IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.11.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
Writ Petition No.8410 of 2009
and
M.P. No.2 of 2009

Supreme Textile Processing Limited,
Rep. by its Authorized Signatory,
Race Course, Coimbatore.

...Petitioner

Vs

1. Commercial Tax Officer,
Trichy Road Circle, Coimbatore.

2. Additional Appellate Assistant Commissioner, (CT),
Coimbatore.

3.Joint Commissioner (CT),
Coimbatore.

...Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in CST 629243/99-00 dt 31.03.09 quash the same.

For Petitioner : Mr.S.Raveekumar.

For Respondents : Ms.G.Dhanamadhiri,
Government Advocate.

ORDER

The petitioner has challenged an order of assessment dated 31.03.2009 passed in terms of the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act') read with Section 39 of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') for the period 1999-2000. Originally, an order of assessment had been passed on 28.10.2003, as against which, an appeal had been preferred before the Appellate Assistant Commissioner, who had on07.05.2004 set aside the order remanding the matter to the Assessing Officer for fresh consideration. In the meanwhile, it appears that the identical issue, as involved in the instant case in relation to allowance of the claim made by the assessee under Section 5(2) of the CST Act came to be considered by the Tamil Nadu Sales Tax Appellate Tribunal ('STAT') for the periods 1998-99 and 1999-2000 (TNGST) and 1998-1999 (CST). The impugned assessment relates to the levy of CST for the period 1999-2000.

2. Both Mr.Raveekumar, learned counsel for the petitioner and Ms.Dhanamadhiri, learned Government Advocate for the respondents confirm that the facts at issue, the legal questions as well as the parties involved are identical to those considered by the Sales Tax Appellate Tribunal. The Tribunal upon a detailed consideration of the matter has held in favour of the assessee, as may be seen from paragraph 16 onwards of its order.

3. After considering the factual details relating to the name of supplier, invoice number and date, number and date of bill of lading, date of high sea sale agreement, invoice number and date of high sea sale, number and date of bill of entry, details of the freight paid and the details of the transactions the Tribunal states as follows:

> '.......
>
> From the above classification of facts, consequent to the agreement entered into between the buyer and the exporter in West Africa, is the first item of the transaction which culminated in the purchase of goods by the dealer-respondent. The sequence of the transaction had been adopted in the above tabulation. The above tabulation would clearly show the fact that the sequence of transactions and the ending of the transaction. This aspect alone would bring the transaction within the ambit of the latter portion of Section 5(2).
>
> 16. It is also evident from the reading of the assessment order at page 3, in which the Assessing Authority had described the transaction as follows:
>
>> "Even though the bill of entry contains the name of both the importer and the ultimate buyers, the original invoice value and the other charges have been collected form the ultimate buyers."
>
> 17. The above factual point clearly show that the ultimate buyers namely, the dealer-respondent

had incurred the freight charges as seen from the above statements. The same had also been produced before the Assessing Authority while filing the objection and it had also been reflected in the order of the Assessing authority at page 6 as follows:

"They further added that the entire expenditure towards the import of cotton such as freight, clearing and forwarding charges are only incurred by them for which they are enclosing a statement marked Annexure-2".

18. The Additional State Representative at the time of hearing had argued that Tvl.Supreme Textiles Processing Limited is not a manufacturer of yarn but had imported and sold to Tvl.Meridian Industries Limited.

19. The cotton was under Open General Licence, he is not a manufacturer but he had imported. There are two types of licences one is Open General Licence and another is actual user licence. When any person is importing goods under OGL, he need not be a manufacturer. But it is not the case with the Actual User Licence. if any person is importing, he has to necessarily use it for own consumption. As the cotton for the relevant period is under Open General Licence, which is also accepted by the State as well as in the assessment order and also the pleadings before us, the importer need not be a manufacturer. But during the year 1999-00 the dealer respondent had effected purchase under High Seas with Advance Licence and the same had been entered in the pass book with an undertaking that he has to export the manufactured yarn. Import duty had been exempted under the advance Licence Scheme obtained from DGFT, Coimbatore and the same had been noted in the Bill of Entry for exempting the duty payable.

20. Verification of the statement extracted above clearly prove that there is a continuous course of action right from the shipment of the goods by the foreign seller till the clearance made by the dealer-respondent. So, the above said transaction comes within the lateral portion of Section 5(2) of the CST Act and the transactions when it comes under Section 5(2) of the CST Act, it is not taxable and the assessment made by the

Assessing Authority disallowing the claim bringing the transaction to taxation net is wrong and the assessment made is set aside concurring with the view of the Appellate Assistant Commissioner.

21.In respect of the assessment made on Tvl.Supreme Textiles Processing Limited, the stand of the state is one and the same as in the case of Tvl.Meridian Industries Limited. In this case also, the state had taken a stand that Tvl.Supreme Textiles Processing Limited had taken delivery of the cotton that had been imported by it and after clearance of the same from the customs, the sale had been effected on inter-state basis to Tvl.Precot Mills, Palghat, Kerala. As the commodity that had been imported is cotton, which is taxable at the point of last purchase in the state when the dealer makes inter-state sales, it is taxable in the hands of the dealer. So, the Assessing Authority had assessed Tvl.Supreme Textiles Processing Limited, as they effected inter-state sales. As seen in the case of Tvl.Meridian Industries, in which Tv.Supreme Textiles Processing Limited was the importer, the same kind of transaction had occasioned in this case also. In the present case, Tvl.Precot Mills, Palghat had taken delivery of the goods as evidenced from the bill of Entry. The dealer had also produced records relating to the freight charges incurred by Tvl.Precot Mills for transportation of the goods from Tuticorin Port to their place of business at Kerala and instances of purchases and transport had been tabulated as follows:

(The tabulation is not relevant and is also not extracted herein for the sake of brevity)

From the above tabulation, it is clear that Tvl.Precot Mills, Palghat had taken delivery of the goods from the port of Tuticorin and transported to his place of business, which had occasioned as a result of High Seas purchases. The documents that had been filed in support of the above transaction are convincing and the transaction has to be necessarily allowed, as high seas purchases coming under the lateral part of

Section 5(2) of the CST Act. So, in respect of CTSA No.149/05, as the transaction is covered under Sec.5(2), the question of assessing the dealer u/s.3(a) does not arise.

22. The judgment reported in 111 STC 435 and 9 TNCTJ 44 are squarely applicable to the present case. Following the ratio arrived at in the above cited judgments; the present appeals are decided on the above findings of the Hon'ble High Court of Madras.

23. With regard to the penalty levied by the Assessing Authority and set aside by the Appellate Assistant Commissioner, the question of levy of penalty does not arise and penalty levied is set aside concurring with the view of the Appellate Assistant Commissioner.

In the result, all the three State appeals stand Dismissed.'

4. Ms.Dhanamadhiri, in the course of hearing, also fairly confirms that the aforesaid order has been accepted by the Revenue and no appeal has been filed till date. In the light of the fact that there is total identity between the factual and legal matrices of the issues considered by the Tribunal and the issue arising for determination before me, I am of the view that this Writ Petition is liable to be allowed.

5. The impugned order is set aside and the Writ Petition allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sl

To

1. Commercial Tax Officer,
   Trichy Road Circle, Coimbatore.

2. Additional Appellate Assistant Commissioner, (CT),
   Coimbatore.

3.Joint Commissioner (CT),
   Coimbatore.

+1cc to M/s.Shanmugham, Advocate sr.9614
+1cc to Special Government Pleader(Taxes) sr.96163

Writ Petition No.8410 of 2009
and
M.P. No.2 of 2009

mp(co)
nr 13/02/2020