IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.92 of 2015
and
Miscellaneous Petition No.1 of 2015

M/s.Shin Thermo Dynamic Engineering (P) Ltd.,
No.29, Kodambakkam High Road,
Chennai-600 034. .. Petitioner

-vs-

The State of Tamil Nadu,
Rep., by The Joint Commissioner (CT),
Chennai (Central) Division,
Chennai. .. Respondent

Tax Case (Revision) under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 14(13) of the Tamil Nadu Value Added Tax Rules, 2007 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 23.06.2015, passed in S.T.A.No.41 of 2015, relating to the assessment year 2008-09.

For Petitioner	:	Mr.P.Rajkumar
For Respondent	:	Mr.V.Haribabu, Additional Govt. Pleader (Taxes)

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ORDER

(Order of the Court was made by T.S.Sivagnanam, J.)

This tax case revision has been filed by the petitioner, who is a dealer on the file of the Assistant Commissioner (CT), T.Nagar (East) Assessment Circle, under Section 60(1) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai (for brevity "the Tribunal"), dated 23.06.2015, in S.T.A.No.41 of 2015. The matter arises under the provisions of the Central Sales Tax Act, 1956 for the assessment year 2008-09.

2.The Assessing Officer while completing the assessment, vide order dated 31.07.2013, stated that on verification of the 'C' Form declaration filed by the dealer, furnished by M/s.Shree Renuka Sugars Ltd., it shows the value of Rs.8,26,09,779/- and took into consideration two of the transactions in respect of Invoice No.1, dated 17.08.2008, and Invoice No.2, dated 20.05.2008, and held that total turnover in those two invoices being Rs.3,96,28,361/-, and the same is liable to be assessed at 2%.

3.The dealer filed appeal before the Appellate Deputy Commissioner (CT)-III (FAC), Chennai in Appeal No.25 of 2013. It was contended before the first appellate authority that a mistake has crept in when M/s.Renuka Sugars Ltd., has issued the Form 'C' declaration, and a local sale, which occurred from the Bangalore Branch of the petitioner/dealer to the Branch of M/s.Shree Renuka Sugars Ltd., at Gulbarga, Karnataka has been shown to be an inter-State Sale. The first appellate authority verified the documents and found that the said turnover has been wrongly mentioned in the Form 'C' declaration and that the Assessing Officer has not supported his conclusion about inter-State sales of the turnover by way of any documentary evidence or by recovery of incriminating or any check post records.

4.Further, the first appellate authority noted that the petitioner has produced the corrected photocopy Form 'C' declaration deleting those two transactions and also opined that if the Assessing Officer was not satisfied with the reply, he could have returned the original Form 'C' declaration to the petitioner for getting the same corrected from the dealer in the other State. Further, it was pointed out that the original Form 'C' declaration is found in page 187 of the assessment file. On being satisfied with the documents produced by the petitioner such as invoices and transport documents, the first appellate authority concluded that the transaction is only local sales within the State of Karnataka. The Revenue carried the matter by way of appeal to the Tribunal, which allowed the appeal by the impugned order.

5.This tax case revision has been admitted vide order dated 28.10.2015, on the following substantial questions of law:-

> *"(i) Whether, on the facts and in the circumstances of the case and on a true and correct interpretation of Section 3(a) of the Central Sales Tax Act, 1956, the Appellate Tribunal is justified in law in treating the local sales effected by the petitioner's branch in Bangalore to M/s.Shree Renuka Sugars Ltd., Karnataka as inter-State sales by the petitioner based on the incorrect C form issued by M/s.Shree Renuka Sugars Ltd., Karnataka?*
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> *(ii) Whether the Appellate Tribunal is legally correct in relying on the contents in the C form and the one line C form filed by the petitioner's customer M/s.Shree Renuka Sugars Ltd., in Gulbarga District to conclude that there was inter-State movement of goods from Tamil Nadu to Karnataka when the fact remains that the sales were only local sales by the petitioner's branch in Bangalore to M/s.Shree Renuka Sugars Ltd., Gulbarga District?*

(iii) Whether the Appellate Tribunal is legally correct in sustaining the levy of tax on the turnover of Rs.3,62,50,318/- @ 3% and on Rs.37,04,310/- @ 2% under the CST Act treating the same as inter-State sales emanating from State of Tamil Nadu merely based on the wrong inclusion of Invoice No.1 dated 17.08.2008 and Invoice No.2 dated 20.05.2008 in the C form issued by the purchaser M/s.Shree Renuka Sugars Ltd., Gulbarga District?

(iv) Whether the Appellate Tribunal being a final fact finding authority is legally correct in accepting the contention of the Revenue that there was inter-State movement of goods from petitioner to M/s.Shree Renuka Sugars Limited, Karnataka on the only ground that in the original C form, the invoice Nos.1 and 2 are included and also without granting an opportunity to the petitioner to rectify the defective C form?

(v) Whether the Appellate Tribunal has committed serious error in accepting a turnover of Rs.3,26,267/- as inter-State Sales turnover of the petitioner based on the wrong inclusion of the said transaction by the purchaser M/s.Shriram EPC Limited in the C form issued by them ignoring that the CST Act clearly contemplates that for an inter-State sale there should be movement of goods from one State to another?

(vi) Whether the Appellate Tribunal is correct in sustaining the levy of tax on the turnovers which do not come under the purview of the CST Act in the hands of the respondent State only for the reason that the purchasing dealers have issued C forms for those turnovers also?

(vii) Whether the Appellate Tribunal is right in coming to a conclusion that if the defective C forms are not rectified then the transactions would amount to inter-State sales in the hands of the petitioner?

(viii) Whether the Appellate Tribunal is legally correct in restoring the penalty levied by the assessing officer without appreciating the fact that there was no escapement of taxable turnover in the hands of the petitioner and also contrary to Section 22(5) of the TNVAT Act?"

6.Mr.P.Rajkumar, learned counsel appearing for the petitioner would fairly state that all the questions are interlinked and it would be sufficient for this Court to consider the first substantial question of law. Therefore, this tax case revision is entertained on the following substantial question of law only:-

"Whether, on the facts and in the circumstances of the case and on a true and correct interpretation of

Section 3(a) of the Central Sales Tax Act, 1956, the Appellate Tribunal is justified in law in treating the local sales effected by the petitioner's branch in Bangalore to M/s.Shree Renuka Sugars Ltd., Karnataka as inter-State sales by the petitioner based on the incorrect C form issued by M/s.Shree Renuka Sugars Ltd., Karnataka?"

7.Heard Mr.P.Rajkumar, learned counsel for the petitioner/dealer; and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent/Revenue.

8.The Tribunal reversed the finding of the first appellate authority mainly on two grounds that the petitioner could not have produced a corrected duplicate copy of the Form 'C' declaration stated to have been corrected by the other State dealer, when the original 'C' Form was in the assessment file. Secondly, it would point out that if at all there is an error in the Form 'C' declaration, the same needs to be rectified in the online entries based on the invoice details produced by the selling and buyers' details only, and the procedure adopted by the petitioner is wholly illegal.

9.The endeavour of the learned counsel appearing for the petitioner is to convince this Court to examine the bunch of documents produced by them to show that those two transactions are genuine intra-State sales within the State of Karnataka done by the petitioner's branch at Karnataka.

10.In our considered view, we are not a fact finding authority and exercising power under Section 60(1) of the TNVAT Act, we have to decide the substantial question of law. The exercise, which we are invited today by the petitioner, is clearly the role of the Tribunal or for that matter the first appellate authority. In any event, we do not want to foreclose the rights of the petitioner, since it is the consistent case of the petitioner that those two entries shown in the Form 'C' declaration are dated 18.09.2009 is a genuine mistake. In fact, though the first appellate authority pointed out that the mistake should have been rectified in the online entries maintained in the State of Karnataka, he did not issue any direction to the Assessing Officer to return the Form 'C' declaration, which was found in page 187 of the assessment file. If that course had been adopted, in all probabilities, the Commercial Taxes Authority of the State of Karnataka may have even rectified the Form 'C' declaration. Bearing this in mind, we propose to issue appropriate directions to enable the petitioner to obtain necessary correction in the Form 'C' declaration.

11.For all the above reasons, this tax case revision is disposed of by directing the petitioner's Assessing Officer to return the subject Form 'C' declaration within a period of two weeks' from the date of receipt of a copy of this order. On receipt of the same, the petitioner is granted eight weeks' time to get the same rectified, since it is the petitioner's case that those two transactions have been inadvertently included in the Form 'C' declaration. The substantial question of law is left open. Furthermore, in respect of the transaction done by the petitioner with M/s.Shriram EPC Limited, the petitioner would state that there is a defect in the Form 'C' declaration. The said original Form 'C' shall also be returned to the petitioner for correction and re-presentation within the above mentioned time. No costs. Consequently, connected miscellaneous petition is closed.

(T.S.S., J.) (V.B.S., J.)
04.02.2019

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T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

To

1.The Joint Commissioner (CT),
Chennai (Central) Division,
Chennai.

2.The Appellate Deputy Commissioner (CT)-III (FAC),
Greams Road, Egmore, Chennai-600 006.

3.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
2nd Floor, City Civil Court Buildings, High Court Campus,
Chennai-600 104.

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04.02.2019