IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM :

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

W.P.No.2739 of 2005

The State of Tamil Nadu
Represented by
The Deputy Commissioner (CT),
Coimbatore Division,
Coimbatore. ... Petitioner

-vs-

1.Tvl.The Kumaran Mills Limited,
1024, Avinashi Road,
Coimbatore.

2. The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Coimbatore. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records on the files of the Second Respondent pertaining to the order dated 27.03.2003 made in C.T.A.No.183 of 1998 and quash the same as illegal.

For Petitioner : Mr.ANR.Jayaprathap Government Advocate (For Taxes)

For Respondents : Ms.Hema Muralikrishnan

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI,J.)

The State has filed this Writ Petition, aggrieved by the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) dated 27.03.2003, whereby the learned Tribunal allowed the Appeal of the Assessee, holding that the transaction in question amounted to branch transfer made by the Assessee which was duly supported by Form-F which was duly verified during the Assessment proceedings and therefore, there was no question of Revision/Re-assessment for want of compliance with the terms under Rule 4 (3-A) of the Central Sales Tax Rules. The relevant findings of the Tribunal are quoted below for ready reference:

> "28. The Department has not pointed out any discrepancy in the Form F declarations to render them as unacceptable. The authorities below have not established that there is a movement of goods against a particular order of direction in order to impose tax under Section 3 (a) of the 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 the item, 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 and contained.
>
> 29. The assessee's 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 is 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 consignments from out of settled agreements for inter-state purchase of the assessee's goods an assessment cannot legally arise on the turnover.

30. Another important fact as has been noticed, on perusal of the assessment records i.e. CST assessment file No.299609/89-90 pages 529 to 570 of the M/s.Kumaran Mills Limited, Avinsahi Road, Coimbatore it is found that the entire revision of assessment was carried out on the basis of the D3 proposals evolved in D3 No.53-57/94-95 dt:27.7.94. Basing on the inspection held in the place of business of the appellant on 7.1.93 and as against the said proposal, the very same Assessing Authority has suggested deviation proposal on 28.6.96, which was rejected by the Enforcement Wing authorities on the following contentions:

a) Statement recorded at the time of inspection on 7.1.93 is in incriminating documents

b)The circular instructions of the Special Commissioner & Commissioner of Commercial Taxes, in Acts Cell. III/124278/94 dt:23.12.94 could be applicable only to the inspection conducted after the under taking given to the High Court.

31. However, the Assessing Authority was of the opinion that the proposal could be implemented either on factual evidences or on legal sanction as given below:

(i) Legal Position

"The legal position with regard to the proof required under the Statute to allow a consignment claim is submission of Form F declarations. The transactions which are not covered by form "F" were already disallowed by the then Assistant Commissioner [CT], Central Assessment Circle-I, himself while ordering the original assessment. The Assessing Officer could be best, make an enquiry with regard to the correctness or otherwise of the details provided in the Form "F". In as much as the Assessing Officer had satisfied with the correctness of the Form F further action in this regard is not feasible under law"

(ii) On facts

"In the statement recorded on 7.1.93 during the inspection by the Enforcement Wing Officers nowhere any attempt was made to implicate the transactions that had been made in the earlier years. In the absence of specific observations with regard to the transactions in the earlier years, any attempt to revise the assessments on the basis of the insufficient evidence could be futile exercise only. Further in the Hon'ble High Court of Madras the principal Commissioner and Commissioner of Commercial Taxes, Madras had given an assurance that the assessments relating to the years, prior to 1.4.92 will not be reopened in the light of the new thanking."

32.The learned Authorised Representative for the appellants referred to the decision of the Allahabad High Court in the case of Harbans Lal Malhotra V Assistant Commissioner, Sales Tax, Ghaziabad reported in 107 STC 98, wherein it has been held that:

"merely a change of opinion and had been issued for the purpose of reassessing the petitioner on the material already scrutinized and considered while passing the original assessment order""

33. In the case of Dhan Avam Prasodham Audyogik V. Commissioner, Sales Tax, U.P., Lucknow reported in 75 STC 386 wherein the Allahabad High Court has held that:

"If the Sales Tax Officer had, at the time of making the original assessment, applied his mind to the taxability of purchases, it would be a case of change of opinion, and in the absence therefore, it would be a case of non-application of mind."

34. It is pertinent to point out at this juncture that in the instructions issued by the Principal Commissioner and Commissioner of Commercial Taxes, Circular in Acts Cell III/124278/94 dt:23.12.94 has ordered that in respect of the assessments upto 91-92 which were re-opened merely for the reasons of non-maintenance of accounts as per Rule 4 (3-A), further action need not be pursued but be dropped. If such assessment upto 1991-92 have been re-opened consequent on inspection on search/seizure of records proceedings can be pursued further without much insistence of the provision of Rule 4 (3-A).

35. It is important to point out that during the inspection held by the Enforcement Wing on 7.1.93, in the place of business of the appellants, there was neither any seizure of records nor any discrepancies pointed out and hence there was no case for further proceedings in the absence of any incriminating records. Moreover, the completed assessments have been revised as per rule 4(3-A), which is a clear violation of the Principal Commissioner and Commissioner of Commercial Taxes instructions. Further it is also the fact that the appellants are in possession of entire set of records and the same were also duly produced before the first appellate authority. The first appellate authority on having made a positive findings with regard to the nature of transaction held and the type of records maintained and produced for verification, has remitted the case back to the Assessing Authority, which the appellants would feel as against the principal of natural justice.

36. Another important aspect of the assessement relating to the years 1989-90 to 1991-92, the entire revision orders were passed for the purpose of implementing the

D3 proposals formulated by the Enforcement Wing, of which, the Assessing Authority was of the view that the said proposals could not be implemented on factual evidences or an legal sanction and thereby deviation proposals were suggested but the same were subsequently rejected by the authorities concerned.

37.From the foregoing discussions and on the basis of the documentary evidences, it would clearly establish that the sale was effected through the agents in other state and could not be held as inter-state sales, as there was no conceivable link in the movement of goods from the principal to the agent and therefore the consignment sales effected outside the state cannot be treated as interstate sales under Section 3(a) of the CST Act. The interstate sale has to be proved not by way of general observations and surmises but with reference to specific movement as to whether they were sent in pursuance of a specific contract of sale or not. Therefore, on facts and on law, we have no hesitation in holding that the revision of assessments have been wrongly made in respect of the sale effected through the agents outside the State. Therefore, the orders passed by the first appellate authority is set aside.

In fine, the appeals stand ALLOWED."

3. Both the learned counsels submitted that this legal position has been upheld by the Hon'ble Supreme Court in the case of Ashok Leyland Limited Vs. State of Tamil Nadu and Another reported in (2004) 3 SCC 1 wherein the Hon'ble Supreme Court has held hereunder:

"99. An order passed by the Statutory authority who has jurisdiction therefore, the same would amount to a part of substantive and not procedural law. In addition to this, there is no provision for appeal. Thus, it is only in limited cases of fraud, misrepresentation etc. that reassessment can be directed and not if there had been a mere error of judgment.

100. If it is not an inter-State sale provided through a legal fiction, then it

amounts to transfer of stock and this is a finding which has been arrived at by a statutory authority where for there does not exist any provision for appeal. Therefore, it cannot be reopened on the premise that there was a mere error of judgment or change in opinion.

101. Once it is held that such determination of an issue having regard to legal fiction created in terms of Sub-section (2) of Section 6A is conclusive, it must a fortiorari follow that the same is binding.

102. The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the assessing authority. "

....

"110. The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State. The said decision therefore, does not run counter to our reading of the said provision. Furthermore, the question which has been, raised before us had not been raised therein.

111. We, therefore, are of the opinion that the observations made by this Court in Ashok leyland (supra) to the effect that an order passed under Sub-Section (2) of Section 6-A can be subject-matter of reopening of a proceeding under Section 16 of the State Act were not correct.

112. However, we may hasten to add that the same would not mean that even wherein such an order has been obtained by commission of fraud, collusion, misrepresentation or suppression of material

facts or giving or furnishing false particulars, the order being vitiated in law would not (sic) come within the purview of the aforementioned principle."

4. Having heard the learned counsels for the parties and on perusal of the aforesaid Judgement of the Hon'ble Supreme Court , we are satisfied that the Tribunal was right in setting aside the order passed by the First Appellate Authority holding that the compliance with the requirement under Rule 4(3-A) of the Rules is mandatory, in view of the Circular issued by the Principal Commissioner and Commissioner of Commercial Taxes, in Acts Cell III/124278/94 dated 23.12.1994 reflected in paragraph 34 of its order of the learned Tribunal quoted above.

We find no merits in the Writ Petition and accordingly this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

1.Tvl.The Kumaran Mills Limited,
1024, Avinashi Road,
Coimbatore.

2. The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Coimbatore.

+1cc to Ms.Pushya Sitaraman, Advocate Sr.12150
+1cc to the Special Government Pleader Sr.12889

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srg 16/03/2020