IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.01.2020
CORAM:
THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P. Nos.36039 & 36175/2003

Tvl.Brahma Sakthi Tin Factory,
rep. By its Partner SVS Velkumar,
Pondy Railway Line
East Shanmugapuram,
Villupuram ... Petitioner in both Writ petitions

versus

1.The Sales Tax Appellate Tribunal,
rep. By its Secretary,
City Civil Court Building,
Chennai 104

2.The Appellate Asst. Commissioner (CT)
C.T. Buildings, Cuddalore

3.The C.T.O.,
Villupuram, II Assessment Circle,
Villupuram ... Respondents in both Writ Petitions

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 1st respondent in STA Nos.381 and 906 of 2000 dated 14.1.2003 and quash the same as illegal arbitrary and against the principles said down by the madras high court reported in 96 STC Page 98 in the Case of A.Dhandapani Vs State of Tamil Nadu & Others in so far as the dismissed portion of the order.

For petitioner : Mr.K.Soundararajan

For Respondents : Ms.G.Dhanamadri,
Govt Advocate
for Respondents 2 and 3

COMMON ORDER

(made by Dr.VINEET KOTHARI, J.)

The assessee has filed these writ petitions aggrieved by the order passed by the learned Sales Tax Appellate Tribunal on 14 January 2003 whereby the learned Tribunal allowed the appeal filed by the Revenue, and reversing the findings of the First Appellate Authority, held that the Branch/Stock/Consignment transfer of goods made by the Assessee from Villupuram to the Union Territory of Pondichery were taxable as inter-state sales under the provisions of the C.S.T. Act. The relevant observations of the order of the learned Tribunal in the impugned order are quoted below for ready reference:-

> "14. We find that all these facts (payment in advance dispose immediately and no expenditure incurred for loading and unloading) put together stand to prove that the Respondents transactions are inter-state sale and further the appellants are not in a position to produce any evidence contrary to above facts in support of the claim of consignment sales. The Appellate Assistant Commissioner has failed to look into the whole facts harmoniously and hence we find that the order of the Appellate Assistant Commissioner is not based on correct facts. We therefore set aside the order of the Appellate Assistant Commissioner and restore the order of the assessing Authority for both the assessment years in respect of levy of taxes in STA Nos.381/2000 and 906/2000.
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> 15. With regard to the penalty of Rs.4,72,431/- (STA 381/2000) and Rs.3,12,867/- (STA 906/2000) levied under Section 12(3) (b) of the Act the Assessing Officer has levied penalty for the wrong claim of exemption as consignment sales. The learned Appellate Assistant Commissioner also deleted the penalty. The learned Additional State representative argued that failure to pay the estimated tax due to the Government at appropriate time warrants penalty. The Hon'ble High Court of Madras in the case of Appolo Saline Pharmaceuticals reported in 125 STC 505 has held that inasmuch as the turnover is available in the books of accounts the levy of penalty is not at all warranted. We therefore agree with the order of the Appellate Assistant Commissioner passed deleting the penalty levied in S.T.A.Nos.381/2000 and 906/2000.
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> 16. In the result, the State Appeals are partly dismissed and partly allowed."

2. The learned Counsel for the Assessee Mr.K.Soundararajan, urged before us that the learned First Appellate Authority had allowed the appeal of the assessee giving detailed findings in favour of the assessee that declaration in prescribed form F

were furnished by the assessee in support of the transaction being treated as consignment transfer/ branch transfer, not attracting any Central Sales Tax, as inter-state sales. But without any rhyme or reason, the learned Tribunal has reversed those findings. He further drew our attention to the recent judgment of this Court in the case of M/s.Advance Paints (P) Ltd. vs. Commissioner of Tax, whereby this court has also held that the sale of the goods by the agent immediately after the goods were received from the Principal does not establish any interstate sale by the Principal.

3. The findings of the learned First Appellate Authority in favour of the Assessee in the present case are also quoted below for ready reference:

> 6. Besides, the Assessing Officer has found that declaration in Form F were file for the transactions, for more than one calendar month, in all amount to Rs.11,97,440/- as detailed at page 3 and 4 of the assessment order. The assessing officer has rejected the above forms and considered the above transaction of Rs.11,97,440.00 for assessment at 10% on ground that as per the provisions as Rule 12 (5) of the CST Tamil Nadu Rules 1957 single declaration form in "F" has to be issued for the transactions in one calender month. Although the Assessing officer has assessed the above transactions of Rs.11,97,440/- on the other grounds, which will be discussed later. The non filing of F form for each calendar month is a separate issue.
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> 7. During the course of argument the partner of the Appellant has contended that if reasonable opportunity will be provided, the defect will be rectified by obtaining fresh F forms from the agents in other States and filing them before the Assessing Officer. Hence this petition or assessment is also remanded back to the Assessing Officer with a direction to give reasonable opportunity to the Appellants to obtain fresh F forms from the agents/ purchasers and to file them before the Assessing Officer and the Assessing Officer has to pass orders according to Law within 2 months from the date of receipt of this order.
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> 8. In respect of the allowance of entire turnover of Rs.31,49,540/- under Section 6A of the CST Act 1956 as consignment sales the

arguments of both the partner of the firm and the departmental representative (I/c) are heard. The various issues are discussed as under:-

9. The Assessing Officer while disallowing the claim of the Appellant that the interest movement of goods were done other than by way of sales, i.e. To their agents in other states for consignment sales under Section 6A of the CST Ac 1956, has mainly relied on the following aspects:

i. Payment for consignment sales were made well in advance;

ii. The goods were sold on bulk in a few invoices on the same day of receipt by the agent or within a few days.

iii. No expenses, loading and unloading charges godown rents etc. were shown in the partials of the commission agents.

For the above reasons, the Assessing Officer has disallowed the entire claim under Section 6 of the CST Act 56 and assessed the entire turnover at 10%.

10. The contention of the AR and the findings of the Assessing Officer are carefully considered.

11. Regarding the payment by the consignment agent, the Hon'ble Madras High Court in the case of State of Tamil Nadu vs.State Trading Corporation reported in 61 STC 341 has held as

> "Held that the forwarding authority that the payment of the piece in advance by the agent would transform the agent as a purchaser was wrong. The question whether the so called agent was only a purchaser had to be decided without reference to the factum of the pre-payment of the price".

In view of the above decision, the fact that the Appellant has made advance receipt of amount of this agent, cannot be held to be a reason for disallowing the claim of the Appellant.

4. Having heard the learned counsel for the parties, we are satisfied that the learned Tribunal erred in reversing the cogent findings of the First Appellate Authority merely because

the agent sold the goods in question immediately after the receipt of the goods from the Principal. This court explained the position and pre-requisites of an inter state sales in the case of M/s.Advance Paints (P) Ltd. vs. Commissioner of Tax, Chennai, (order dated 9 December 2019) and held as under :-

> 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.
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> 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.
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> 8. In the result, the Writ Petition is allowed. The order of the Sales Tax appellate Tribunal, Chennai, is set aside. No costs.

5. Reiterating the same view, we are of the opinion that the present writ petitions filed by the Assessee deserve to be allowed and the impugned order passed by the Sales Tax Appellate Tribunal deserves to be set aside and the order of the First Appellate Authority deserves to be restored and we order accordingly.

6. In the result, the Writ Petitions are allowed. No costs. Consequently, WMP Nos.43912 and 43757 of 2003 are also closed.

7. The First Appellate Authority has made a remand of the proceedings to the Assessing Authority for correction and verification of the "F" Forms. That direction, due to long lapse of time might have been complied with by now. If not already complied, that direction of remand will stand.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Sales Tax Appellate Tribunal,
City Civil Court Building,
Chennai 104

2.The Appellate Asst. Commissioner (CT)
C.T. Buildings, Cuddalore

3.The C.T.O.,
Villupuram, II Assessment Circle,
Villupuram

+1 cc to M/s Special Government Pleader (Taxes)sr2340
+1 cc to M/s K.Sundararajan Advocate sr2380

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