IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.5354 of 2004

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

Vs.

1.M/s.Tower Steel (India) Ltd.,
Madurai.

2.The Secretary,
Tamilnadu Sales tax Appellate
Tribunal (AB), Madurai ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the second respondent pertaining to the order dated 23.09.2002 made in M.T.A.No.542 of 2001 and quash the same as illegal.

For Petitioner : R. Swarnavel
Govt. Advocate (Taxes)

For Respondent : No appearance
(notice served)

O R D E R

[Order of the Court was made by DR.VINEET KOTHARI,J]

The Revenue has filed the present writ petition aggrieved by the findings of the Tamilnadu Sales Tax Appellate Tribunal holding that the remand made by the First Appellate Authority was not justified in the facts and circumstances of the case, as the transactions in question, were made as direct interstate sales under the guise of depot transfer by the assessee, which is taxable under the provisions of CST Act.

2. The relevant findings in the impugned order dated 23.9.2002 are quoted below for reference.

'e) The other point relied on by the learned Appellate Assistant Commissioner (CT) is the observation of the Hon'ble Supreme Court in the case of Tvl.Ashok Leyland and others reported in 105 STC 152. In this case, the learned Authorised Representative has proved that the appellants are having registered depot at Palakkad with branch at Punalur. He has produced the order passed by the Assistant commissioner (assessment) Special Circle, Department of Commercial Taxes, Palakkad, where in the impugned transactions had been assessed under CST Act 1956. This shows that they are having a depot at outside the State and the tax due under the local Act on the disputed turnover before us has been paid in Kerala. These factors have been agreed by the learned Appellate Assistant Commissioner (CT), but after verifying all the above circumstances and satisfied that the disputed transactions are depot sales has chosen to remand the issue again to the Assessing Officer. This view of the learned is not correct and against the decision reported in 34 STC 195, 67 STC 358 and 408. We have examined this issue in the light of the decision rendered by the Hon'ble High court in the case relied on by the Authorised Representative. In the case of Tvl.Panduranga Rice Mill, Vs. The State of Andhra Pradesh, reported in 34 STC 195, the Hon'ble High Court held that:

"When there was no material to show that the petitioner was clandestinely purchasing paddy and when there was a finding to that effect by the Tribunal any further enquiry to wish some information against the petitioner would only resultant and presumption of the petitioner. The Tribunal was therefore not justified in remanding the matter to the Assessing Officer'. In the case of Tvl.Jaganlal Shiv Charan Das Vs. Commissioner Sales Tax reported in 67 STC 408 the Hon'ble High Court held that" the order of remand is not justified when there was a positive finding recorded".

Following the principles laid down in the above decision we come to a conclusion that the remand order of the learned Appellate Assistant commissioner (CT) is not acceptable and accordingly it is set aside. The remand order of the learned Appellate Assistant Commissioner (CT) and decided that the impugned transactions is a depot sales not liable to levy tax under section 3-A of the CST Act, 1956.

f) The next point of dispute whether the penalty levied by the learned Assessing Officer and remanded by the learned Appellate Assistant Commissioner (CT) is correct?

In this case the Assessing Officer has levied penalty on the impugned transactions holding that the appellants have camouflaged the interstate sales as depot transfer. For the reasons stated above we have set aside the levy of tax made on the impugned turnover. Therefore, the penalty levied is also set aside."

3. Learned counsel appearing for the Revenue has submitted that the First Appellate Authority has remanded the case back to the Assistant Authority as he found that the assessee failed to produce relevant documents and adduce evidence to establish the claim of the depot transfer.

4. None appears for the assessee despite service.

5. We have perused the records. From the assessment order itself, we find that the assessee has produced all the relevant documents like D-Book and ledger, vouchers etc and it is upon due scrutiny of accounts, the assessment order was passed by the assessing Authority holding that the transfers are taxable interstate sales, however, the First Appellate Authority remanded the case back in the appeal filed by the assessee.

6. The assessee went up in second appeal before the Tribunal which held that the first Appellate Authority under the facts and circumstances of the case was not justified in remanding the case back and it gave its own findings that the transactions in question amounted to Depot transfers, which are not taxable under the provisions of Section 3-(a) of CST Act, 1956, as inter-state sales.

7. Having heard the learned counsel for the Revenue, we are satisfied that such findings of fact given by the Tribunal, even though, they are mixed findings of fact and law, do not give rise to any question of law, for our further consideration, more particularly, when the matter in issue/impugned order pertains to old assessment year 1996-97 and now 25 years have gone by . Therefore we do not find any justification to accept the submission made by the learned

counsel for the Revenue that the Appellate Tribunal should have upheld the remand order passed by the First Appellate Authority. We do not find, accordingly, any merits in the present writ petition filed by the Department. Therefore it is dismissed. No costs.

Sd/-
Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

msr

To

1. The Secretary,
   The Tamil Nadu SalesTax Appellate Tribunal(Additional Bench)
   Coimbatore.

2. TVL Tower Steel (India)ltd.,
   Madurai.

3. The Deputy Commissioner(CT),
   State of Tamilnadu,
   Madurai Division,Madurai.

+1cc to Special Government Pleader(Taxes),SR.NO.17943

W.P.No.5354 of 2004

GS(18/05/2020)