

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

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

W.P.NO.14193 OF 2001

M/s.Advance Paints (P) Ltd.
No.37/1, Jayalakshmipuram,
I Street, Chennai. 34

... Petitioner

versus

1. The Commercial Tax Officer,
Valluvar Kottam Assessment circle,
Chennai 600 006.

2. The Sales Tax Appellate Tribunal (Addl. Bench)
rep. By its Secretary,
Chennai 600 104

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the impugned proceedings of the second Respondent passed in T.A.No.435/2000 dated 12.03.2001 and quash the same.

For petitioner : Mr.N.Murali

For Respondents : Ms.Dhanamadhiri,
Government Advocate (Taxes)

सतयमेव जयते
O R D E R
(made by DR.VINEET KOTHARI, J.)

This writ petition has been filed by the Assessee M/s.Advance Paints (P) Ltd., aggrieved by the order passed by the learned Sales Tax Appellate Tribunal, Chennai, dismissing the appeal filed by the Assessee and upholding the order passed by the two authorities below, whereby, all the three authorities concurrently held that the Stock/ Branch Transfer of goods made by the Assessee to its branches in Bangalore and Kerala were liable to tax under the provisions of the Central Sales Tax Act, treating them as interstate sales. The relevant portion of the impugned order passed by the learned Sales Tax Tribunal is quoted below for ready reference.

5.Point. We have considered rival submissions and also perused the connected records. It is seen from the impugned Assessment order that the Assessing Officer disallowed the claim of exemption on stock transfer made by the appellants to an extent of Rs.3,45,468/- on the ground that the appellants have not filed necessary documentary evidence to prove their contention. The appellants have not produced any proof for arrival of goods at other State and also they have not produced the stock account of the branches. Further the appellants have not filed the transport documents as required u/s 6(A)(1) of the Central Sales Tax Act 1956. The Assessing Officer had also noticed that the appellants have made entries showing that the goods were sold prior to their despatch. Mr.S.Saravanan, learned counsel for the appellants contended that the appellants have produced necessary evidence before the learned Appellate Assistant Commissioner. But the learned Appellate Assistant Commissioner had categorically stated in his order that the appellants have not produced any documentary evidence to prove that the stock transfer and interstate sales were effected by the appellant during the year 1994-95. The appellants have not filed any documentary evidence in support of their case even before us. It is the case of the appellants that they have paid taxes in other states on their local sale to prove their contention. It is the duty of the appellants to file the assessment order on other states but no such documentary evidence has been filed by the appellants. Hence the Appellate Assistant Commissioner had rightly confirmed the orders of the Assessing Officer in respect of stock transfer. The next dispute relates to levy of higher rate of tax for want of C forms. The appellants have not filed C forms even before us, for the disputed turnover of Rs.88,017/- and Rs.28,296/-. Hence, the levy of higher rate of tax on the above said turnover is confirmed. Having regard to the facts and circumstances of the case, the orders of the Appellate Assistant

Commissioner does not call for interference.

2. The Assessing Authority in the first instance while rejecting the contention of the Assessee that it was only a case of stock transfer and not inter-state sales, held that the goods were sold either on the same day, or in some cases, prior to arrival. The Assessing Authority rejected the case pleaded by the Petitioner, despite the fact that the proof for movement of goods, proof for arrival and disposal of the goods in Kerala and submission of Form "F" in support of such Branch transfers were produced by the Assessee. Therefore, there was an assumption arrived at by the Assessing Officer that there were pre-existing contract and sales with the agent in Kerala and consequently, the movement of goods in question from Tamil Nadu to Kerala took place in pursuance of such pre-existing contracts and hence, such transaction will be liable to be brought under the Central Sales Tax Act. The relevant portion of the impugned order is quoted below for ready reference:

"The position already shows that the goods were sold either on the same day or shown as sold prior to arrival. This could not have happened unless there was pre existing orders. The turnover of Rs.3,29,733/- is treated as direct inter-state sales and proposed at 15.3%. The claim of exemption is in respect of the receiving turnover of Rs.10,16,960/- as found to be in the order and is allowed."

3. The learned counsel for the Assessee Mr.N.Murali submitted that in similar circumstances, the Division Bench of this court in the case of the State of Tamil Nadu Represented by The Deputy Commissioner (Court) Chennai (North) Division vs. Tvl.P.M.P. Iron and Steel India Ltd., (2012-13 (18) TNCTJ 76), held as follows:-

5.The mere fact that the goods despatched by the assessee and received by the agents have been sold on the very same day after their arrival or the next day itself cannot be a ground to hold that the transactions are inter-state sales. Further, the assessee has produced before the Appellate authorities, the copies of sale pattials, invoices rendered by the agents as well as the excise gate pass. The above said documents clearly proves that the transactions are consignment sales as held by the Appellate authorities.

4. The learned counsel for the Revenue however submitted that relevant documents were not furnished by the Assessee before the Authorities and therefore, the assessment order and its confirmation by the two Appellate Authorities was justified.

5. Having heard the learned counsel for the parties, we are of the clear opinion that the present writ petition deserves to be allowed and the impugned order passed by all the three authorities concurrently deserve to be set aside.

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.

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.

8. In the result, the Writ Petition is allowed. The order of the Sales Tax appellate Tribunal, Chennai, is set aside. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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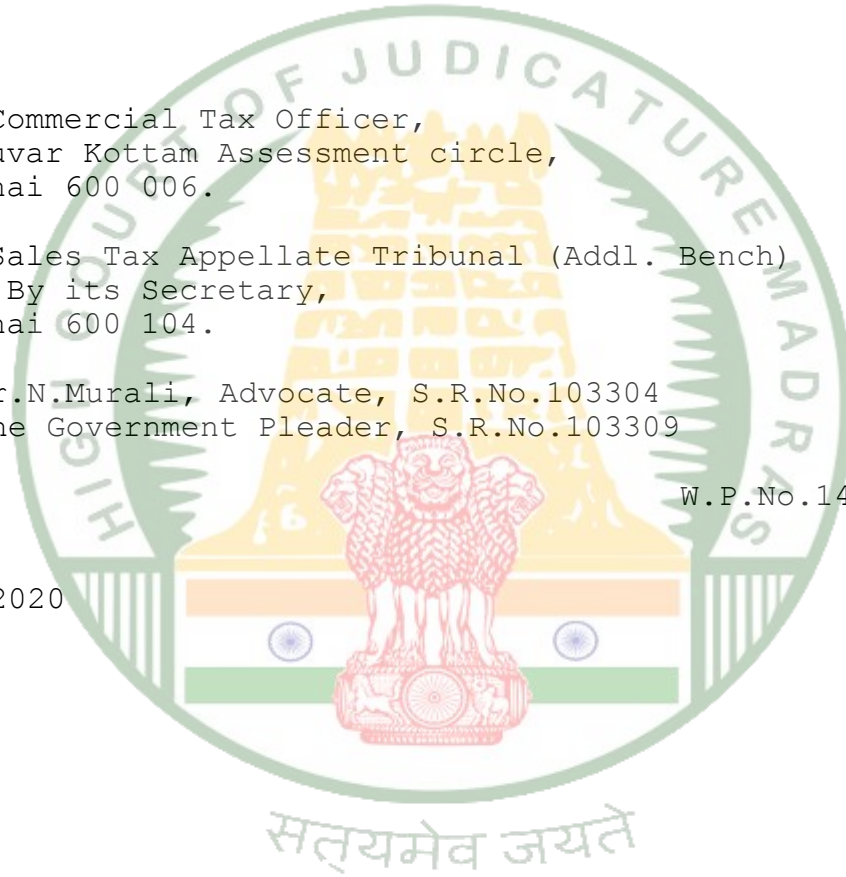
To

1. The Commercial Tax Officer,
Valluvar Kottam Assessment circle,
Chennai 600 006.
2. The Sales Tax Appellate Tribunal (Addl. Bench)
rep. By its Secretary,
Chennai 600 104.

+1cc to Mr.N.Murali, Advocate, S.R.No.103304
+1cc to the Government Pleader, S.R.No.103309

W.P.No.14193 of 2001

RSI (CO)
CS/21/01/2020



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