IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.No.40140 of 2006
and
M.P. No.2 of 2006

Tvl.Sri Shanmuga Ginning Factory,
rep. by its Partner,
P.Arthanareeswaran,
65/3, Omalur Main Raod,
Konganapuram, Edapadi Taluk,
Salem District. ...Petitioner

Vs

The Commercial Tax Officer (FAC)
Sankari Assessment Circle,
Sankari, Salem District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, to call for the records of the respondent in TNGST/3221611/2001-02 dated 26.06.2006 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader (Tax)

O R D E R

The petitioner runs a ginning factory, purchases cotton kappas and subjects the same to the process of ginning and according to it, intra state sales.

2. The petitioner is an assessee on the file of the Commercial Tax Officer, Sankari Assessment Circle/respondent. Cotton falls within the ambit of declared goods, taxable at the point of last purchase. The relevant entry is set out herein:

ORIGINAL AND PRESENT ENTRY Cotton that is to say - all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but excluding cotton waste.	At the point of last purchase in the State	1 2 3 4 (RR) 2 4	01-04-59 01-04-64 03-03-75 17-07-96 05-03-97 18-08-01

3. Thus all kinds of cotton, in its unmanufactured state, whether ginned or unginned, but excluding cotton waste will be subject to tax only at the point of last purchase in the State. There was some discussion on the processes carried on by the petitioner in its factory and whether the processes would impact the nature of the commodity and consequently its taxability. However a Division Bench of the Punjab and Haryana High Court in the case of Raghbir Chand Som Chand V. Excise and Taxation Officer, Bhatinda and Others ((1960) 11 STC 149) has held that ginned and unginned cotton are essentially the same commodity.

4. In the present case, the Assessing Authority has proceeded to bring to tax an estimated quantum of cotton to tax. The estimation came to be necessary, since the petitioner had misplaced 25 leaves of delivery notes; according to the respondent one delivery note would account for one load of kappas weighing 10,000 Kgs and thus for 25 leaves, the dealer would have purchased 2,50,000 Kgs.

5. The respondent admits at paragraph 2 of the impugned assessment order that the petitioner, post ginning of the kappas would have sold the resultant lint and cotton seed. He thus estimates and computes the taxable turnover as follows:

'Purchase of Kappas out turn

of lint at 31% of 2,50,000 - 77,500 kgs

Out turn of lint at 31% of 2,50,000 - 77,500 kgs

Value at 70.52 per kgs taxable at 4%

(77,500 X 70.52) - 54,65,300.00

Out turn of seeds at 65% 1,70,000 kgs

value at 7.06 per kgs (170000 X Rs.7.06)

Turnover taxable at 4% - 12,02,200.00'

6. The case of the petitioner is simply that whatever may be the sales turnover, the same cannot be subject to tax in its hands since the taxable event is the point of last purchase in the State.

7. I find merit in what the petitioner says, drawing support from the judgment of the Supreme Court in the case of Shanmuga Traders V. State of Tamil Nadu and others (114 STC 1) that has settled the issue that the point of levy fixed under the Statute cannot be shifted under any circumstances. The Bench at paragraph Nos.12 and 13 states as follows:

> '12. We do not think that the conclusion reached by the Madras High Court in the order under appeal can be upheld. The goods with which we are concerned being declared goods, they can only be taxed at a single point; that is, only one sale in the State can be subjected to tax. It is for the state to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the state. If the single point is fixed by the State at, say, the point of first sale and the State exempts the first sale from payment of tax, either by a general provision or a specific provision applicable to a class of seller, a particular seller or the goods sold may not be subjected to tax at either that point of first sale or any subsequent sale in the State.
>
> The Second Schedule of the State Act specifies the single point; it is "the point of first sale in the State". The first sale in the State was the sale by the said Board to the appellants/petitioners. That sale was exempt from tax by reason of the notification dated December 1, 1982 aforementioned. The iron and steel sold by the said Board to the appellants/petitioners was, therefore, not liable to tax either at the point of first sale or any subsequent sale in the State'

8. The taxable event in regard to the sale of all kinds of cotton would thus be only at the point of last purchase. The Assessing Authority, in the order of assessment does not dispute the position that all sales have been made intra State/domestically. Thus the ratio of the above judgment is applicable on all fours to the facts and circumstances before me.

9. Though Mr.Mohammed Shaffiq, learned Special Government Pleader would urge the Court to appreciate that it was a case of suppression by the assessee, I note that it was the case of the petitioner even at the time of assessment that 25 leaves of the delivery book had been misplaced. It is based only on an

assumption of suppression by the Assessing Officer that the impugned estimate has been made.

10. In the light of the discussion as above, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sl

To

The Commercial Tax Officer (FAC)
Sankari Assessment Circle,
Sankari, Salem District.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 78983

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A.SK(29/11/2019)