IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.38679 of 2006
and
M.P.No.1 of 2006

TVL.Chotrani Overseas,
No.16, Ground Floor,
Shiv Krupa RRT Road,
Mulund (West),
Mumbai - 400080. ..Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
   Roving Squard-II, Enforcement Wing (Central),
   Greams Road, Chennai - 6.

2. The Deputy Commissioner of Commercial Taxes (Central),
   Greams Road,
   Chennai - 6.

3. The Joint Commissioner of Commercial Taxes,
   Roving Squard,
   Officer of the Commissioner of Commercial Tax,
   Chepauk, Chennai - 6. ..Respondents

Prayer:

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in R.P.No.J1/137/2005 dated 15.03.2006 on the file of the 3rd respondent and quash the same as illegal without the authority of law.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel for
Mr.S.Ramesh Kumar

For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader

ORDER

The case of the Department is that the petitioner herein had effected a sale after the goods have been cleared and crossed the customs barrier of India and therefore, initiated proceedings for assessment under the TNGST Act.

2. The learned Senior Counsel appearing for the Petitioner would submit that the sale had taken place in the course of import, since there was a transfer of title of the imported goods, before the goods had crossed the customs barrier of India and as such, the respondents are not justified in passing the impugned orders. Even otherwise, the learned Senior Counsel would submit that it is not the case of the respondents that the subsequent sale was effected after the goods have been cleared from the customs barrier.

3. Per contra, the learned Special Government Pleader submits that the petitioners herein are not entitled for the exemption under Section 5(2) of the Central Sales Tax Act, 1956, since this is the case where the petitioner had cleared the goods and then effected the sale. The very fact that the detention notice has been issued in proceedings initiated under the Act reveals that the respondents had treated it as second sale to have been taken place outside the course of the import and therefore, the petitioner is not entitled for the benefit of exemption.

4. The short point that arises for consideration in the present case is as to whether the petitioner had effected the sale before the goods had crossed the customs frontier to establish that such a sale had taken place in the course of import.

5. The petitioner herein had imported certain goods from a Foreign Country and cleared the same through his clearing agent at the Madras Port. Under invoice dated 11.09.2003, the goods came to be sold to M/s.Gautham Enterprises at Chennai. It is the case of the petitioner that the sale had occurred even prior to the clearing of the goods. When the consignments were transported by clearing agents, the first respondent had detained the same, questioning the genuinity of the transaction. Consequently, a notice dated 15.09.2003, was issued calling upon the petitioner to pay a sum of Rs.3,05,475/- to which the petitioner had given his objections on 16.09.2003. The second respondent had passed an order in revision rejecting the petitioners plea which was also confirmed by the first respondent herein.

6. The gist of the case of the respondents in the impugned proceedings is that the petitioners themselves have admitted that they have cleared the goods from the customs port through their clearing agents and then transferred the goods to M/s.Gautham Enterprises and therefore, the subsequent sale amounts to a second sale transaction, which has to be construed as a local sales effected, after the goods were cleared from the port and consequently held that the sale to the local buyer was not in the course of import. The only contention which the learned Senior Counsel for the petitioner had raised is that the sale had occasioned even before the clearance of the goods from the port and therefore, they are entitled for exemption under Section 5(2) of the Central Sales Tax Act.

7. I am unable to agree with such a contention. The respondents had clearly come out with a case, from the very fact that they chose to detain the consignment under the provisions of the TNGST Act. The subsequent notices were also issued invoking the provisions of the TNGST Act and as such, it can only be construed that the proceedings came to be initiated on the ground that a local sales has been effected after clearance of the goods from the port. Though this aspect has not been clearly spelt out in explicit terms in the notices, as rightly pointed out by the learned Special Government Pleader, there was no necessity for the respondents to specifically explain that they were proceeding under the provisions of the TNGST Act, since the very facts that they chosen to detain the consignment and initiating a demand would itself establish that they were of the view that the petitioner had effected local sales after clearance of the goods from the port.

8. The learned Senior Counsel for the petitioner, in many words, attempted to impress this Court that the sale to M/s.Gautham Enterprises was prior to the clearance of the goods and before the goods had crossed the customs frontiers of India. For such a proposition, the learned Senior Counsel would submit that it is never the case of the respondents that the sale was effected after the clearance of the goods. As stated above, when the consignment was entrusted and detention notice was issued under the TNGST Act and the consequent proceedings was also initiated under the TNGST Act, itself evidences that the respondents had treated the sale to be one after clearance of the goods.

9. Section 5(2) of the Central Sales Tax Act states that a sale is said to have taken place in the course of import when either the sale or purchase occasions the import or the sale or purchase is effected by a transfer of documents to the title, before the goods have crossed the customs frontier of India. For the purpose of the present case, if the importer had effected a

sale of the goods before the goods had crossed the customs frontiers of India, such importer would be entitled for the exemption under Section 5(2) of the Central Sales Tax Act. It has been held by both the authorities viz., respondents 2 & 3, that the petitioners themselves had admitted that they had cleared the goods from customs port and transferred the goods to the buyer. The petitioner though disputes such observations, is unable to establish from the records that it is a case where the sale to M/s.Gautham Enterprises had occasioned, even prior to the clearance of goods from the customs frontiers of the port.

10. A Division Bench of this Court in a case reported in 129 STC Page 294, in State Trading Corporation of India ltd., v. State of Tamil Nadu and Another had held as follows:

> "13.Until such time as the duty payable on those goods is not paid, the amount of duty payable being determined with reference to the rate at which the duty was levied as on the date of the removal of the goods from the warehouse, the goods cannot be regarded as having crossed the customs barrier of India."

11. In 110 STC page 394, in the case of Minerals and Metals Trading Corporation of India Ltd., v. State of Andhra Pradesh, the following observations were made:

> "11. We have already referred to Section 5(2), read with section 2(ab). The goods will cross the limit of the area of the customs station only on clearance by the customs authorities. Clearance by the customs authorities will be after filing the bill of entry and after the assessment of duty under section 28 of the Act. Before the assessment of the duty the goods kept in the customs port cannot cross the limits of the customs port. Therefore, irrespective of the fact whether duty is paid or not, when once the bill of entry is filed and the imported duty is assessed, then only the goods can cross the limits of the customs post, therefore, any transfer of documents of title before the clearance of the goods by the customs authorities on making the assessment of goods would amount to a sale in the course of import, as after the assessment is made and on filing of the bill of entry the goods get mingled with the general mass of goods and merchandise of the country. The goods get the eligibility to be declared as local goods after clearance even though they are not physically removed from the harbour premises. They attain the character of local goods and cease to be foreign goods. Therefore, the relevant point of time for determining as to whether the sale of goods is in the course of

import by a transfer of title deeds is the transfer by the title deeds before filing the bill of entry and the assessment of duty irrespective of the fact whether the goods are physically cleared from the harbour or not and whether duty is paid or not. As pointed out in the earlier paras after the filing of the bill of entry and the assessment of the duty the import stream dries up and ceases to flow after the customs Department levies the duty declaring the eligibility of the goods to be cleared and mingles with the general mass of goods and merchandise in the country. Once the duty is levied the import is at an end and the notional customs barrier is supposed to have been crossed. The reason being it is difficult to ascertain the point of time or the place at which the goods have entered the limits of the customs port. Therefore, the assessing authorities under the APGST Act does not get jurisdiction to assess the goods if the transfer of the title deeds is effected before the clearance of goods by filing the bill of entry under the Customs Act and after making the assessment of the import duty payable under section 28 of the Customs Act, 1962."

12. In the instant case, when the goods were cleared from the customs port, the exemption provided under Section 5(2) of the Central Sales Tax Act, seizes to exist, insofar as the subsequent sales are concerned. When the petitioners have not established before the authorities that they had effected a sale even prior to the clearance of the goods, I am unable to find any infirmity in the orders of the authorities. The petitioners were duty bound to raise objections before the Authorities and establish that the sale to M/s. Gautham Enterprises had occurred prior to custom clearance, which they had failed to do so.

13. As such, this Court does not find any merits in the contentions of the petitioner and accordingly, writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Deputy Commercial Tax Officer,
   Roving Squard-II, Enforcement Wing (Central),
   Greams Road, Chennai - 6.

2. The Deputy Commissioner of Commercial Taxes (Central),
   Greams Road, Chennai - 6.

3. The Joint Commissioner of Commercial Taxes,
   Roving Squard,
   Office of the Commissioner of Commercial Tax,
   Chepauk, Chennai - 6.

+1cc to the Special Government Pleader, S.R.No.63461

W.P.No.38679 of 2006

NRJK(CO)
CS/23/09/2019