IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM

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

T.C.(R). No.138 of 2018

The State of Tamil Nadu,
Rep. By the Joint Commissioner(CT),
Chennai (North) Division,
Chennai-6. ...Petitioner

Vs.

Tvl.Solisar & Co.,
No.189, Maleya Perumal Street,
Chennai-600 001. ...Respondent

Tax Case(Revision) filed under Section 58 of the Tamil Nadu Value Added Tax Act, 2006 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 25.11.2013 passed in S.T.A.No.105 of 2011, against the order of the Appellate Deputy Commissioner (CT)-II, Chennai - 108 dated 23/11/2010 and made in Appeal No and year:CST:5/2010, against the order of the Assistant Commissioner (CT)(FAC), Kothawalchavadi Assessment Circle, Chennai dated 11/01/2010 and made in CST/13376/2001-02.

For Petitioner : Mr.V.Hari Babu
Additional Government Pleader (Tax)

For Respondents : Mr.S.Ramanathan

O R D E R

This Tax Case Revision has been filed under Section 58 of the Tamil Nadu Value Added Tax Act, 2006 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in S.T.A.No.105/2011 dated 25.11.2013.

2. This Tax Case Revision is entertained on the following substantial questions of law:

'(i) Whether on the facts and in the circumstances of the case the tribunal was right in not considering the fact that the C form furnished by the dealer in support of claim of deduction under Section 6(2) of the CST Act is bogus?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in not considering the fact that the C form furnished by the buyer Tvl.Welcome Enterprises, Sathur was found to be bogus as the perusal of the records with Commercial Tax Officer, Sathur revealed that the C form was not issued from the said office.

(iii) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that once the seller produced the C form which is obtained from buyer and found to be bogus, the seller has no control over the purchaser.'

3. We have Heard Mr.V.Haribabu, learned Additional Government Pleader for the petitioner and Mr.S.Ramanathan, learned counsel for the respondent.

4. The assessee is a dealer in paper and paper bonds and were assessed on a total and taxable turnover of Rs.36,04,685/- and Rs.8,36,899/- for the assessment year 2001-02 under the provisions of the Central Sales Tax Act, 1956, vide assessment order dated 09.06.2003. Subsequently, the Assessing Officer stated that the exemption allowed on transit sales on the turnover of Rs.3,81,355/- was not correct, on the ground that E1 and C forms furnished in support of the claim for deduction under Section 6(2) of the CST Act furnished by the buyer M/s. Tvl. Welcome Enterprises, Sattur was found to be bogus and the Registration Certificate number noted in the C form was not allotted to the said buyer but was allotted to Deepak Fire Works Industries, Sattur. Therefore, the assessing officer revoked the claim of exemption which was already granted and subjected turnover to tax under Section 9(2) of the CST Act r/w Section 16 (1) of the TNGST Act.

5. Aggrieved by the said order, the assessee preferred an appeal before the first Appellate Authority, which was allowed by order dated 23.11.2010. Aggrieved by the said order, the Revenue filed an appeal before the Tribunal which was dismissed by the impugned order.

6. The question is as to whether the respondent/assessee who is the selling dealer can be made liable and his claim for exemption can be denied, on the ground that the purchasing dealer had submitted bogus Form “C” declaration or bogus form “E1” declaration. This question is no longer res integra and has been decided by the Hon'ble Division Bench in W.P.No.1061 of 2000 etc. batch dated 04.12.2001. In the said decision, it was held that it is not the duty of the selling dealer to launch any

enquiry as to whether or not either Form-XVII or C-Form declaration produced by the buyer is genuine or not and as the selling dealer has acted in good faith upon the buyers representation, he is entitled to the benefit of concessional rate of tax.

7. The Tribunal, in our considered view, rightly followed the decisions passed by this Court in a batch of cases and rightly observed that the Assessing Officer can proceed against the purchasing dealer. The learned Additional Government Pleader referred to the decision of the Division Bench, in the case of Agfa-Gavert India Limited Vs. State of Tamil Nadu, [reported in (2001) 123 STC 108]. The said decision has taken note of the decision of the Hon'ble Supreme Court in the case of State of Madras Vs. Radio and Electricals Ltd., [reported in Volume 18 STC 222]. This decision also lays down the same principle stating that the selling dealer should satisfy himself that the purchaser is registered dealer and the goods purchased are specified in certificate and his duty extends no further.

8. It has been further held that, if he is satisfied on these two matters, a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form "C", the selling dealer is under no further obligation to see the application that the rules for the purpose of which it was represented that the goods were intended to be used. Further, it was pointed out that if the purchasing dealer misapplies the goods he incurs a penalty under Section 10 and penalty cannot be vested upon the selling dealer.

9. In the instant case, the assessee has specifically contended that they were informed that the purchasing dealer is registered with the department and the registration number was given and they were entitled to deal with the goods and believing the representation, has received this Form "C" declaration issued by them. Therefore, the twin parameters required to be satisfied by the selling dealers have been satisfied in the instant case. Therefore, the Tribunal was right in rejecting the appeal filed by the revenue.

10. For the above reasons, the tax case revision is dismissed and the Substantial Questions of Law are answered against the Revenue.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

ssb/mrm

To

1) The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Chennai

2) The Joint Commissioner (CT),
Chennai (North) Division,
Chennai-6.

3) The Appellate Deputy Commissioner (CT)-II,
Chennai - 108

4) The Assistant Commissioner (CT)(FAC),
Kothawalchavadi Assessment Circle,
Chennai

+1 cc to M/s.S.Ramanathan, Advocate, S.R.No.19032

+1 cc to Spl.Government Pleader, Advocate, S.R.No.19555

T.C.No.138 of 2018

SV(CO)
SSM(30/04/2019).