IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.28067 OF 2004

THE STATE OF TAMIL NADU
REP. BY ITS DY. COMMISSIONER (CT)
COIMBATORE DIVISION
COIMBATORE ..Petitioner

Vs

1 TVL THE SARAVANA BALAJI STEELS
43 ANSARI STREET
COIMBATORE

2 THE SECRETARY
THE TAMIL NADU SALES TAX APPELLATE TRIBUNAL
(ADDL. BENCH) COIMBATORE ..Respondents

Prayer: Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the 2nd Respondent pertaining to the order dated 06.01.2003 in C.T.No.117 of 1997 and quash the same.

For petitioner : Ms.G.Dhanamadhari
Government Advocate (Taxes)

For Respondents : No appearance for 1st Respondent

O R D E R

(made by Dr.VINEET KOTHARI, J.)

The Revenue has filed this writ petition aggrieved by the order of the Tamil Nadu Sales Tax Appellate Tribunal dated 6 January 2003, allowing the appeal of the Assessee and holding that the goods transfer in question supported by “F” Form is taxable under the provisions of the Central Sales Tax. The relevant findings of the learned Tamil Nadu Sales Tax Appellate Tribunal, is quoted below for ready reference:-

> 7. The Department has not pointed out any discrepancy in the Form F declarations to render them as the acceptable. The authorities below have not established that there is a movement of goods against a particular order or direction in order to

impose tax under Section 3(a) of CST Act, 1956. The grounds for rejection of the claim relying on certain clauses in the agreement read in isolation and relying on payment received in advance and sale made on the same day are not in accordance with law and are not based on concrete findings. The sale pattials are indeed a running account of details related to date wise inward receipt of goods by the agents in the other state wherein its quantity received on each occasion, Form XX No. under which the goods were received from the principal, the details of proforma invoice of the goods, the dates on which the sale were made by the agent, the bill number under which the goods were sold, the quantum and the rate at which the goods were sold, the sale amount and tax collected are contained. The assessee have established to have moved their goods accompanied by Form XX's which are legal documents of transportation as held in 96 STC 98. The mode of remittance by DD is also available in the sale pattials. Hence the findings of the Assessing Officer in (i) to (xiii) of the assessment order in pages 5 and 6 are therefore legally of no avail to the Department to create a tax liability on the dealer. When the Assessee has furnished declaration in form “F”, issued by the agent and documents of transportation, unless the authorities below were able to record a finding contrary to the information available in these documents which was in turn based upon their own verification and enquiries and unless the Department would conclusively point out to the moving of consignment from out of settled agreements for inter-state purchase of the Assessee's goods, an assessment cannot legally arise on the turnover. Such a contingency of outright sale not being recorded in the order of the authorities below, the assessment on the turnover impugned is not legally valid and is set aside.

7. In 70 STC 456, it is held as under :

" The condition precedention imposing sales tax under the CST Act is that the goods must have moved out of the State in pursuance of the contract entered into between the seller and the purchaser. It will be the duty of the Revenue to establish that the sales in question were duly inter-state sale”.

The Department in the case on hand has not established that the claim of the Assessee under Section 6-A is not acceptable either because the documents were incomplete or that the details recorded therein were untrue.”

2. The learned counsel for the Respondent Assessee supported the impugned order and submitted that they are findings of facts and does not require any interference by this Court in the present Writ Petition. He also relied upon the recent judgment of this Court in M/s.Advance Paints (P) Ltd. vs. CTO, Chennai, dated 9 December 2019, in which this Court has 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.

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.
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> 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.

3. In view of the aforesaid, we are satisfied that there is no error in the order of the learned Tribunal and the finding of fact recorded by the learned Tribunal does to require any interference in this writ petition filed by the Revenue. The writ petition is devoid of merits and the same is liable to be dismissed and is accordingly dismissed. no costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

THE SECRETARY
THE TAMIL NADU SALES TAX APPELLATE TRIBUNAL
(ADDL. BENCH) COIMBATORE

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.P. Rajkumaran, Advocate sr 8960.
+1 CC to The Spl. Government Pleader(T) sr 9596.

W.P. No.28067 OF 2004

SSV(CO)
SP(02/03/2020)