 2002

The State of Tamil Nadu,
rep. By The Deputy Commissioner,
Tirunelveli Division,
Tirunelveli. ... Petitioner

versus

1.The Empire Match Co.,
Thalavaipuram

2.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Madurai ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the 2nd Respondent pertaining to the order dated 7.2.2002 in MTSA 1085 of 2001 and quash the same as illegal.

For petitioner : Mr.Mohammed Shafiq
Special Government Pleader

For Respondents : Mr.P.Radhakrishnan

O R D E R
(made by Dr.VINEET KOTHARI, J.)

The Revenue has filed this writ petition aggrieved by the order passed by the learned Tamil Nadu Sales Tax Appellate Tribunal on 7 February 2002 whereby the learned Appellate Tribunal dismissed the revenue appeals and upheld the order passed by the First Appellate Authority and held in favour of the respondent Assessee that the Branch transfer of the goods i.e. matches made by the Assessee to its branch in Kerala was only a branch transfer and not sales in the course of inter-State Sale and therefore was not liable to tax under the provisions of the Central Sales Tax Act. The relevant findings of the Tribunal in this regard are quoted below for ready reference :-

> "We have gone through the entire records relating to this state appeal in detail. The scrutiny of the appeal records revealed that the Assessing Officer had disallowed the

exemption on consignment sales and treated the same as that of out right interstate sale and passed best of judgment based on the results of inspection conducted by the Enforcement Wing officials in the place of Tvl.Dhamayanthi Match Factory. The inspection conducted by the Department resulted in recovery of certain incriminating records. On appeal the learned Appellate Assistant Commissioner after considering all the aspects allowed the exemption claimed on consignment sales and deleted the same from assessment with corresponding penalty by allowing the appeal of the respondents. While allowing the appeal of the respondent, the learned Appellate Assistant Commissioner had given his categorical findings in his order at pages 3 to 5 under Point No.(i) and (ii). From the above finding, we could safely conclude that the Appellate Assistant Commissioner is justified in allowing the exemption on consignment sales effected by the respondents as well as the deletion of penalty. The Appellate Assistant Commissioner had come to a correct conclusion and allowed the appeal of the respondents. The Department had not pointed out any specific omission and also not furnished further evidences in support of their grounds of state appeal filed. The action of the Appellate Assistant Commissioner is found to be in order. The reasoning given by the Appellate Assistant Commissioner to arrive his findings are agreeable for us also. As such, e feel no further discussion is necessary in this matter. However, the Deputy Commissioner also had not substantiated any additional evidences to restore the order of the Assessing Officer. In view of the above facts and circumstances of this case, we find no reason to interfere with the order of the Appellate Assistant Commissioner. Hence, we uphold the same".

2. The learned counsel for the Revenue Mr.Mohammed Shafiq sought to draw our attention to the sequence of transaction entered into by the agent of the assessee from the table reproduced by the First Appellate Tribunal in its order dated 1.2.2001, which to its relevant extent is quoted below for

ready reference :-

| Sl. No | Trsfr. Inv.No. & Date | L.R.No. & Dt | Dt.of receipt by agent | No.of Bundles | Trsfr. Inv.Value | Sale by agent | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | No.of Bundles / Inv.No. & Dt/ Value | | |
| 1 | 12/ 25.4.95 | 12/ 26.4.95 | 27.4.95 | 1000 | 157000 | 1000 | 31/ 28.4.95 | 165000 |
| 2 | 22/ 5.6.95 | 39/ 7.6.95 | 8.6.95 | 1400 | 219000 | 1400 | 89/8.6.95 | 231000 |
| 3 | 28/ 5.7.95 | 45/ 5.7.95 | 9.7.95 | 400 | 66800 | 400 | 93/10.7.95 | 69600 |
| 4 | 31/ 15.7.95 | 50/ 15.7.95 | 20.7.95 | 1400 | 233800 | 1400 | 95/21.7.95 | 243600 |
| 5 | 32/ 24.7.95 | 111/ 24.7.95 | 26.7.95 | 1000 | 177000 | 1000 | 100/27.7.95 | 180680 |
| 6 | 40/ 8.9.95 | 19/ 9.9.95 | 10.9.95 | 1200 | 204000 | 1200 | 110/10.9.95 | 205720 |
| 7 | 43/ 15.9.95 | 21/ 16.9.95 | 17.9.95 | 200 | 34800 | 200 | 112/18.9.95 | 36400 |



3. The learned counsel for the Revenue sought to urge that since the sale by the Agent is almost on the next day, in sequence of the same quantum received from the Principal, therefore, an inference could be drawn against the Assessee that the movement of goods from Principal within the State of Tamil Nadu to the Branch within the State of Kerala took place in pursuance of a pre-concluded contract of sale executed with the Agent in Kerala and therefore, the same could be taxed under the provisions of C.S.T. Act. The learned counsel drew our attention to the decision of the Hon’ble Supreme Court in the State of Tamil Nadu vs. M/s.Hercules Rubber Company, in which the Hon’ble Supreme Court, relying upon its earlier decision in Union of India vs. K.G.Khosla & Co. (P) Ltd., 1979(3) SCR 453, on the

facts of the case before it held as under :-

> "That apart, if, however, it is established on facts placed on record that the movement of goods was occasioned on account of the contract of sale, it would ordinarily be an inter-state transaction. In the present case, unfortunately, the evidence does not disclose whether the quantity of goods indented by the Vijayawada Branch and the quantity of good supplied by the Head Office was the same or whether the quantity of goods supplied was the same as the quantity of goods ordered by the buyer. If it is the latter there would be very little difficulty in reaching the conclusion that the movement of goods was occasioned on account of the order placed by the customer and that would clinch the issue. If, however, the situation is that the goods indented by the branch and the goods supplied by the Head Office tallied insofar as the quantity is concerned, it may well be that the nexus with the customers' order may not be inferred unless it happens to be the same quantity as ordered by the customer in which case it would have to be determined on facts. In the absence of evidence in this behalf as regards the quantity of goods indented, supplied and ordered it is difficult to reach a positive conclusion. We, therefore, deem it appropriate that the matters be remitted to the Sales Tax Appellate Tribunal, Tamil Nadu, which may decide the matter after calling for the record from the authority below and in the light of the decisions referred to above, if necessary, by even calling for fresh evidence. The appeals will stand allowed accordingly with no order as to costs.



4. Even in the facts of that case also, the Hon'ble Supreme Court held that the Revenue could not bring on record any evidence to disclose whether the quantity of goods indented by the Viajayawada Branch and the quantity of goods supplied by the Head Office was the same or whether the quantity of goods supplied was the quantity of goods ordered by the buyer and thus the matter was finally decided in favour of the Assessee only.

5. Recently, in a similar factual situation, this court in the case of M/s.Advance Paints (P) Ltd., vs C.T.O, Chennai, by order dated 9 December 2019, relying upon the previous judgment of the Division Bench of this Court in the case of Deputy Commissioner vs. PNT Iron and Steel India Ltd., held as under :-

> 6. Admittedly, before the Assessing Authority himself adequate proof of movement of goods from Tamil Nadu to Kerala had been produced by the Assessee. In support of the branch transfer/ stock transfer made by the Assessee, the prescribed Form "F" were also furnished by the Assessee. No pre-concluded contract with the buyer was found in the record of the Assessing Authority. The mere presumption of the Assessing Authority without any documentary evidence that the goods have moved from Tamil Nadu to Kerala and Bangalore pursuant to some pre-existing contract is unfounded. Merely because the agent happened to sell the goods received from the Principal in Tamil Nadu on the same date of receipt of goods or on the very next day or any day immediately thereafter, it is not a ground to treat the stock transfer/ branch transfer as an inter-state sale. The necessary incident for holding the sale as an inter-state sale, inviting imposition of tax under the Central Sales Tax Act is the movement of goods from one State to another, in pursuance of a pre-existing contract with the seller. Therefore, merely on the assumption or presumption of any such kind of pre-existing contract, the Assessing Authority could not have imposed the tax under the provision of Central Sales Tax Act. Since necessary documents and evidence were already furnished before the Assessing Authority himself, furnishing of the same again before the Appellate Authorities was not at all called for. And therefore, on this premise, the Appellate Authority should not have confirmed the finding of the Assessing Authority that the Assessee is liable to pay tax under the Central Sales Tax Act.
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> 7. We respectfully agree with the view expressed by the Coordinate Bench of this Court in P.M.P. Iron and Steel India Ltd. (supra), and merely because the timing of the sale by the agent is immediately on the receipt of goods or in near future, it

cannot be a ground to presume any pre-existing contract with the seller in Tamil Nadu and holding the same to be an inter state sale and therefore, taxable under the CST Act. The writ petition is therefore liable to be allowed and the orders of the Assessing Officer, Appellate Assistant Commissioner and Sales Tax Appellate Tribunal are liable to be quashed.

6. In view of the aforesaid, we do not find any merit in the submission made by the learned counsel for the Revenue that any pre-existing contract was established by the Revenue to tax the Branch transfers made by the Assessee Principal from the State of Tamil Nadu to the State of Kerala to its Agent M/s. Pandian Agencies. Merely because the sales made by the Agent are immediately on the succeeding day or dates or in the near future, it does not entitle the Revenue to draw any presumption of link between movement of goods to the sale conducted by the Agent in the Kerala as Branch of the Assessee Principal. The essential ingredient of Inter State Sale viz., movement of goods commencing from one State to another in pursuance of the pre-existing contract is not satisfied in the present case also. Therefore, the concurrent findings of the two Appellate Authorities in favour of the Asessee do not call for any interference by this Court in the Writ jurisdiction. The Writ Petition filed by the Revenue is therefore liable to be dismissed. The same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Madurai.

2.The Deputy Commissioner,
Tirunelveli Division,
Tirunelveli.

+1cc to Mr.P.Radhakrishnan , Advocate SR.No. 105656
+1 cc to Spl Government Pleader(Taxes) Sr.No. 106595

W.P. No.36906 of 2002

A.SK(04/02/2020)