IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.1.2020

CORAM

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

W.P.No.36978 of 2002

The State of Tamil Nadu,
rep. by the Deputy Commissioner (CT)
Chennai (East) Division, Chennai. Petitioner

Versus

1. Tvl.Aby Engineers and Consultants (P) Ltd.,
No.4-A, R.K.Salai, Chennai-14.

2. The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal (MB), Chennai-104. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records on the file of the second respondent pertaining to the order dated 22.5.2001 made in T.A.No.358 of 1999 and quash the same as illegal.

For Petitioner : Ms.G.Dhana Madhri,
Govt. Advocate for Commercial Tax

R1 - Not Ready
R2 - Tribunal

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The learned Tribunal, by its impugned order dated 22.5.2001, allowed the Petition filed by the Assessee and held the turnover in question to be Stock Transfer/Branch Transfer made by the Assessee during the relevant period and the same does not amount to inter-State Sales.

2. The relevant portion of the order passed by the Tribunal is quoted below for ready reference:-

"The learned first appellate authority has also given examples that the appellant had received payments in advance and therefore, it should be an inter-State sale. It is contended by the learned Advocate that sometimes the customers in other States enquire with the branches with the availability of tanker lorries and the price of Kerosene oil and have preferred cheques and Demand Drafts in advance. In the present case, there is no documentary evidence to show that there is nexus between orders placed between customer and branch office and the movement of goods from Chennai to the branches in other States. The collection of advance tax alone will not decide the nature for the reasons they have already given above. There is no clinching evidence to show the goods were moved to other State with prior specific order. Actually, the goods have moved under the cover of stock transfer invoices, Form XXVIII declaration, lorry way bill which clearly show that the goods are moving only to the branch office. In the same manner, it is to be decided whether the transport charge of Rs.15,69,867/- incurred should be taken as evidence to show that goods have moved to the customer in other State directly. The learned Advocate as contended that like the advance tax payment by customers in other States, the transport charges have also been sometimes made to appellants. From the perusal of the records and the recovered it is seen that there is no evidence even in the recovered records to show that the goods have been received by the customers in other States directly from the Head Office. Even the transport charges payment will not decide the issue. The other evidences such as stock transfer memo, delivery note etc., clearly proved that the goods were despatched by the Madras Office only to the branch office. In lieu of the absence of the materials or evidence, it is to be decided whether the appellants have decided the burden of proof cast on them under section 6-A of the Central Sales Tax Act. Already we have dealt with the issue elaborately. The appellant had discharged his duty by way of presenting all the documents required for the branch transfer and he has proved that the entries in Form F are true and genuine.

21. We have already held that mere receipt of transport charges will not alter th characteristic. The learned State Representative in this context had contended that as per the Receipt No.1301 to 1306 the

transport charges were collected separately by Chennai Office. Though it cannot be connected with any specific movement of goods, it is brought to our notice that the appellants have got Kerosene storage facilities in other States. They have also got trucks for storing Kerosene. Stock was sometimes sent to the actual consumers in the same tank truck to avoid evaporation loss or to save extra loading and unloading charges. It is not clearly proved by the State that the charges incurred are towards the despatch of goods directly to the ultimate purchaser. On the other hand, the explanation offered by the appellant in this regard is acceptable one.

22. So, we come to a conclusion that the turnover of Rs.4,62,11,884/- represents only branch transfer and it cannot be termed as inter-State sales as observed by the Assessing Officer.

23. In fine, the appeal is allowed."

3. In a similar circumstance, in the case of M/s.Advance Paints (P) Ltd. v. C.T.O. Chennai (W.P.No.14193 of 2001, dated 9.12.2019), this court has allowed the Writ Petition filed by the Assessee. The relevant portion of the said order is also quoted below for ready reference:-

"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."

4. In view of the above, we do not find any merit in the Writ Petition filed by the Revenue and it is liable to be dismissed. Accordingly, it is dismissed. No costs. A copy of this order may be sent to the Respondent/Assessee.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The State of Tamil Nadu,
rep. by the Deputy Commissioner (CT)
Chennai (East) Division, Chennai.

2. The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (MB), Chennai-104.

3. Tvl.Aby Engineers and Consultants
(P) Ltd.,
No.4-A, R.K.Salai, Chennai-14.

+1cc to the Government Pleader(Taxes), S.R.No. 4279

W.P.No.36978 of 2002

VG I(CO)
GN(24/02/2020)