IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On 14.02.2019	Orders Pronounced On 25.02.2019

CORAM:

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

Tax Case No.84 of 2017

State of Tamilnadu
Rep., by the Deputy Commissioner (CT),
Chennai (South) Division,
Chennai - 600 006. .. Petitioner

-vs-

Tvl.Ambathur Clothing Company,
No.86/E-2, Ambathur Industrial Estate,
Chennai - 58. .. Respondent

Tax Case filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order of the Sales Tax Appellate Tribunal (Main Bench) Chennai, in S.T.A.No.1115/2001MB, dated 13.05.2003, against the proceedings of the Appellate Assistant Commissioner (CT)-VI, Chennai-600 108 dated 21/9/2000 and made in Appeal No. and Year:AP 195/2000, against the proceedings of the Depurty Commercial Tax officer, Ambattur Assessment Circle, dated 27/3/2000 and made in TNGST-144673/94-95/(Para 23/IIB).

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

For Respondent : Mr.V.Sundareswaran

ORDER

T.S.Sivagnanam, J.

This Tax Case has been filed by the Revenue challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, in S.T.A.No.1115/2001, dated 13.05.2003.

2.The Tax Case has been filed raising the following substantial questions of law:-

(i) The Tribunal ought to have considered that the dealer did not disclose the taxable turnover of REP licence in the monthly A1 returns for the year 1994-95 and paid the tax due thereon. Therefore, the returns filed by the dealer becomes incorrect and incomplete despite the transactions are available in the books of accounts.

(ii) The Tribunal ought to have followed the ratio laid down in the decision reported in 94 STC 139. In the said decision, the taxability of REP licence was settled which was affirmed by the Supreme Court in the case reported in 102 STC 106. In the above cases, it was ruled that penalty can be levied on REP sales from 01.04.1992 onwards.

3. Heard Mr.V.Haribabu, learned Additional Government Pleader appearing for the appellant and Mr.V.Sundareswaran, learned counsel appearing for the respondent.

4. The respondent is manufacturers and exporters of readymade garments registered on the file of the Deputy Commercial Tax Officer, Ambattur Assessment Circle under the provisions of the Tamil Nadu General Sales Tax Act, 1959, (TNGST Act) and the assessment year under consideration is 1994-95.

5. The assessment was completed and the respondent/assessee was finally assessed to tax on total and taxable turnover of Rs.2,34,653/- and Rs.17,26,890/- respectively. The Assessing Officer subsequently appears to have made verification and pointed out that the assessee had incurred expenditure of Rs.24,65,912/- towards purchase of “licence premium” and Rs.2,25,000/- for “quota premium”. Consequently, notice dated 09.02.1998, was issued to the assessee calling upon them to produce document of sufference of tax on sales of references and quota failing which the Assessing Officer stated that he proposes to assess the said turnover. The assessee by letter dated 16.06.1998, furnished the details for purchase of licence and quota. Since the assessee did not prove sufference of tax of single point tax at earlier stage on the turnover of Rs.70,23,468/-. The assessee were assessed to tax at 8%.

6. Aggrieved by such order, the assessee preferred appeal to the Appellate Assistant Commissioner(CT)-VI, Chennai, which was allowed by order dated 21.09.2000. The First Appellate Authority pointed out that the Assessing Officer has not made out a case that there was a sale of licences/quota purchased by the assessee and that the assessee has proved with records that

licenses/quota were utilised on import of goods. Therefore, it was pointed out that the assessee has disposed of the licences in a manner other than by way of sale. The Appellate Authority referred to various decisions and concluded that the provisions of Section 7A(1)(b) of the Act would not stand attracted to the assessee's case.

7. The Revenue filed appeal before the Tribunal contending that the assessee had effected import of goods with the aid of the licences and according to Section 7A every dealer who in the course of business purchases any goods from registered dealer or any other person, who sells or purchases of such goods is not liable to tax under Section 3(1) and since the assessee effected purchase from unregistered dealers, Section 7A is attractive.

8. The Tribunal after noting the legal position, on facts held that M/s.M.M Traders have sold the REP licence to the respondent/assessee and it is only M.M Traders have to be taxed, as the first seller and point of taxation cannot be shifted to the second seller in the assessment year 1994-95. It was pointed out that the department has not proved that there is no such dealers as M.M.Traders and even then, the point of sale cannot be shifted to the second dealer and therefore, the action of the Assessing Authority is not acceptable, as he has not made any enquiry about the bonafide of the dealer. Further, for the first time, before the first Appellate Authority the contention regarding the applicability of Section 7A was raised and this was also rejected by the First Appellate Authority after assigning proper reasons and therefore, the Tribunal declined to interfere with the order passed by the First Appellate Authority.

9. The learned Additional Government Pleader reiterated the contention that were canvassed before the Tribunal.

10. The legal position as to whether the transaction is taxable or not, has now been settled by the Hon'ble Supreme Court in the decision in Vikas Sales Corporation & Anr., vs. Commissioner of Commercial Taxes & Anr., Appeal (Civil) No.7771-75 of 1996, dated 01.05.1996. The question however in the instant case is whether the point of taxation can be shifted to the respondent/assessee. This aspect of the matter requires examination of facts. This aspect of the matter was considered by the First Appellate Authority by thoroughly examining the factual position. This factual finding was affirmed by the Tribunal. The Tribunal noted that the respondent/assessee has given the name of the selling dealer of the import license and import licence cannot be issued to any party and the authority who is issuing the import licence does so only after due verification and the address of the selling dealer has been

furnished by the respondent/assessee and only the selling dealer has to be taxed as a first seller and the point of taxation cannot be shifted to the second seller namely respondent/assessee. Thus we find there is no question of law arising for consideration in this Tax case.

For the above reasons, the Tax Case is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Sales Tax Appellate Tribunal,
(Main Bench) Chennai.

2.The Appellate Assistant Commissioner (CT)-VI,
Chennai-600 108.

3.The Deputy Commercial Tax Officer,
Ambattur Assessment Circle.

4.The Deputy Commissioner (CT)
Chennai (South) Division,
Chennai-600 006.

+1cc to the Special Government Pleader (Taxes) Sr.17762
+1cc to Mr.V.Sundareswaran, Advocate sr.16907

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srg 14/03/2019