IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.2.2020

CORAM

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

W.P.Nos.34626 & 34627 of 2003
and
W.M.P.Nos.42062 & 42063 of 2003

Tvl.Neick Labs,
17, Nainiappa Naicken Street,
Chennai-3. Petitioner
(In both petitions)

Versus

1.The Chairman,
Tamilnadu Sales Tax Appellate
Tribunal (AB), Chennai.

2.The Appellate Assistant
Commissioner (CT) I,
Chennai.

3.The Deputy Commercial Tax Officer,
Evening Bazaar Assessment Circle,
Chennai. Respondents
(in both petitions)

Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the first Respondent in STA Nos.431 & 433/2001 dated 30.9.2002 and quash the same as illegal, unlawful and unconstitutional.

For petitioner : No appearance.

For Respondent : Mr.Hariharan, Govt. Advocate

COMMON ORDER
(Order of the court was made by R.SURESH KUMAR, J.)

These two Writ Petitions have been filed against the Common Order dated 30.9.2002 in S.T.A.Nos.431 and 433 of 2001 passed by the Tribunal viz., the Tamil Nadu sales Tax Appellate Tribunal.

2. The Writ Petitioner is a Dealer of some Medicine and they were the main Stockist at Tamilnadu and was having Branch at Pondicherry. During the relevant Assessment Years viz., 1994-95 and 1995-96, certain Sales have been effected through the Pondicherry Branch and those Sales have been subjected to tax as if it is Inter-State Sales from Tamilnadu directly through the branch of the Assessee at Pondicherry. Accordingly the Assessment Order was passed by the Assessing Authority by order dated 30.9.1999 as against which the Assessee/Dealer preferred Appeal before the first Appellate Authority, who, by order dated 9.5.2000, reversed such Assessment Order by giving reasons. Aggrieved over the said order of the first Appellate Authority, the Revenue preferred Appeal before the Special Tribunal, which passed the impugned order dated 30th September 2002 whereby the first Appellate Authority's order got reversed and the Assessment Order passed by the Assessing Authority got restored. Aggrieved over the same, the present Writ Petitions have been filed by the Assessee/Dealer.

3. We have heard Mr.Hariharan, learned Government Advocate appearing for the Revenue, who would submit that, the alleged sale, which was taken place at Pondicherry, is only pursuant to the order given to the Tamilnadu Dealer, who, against such orders, has transferred the Stocks from Tamilnadu to Pondicherry Branch pursuant to which only, the sale has been effected and therefore for taxing purpose, it shall be construed only as Inter-State Sale taken place from Tamilnadu to Pondicherry and accordingly the Assessee/Dealer is liable to be taxed.

4. In this regard, it is the further case of the Revenue that, before the Assessing Authority, it has been admitted that, they sold the materials to the tune of Rs.4,36,395/- against the identified customers and advance amounts were received, based on which only, the Assessing Authority had come to the conclusion that those Sales which were taken place are to be construed only as Inter-State Sales and therefore, the Assessment Orders passed by the Assessing Authority are sustainable.

5. The learned Government Advocate appearing for the Revenue would further contend that, the first Appellate Authority, without having taken into account the said facts in proper perspective, reversed the said Assessment Order, however, the Tribunal in the impugned order has taken into account such facts in a proper perspective. In fact in para 9 of the said impugned order, the Tribunal has concluded that the Madras Office of the Respondent/ Dealer received orders from the customers in Pondicherry through its Branch at Pondicherry and has transferred the goods pursuant to those orders for two Assessment Years, which establishes an inextricable link between the movement of goods and the prior orders received from the customers. The learned counsel relied upon the said findings given by the Tribunal heavily. For the sake of convenience, such findings are quoted below for ready reference:-

"9. In these cases it is found that the Madras Office of the respondent/dealers received orders from the customers in Pondicherry through its Branch at Pondicherry and has transferred the goods in pursuant to these orders for two assessment years which establishes an inextricable link between the movement of goods and the prior order received from the customers. The Assessing Officer in his orders has also stated that the respondents had also admitted the fact before the Deputy Commercial Tax Officer, Evening Bazaar that they had sold materials for Rs.6,33,487/- in STA.431/01 against identified buyers and received advance payments before the supply. The movement of goods has occasioned against specific order in both years. On such a situation the transaction is not one of Branch transfer but an interstate sale as decided by the Supreme Court of India in the case of Cheseborough Ponds India Ltd., reported in 52 STC 164 and in the case of English Electric Company of India Ltd., Vs. Deputy Commercial Tax Officer, Alandur reported in 23 STC 32.

10. When it has been proved that the goods had moved only against specific orders from the customers in Pondicherry, the observation of the learned Appellate Assistant Commissioner in respect of maintenance of stock book by the Pondicherry branch is not relevant in these cases. In the above facts and circumstances of these two appeals, we are of the view that the learned Appellate Assistant Commissioner is wrong in set-asiding the turnover of Rs.6,33,486/- and Rs.4,36,396/- in both the appeals and accordingly we set-aside the orders of learned Appellate Assistant Commissioner and restore the orders of assessing officer in this regard"

6. We have given our anxious consideration to the said submissions made by the learned Government Advocate appearing for the Revenue and perused the materials placed before us.

7. Though the Assessing Authority has taken a view that the Sale that had taken place at Pondicherry is Inter-State Sales based on the alleged admission made by the Assessee, the said fact has been considered by the first Appellate Authority where, the first Appellate Authority has found the factual matrix by stating that, he has perused the Stock Books maintained by the Pondicherry Branch on a day to day basis and such Stock Books had been initialed and sealed by the Assessing Authority at Pondy and a perusal of the entries in the Stock Books with reference to Advance amount received and the invoices raised

revealed that the Branch at Pondy had sufficient stock of the goods invoiced by the Branch on the Customers from whom advances had been collected by their representatives.

8. Against these factual findings given by the first Appellate Authority, the Tribunal, at para 9 of the impugned order, as has been extracted hereinabove, has simply stated that, the Madras Office of the Respondent/Dealer received orders from the customers in Pondicherry through its Branch at Pondicherry.

9. With regard to the said finding given by the Tribunal, we find that the Tribunal has not given any specific reason that on what basis such a finding has been given by the Tribunal, whereas, the first Appellate Authority has asserted at para 6 of the order passed by the said Authority which is extracted hereunder for ready reference:-

> "6. I have perused the stock books maintained by the Pondy branch on a day-to-day basis. The stock books have been initialed and sealed by the Assessing Authority at Pondy. A perusal of the entries in the stock book with reference to advance amount received and the invoice raised revealed that the branch at Pondy had sufficient stock of the goods invoiced by the branch on the customers from whom advances have been collected by their representatives. Further the despatches from the Head Offices were on a routine basis to replenish the stock of the branch and they were not exactly as per the quantity required by the customers and supplied by the Pondy branch. Thus it cannot be said that the despatch of the goods from the Madras Head Office is against specific orders placed by customers from whom the advances have been collected. Supplies were made from the sufficient stock held by the Pondy Branch on the date of sale. Therefore the assessing authority is not justified in treating the sales made by the branch in which advances have been collected from customers as direct sales by the Head Office at Madras in pursuance of any order from customers outside the State. I therefore set aside the revision of assessment for the year 1994-95 on the turnover of Rs.6,33,486 and disallowance of exemption on a turnover of Rs.4,36,396 for the year 1995-96."

10. Since the factual finding has been arrived at by the first Appellate Authority which includes the observation that the Stock Books has been initialed and sealed by the Assessing Authority, there can be no further proof to be filed by the Revenue against such entries made therein. Those factual findings reveal that the Branch at Pondy had sufficient stock of

the goods and whenever orders come to Pondicherry Branch, sales has taken place. The finding given by the Tribunal that the sales effected at Pondicherry were only pursuant to the transfer of stocks made then and there by the Tamil Nadu Branch/Dealer has no basis. The Tribunal, being final fact finding Authority, ought to have gone into those factual aspects in detail. Without doing such exercise, the Tribunal has given such a finding against the factual findings given by the first Appellate Authority. We do not feel that the reason given by the Tribunal for taking a different stand for reversing the factual findings of the first Appellate Authority has got any basis and sustainability.

11. In that view of the matter and the factual matrix as we found in the records available before this court, we have no hesitation to hold that the Tribunal has erred in giving such a finding for making a reversal of the order passed by the first Appellate Authority. In view of the above, we are of the view that the order impugned made by the Tribunal is to be interfered, with, with a result, the order of the Tribunal is hereby set aside and consequently the order passed by the first Appellate Authority is restored. Accordingly these Writ Petitions are allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssk.
To:

1.The Chairman,
Tamilnadu Sales Tax Appellate
Tribunal (AB), Chennai.

2.The Appellate Assistant
Commissioner (CT) I,
Chennai.

3.The Deputy Commercial Tax Officer,
Evening Bazaar Assessment Circle,
Chennai.

+1cc to the Spl. Government Pleader SR.8764

W.P.Nos.34626 & 34627/2003

CP(CO)
CB(04/03/2020)