

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.02.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.22802 to 22804 of 2013
and
M.P. Nos.1 , 1 and 1 of 2013

Vega Cotton represented by its proprietor
V.Vivekanandan,
8, Sivan Koil Puthu Theru,
Keezhakasa Kudy, Kottucherry,
Karaikal - 609609.Petitioner in all petitions

Versus

- 1.The Check Post Officer,
Deputy Commercial Tax Officer,
Check Point-II, Hosur,
Krishnagiri District.
- 2.The Deputy Commercial Tax Officer (CT),
Karaikal Assessment Circle,
Karaikal.Respondents in all petitions

Common Prayer: Writ Petitions filed under Article 226 of the
Constitution of India praying to issue Writ of Certiorari, to
call for the records of the 1st respondent in GDR No.8016/2013-
14, 8017/2013-14(Invoice No.424 dated 12.08.2013) and 8017/2013-
14(Invoice No.423 dated 12.08.2013) dated 15.08.2013 and quash
the same.

For Petitioners : Mr.S.Raveekumar

For Respondents : Mr. R.Swarnavel, G.A.

COMMON ORDER

By this common order all the three writ petitions are being
disposed. The petitioner has challenged three impugned
proceedings dated 15.8.2003 bearing reference GDR No. 8016/2013-
14; GDR No. 8017/2013-14; and GDR No. 8017/2013-14 wherein not
only tax at 5% has been proposed and demanded but also
compounding fees being twice the amount of the duty proposed has

been imposed on the petitioner. The petitioner has been given an option to pay the aforesaid amount as compounding amount in lieu of prosecution.

2.The petitioner claims to have received purchase orders from M/s. Sri Vishnu Mills, Coimbatore , M/s. Varun Mills, Udumalpet and PSM Textiles, Coimbatore

3.It is the case of the petitioner that the petitioner purchased cotton from a supplier namely Balaji Cotton Trading Company, Maharashtra for being supplied to the above customers. The tax invoices was raised by the supplier directly in the name of the above three persons to whom the supply was to be affected directly. The tax invoices specifically stated that the consignee were the three above named persons and the sale was on account of M/s. Vega Cotton, Karikal, the petitioner..

4.While in transit, the three consignments of goods were detained by the 1st respondent near Kuppam, Krishnagiri District vide two different detention notices as one of the lorry had two consignments for being delivered in Coimbatore..

5.Pursuant to the aforesaid detention of the three consignment of goods, the petitioner sent a representation dated 14.8.2013 and requested for immediate release of the detained lorry and the consignment of goods on the ground that the transaction was covered by E1 sales invoice and therefore the transaction outside the purview of the respondents under Tamil Nadu Value Added Act, 2006. The detention notice however reportedly stated that the transactions in the invoice were doubtful and would require further investigation.

6.Thereafter, the impugned orders titled as "Draft Compounding Notice" were issued to the petitioner which not only demanding tax but also compounding/composition fee for the three consignments for the petitioner.

7.The petitioner is aggrieved by the same and submits that the 1st respondent is neither authorised to detain the goods/vehicle nor call upon the petitioner to pay the compounding/composition fee/amount under section 72 of the Tamil Nadu Value Added Tax Act, 2006.

8.It is submitted that the respondent has no power to include gross profit in the tax. It is further submitted that

only 2nd respondent is competent to levy and collect tax, if at all, tax was payable by the petitioner and was not paid by the petitioner.

9.It is specifically submitted that the 1st respondent being an Enforcement Wing Officer, has no power to take any action other than those mentioned in section 67 of the Tamil Nadu Value Added Tax Act, 2006.

10.It is further submitted that rule 15 of the Tamil Nadu Value Added Tax Rules, 2007 specifically excludes authority of the 1st respondent to deal with the provisions of section 71 and 72 of the said Act.

11.Per contra, the 1st respondent has filed 2 separate common counters dated April, 2014 and 2nd December, 2019. In both the counters it has been stated that the two lorries carrying three consignments were detained on 14.8.2013 and it was found that the consignment had originated from a trader from Maharashtra and on verification it was found that the 3 local purchases were willing to pay tax at 5% on the transaction.

12.It is only thereafter, the impugned draft compounding notices dated 15.8.2013 were issued to the petitioner. It is submitted that petitioner has an alternate remedy under section 54 of the Tamil Nadu Value Added Tax Act, 2006. It is further submitted that as per rule 15 (1) Of the Tamil Nadu Value Added Rules, 2007, the Deputy Commercial Tax Officer/Check Post Offices are competent to conclude whether the petitioner had evaded payment of tax in their earlier transactions also and therefore in lieu of prosecution, the petitioner was given an opportunity to compound the offence on payment of the amount prescribed under section 72 (1) of the Tamil Nadu Value Added Tax Act, 2006 by way of the impugned notices.

13.It is further submitted that as per section 71 of the Tamil Nadu Value Added Tax Act, 2006, any person who violates the provisions of the Act or commits an offence is liable to be prosecuted after obtaining written consent of the Joint Commissioner under section 73 of the Tamil Nadu Value Added Tax Act, 2006 and therefore it is for the petitioner to opt for compounding of the offences to avoid prosecution. As far as taxes concerned , payment if any would be subject to further proceedings. It is therefore submitted that it is for the petitioner to opt for the compounding of the offence by paying the composition fee or in the alternate face the prosecution proceedings as and when same is sanctioned by the competent authority.

14.I have considered the rival submissions made on behalf of the petitioner and the respondents by their respective counsels. The question of petitioner evading tax in respect of a transaction which has emanated from outside the State cannot be taxed on its entry within into the State of Tamil Nadu as in the present case.

15.If at all, the Check Post authorities at Maharashtra border had found that the goods were not charged to tax on such inter-state sale, they would have detained the goods and the lorry there. In fact, they would have collected appropriate central sales tax before the goods left the Maharashtra border under the provisions of the Central Sales Tax Act, 1956. As such, no taxable event had taken place within the State of Tamil Nadu. The 1st respondent thus had no authority to tax the above transaction. For the same reason, there was also no scope for invoking Section 72 of the TNVAT Act, 2006 under the circumstances.

16.At the same time, the argument of the learned counsel for the petitioner that there was an E1 Transaction appears to be misplaced in as much E1 Transaction takes place only after the goods have been put to the possession of the transporter for being supplied to the buyer outside the State and the said buyer effects a subsequent sale while the goods are in the possession of the transporter or in transit.

17.Central Sales Tax Act 1956 envisages a single point of taxation i.e. tax at the first point of sale. Subsequent sales during the movement of the goods from one state to another is exempted under section 6(2) of Central Sales Tax Act 1956.

18.As per the prevailing trade practices, when the goods are put in possession of the carrier for transportation, the carrier issues a receipt to the seller [i.e. "lorry receipt" in case of road transport; a "railway receipt" in case of transport by rail, an "airway bill" in case of transport by air and a "courier receipt" in the case of transportation through the courier services.] This receipt issued by carrier is the document of title to goods.

19.As per Section 2(4) of the Sales of Goods Act, 1930 transfer of goods can be by an "endorsement or delivery of documents of title". Thus, receipt is either transferred by a mere delivery or with an endorsement on the document. Even

though goods can be transferred by mere delivery of documents without endorsement on such document, as a prudent practice, the transfer the documents generally accompanies a written endorsement on the documents. The seller sends such receipt to the buyer. The buyer takes delivery of goods from the carrier, on production of the receipt to the carrier.

20. As per Section 3(b) of the Central Sales Tax Act 1956, a sale or purchase can be effected by transfer of documents of title to the goods during their movement from one state to another shall be deemed to take place in the course of interstate trade or commerce. As per Explanation 1 to section 3 of the Central Sales Tax Act 1956 the movement of goods commences with the delivery of goods to carrier or other bailee or transmission and terminates when delivery is taken from the carrier.

21. As per Explanation 2 to section 3 of the Central Sales Tax Act 1956, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state where the movement of goods commences and terminates in the same state.

22. Section 6(2) of CST provides exempts from payment CST on subsequent sales, which has been effected by transfer of documents of title of goods during their movement in the course of interstate sales.

23. In *A & G Projects and Technologies Ltd v. State of Karnataka* [2009] 2 SCC 326, the Supreme court held that once the first transaction in the inter state sale has suffered CST, subsequent sales effected by transfer of documents during transit is exempt provided conditions prescribed u/s 6(2) are satisfied. The Supreme court observed as such:

15. Section 6(1) of the CST Act, 1956 imposes a liability to pay tax on sale of goods other than electrical energy effected by a dealer in the course of inter-State trade or commerce during a year. Sub-section (1) of Section 6 appears to provide for multi-point tax but this is subject to the other provisions of the Act. This qualification which is reflected in the other provisions of the Act restricts the levy to a single point subject to certain conditions, restrictions and circumstances. Sub-section (2) of Section 6 exempts from levy a subsequent inter-State sale to a registered dealer of goods [described in Section 8(3)] and also to the

Government, provided conditions of the proviso to sub-section (2) are fulfilled. However, a subsequent sale not falling within Section 6(2) will, however, attract tax because of Section 9(1), notwithstanding the fact that the first sale has been subjected to tax under Section 6(1) of the CST Act, 1956. Thus, Section 6 makes every dealer liable to pay tax under the 1956 Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade.

16. Analysing Section 6(2), it is clear that sub-section (2) has been introduced in Section 6 in order to avoid cascading effect of multiple taxation. A subsequent sale falling under sub-section (2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as the first sale has been subjected to tax under sub-section (1) of Section 6 of the CST Act, 1956. Thus, in order to attract Section 6(2), it is essential that the sale concerned must be a subsequent inter-State sale effected by transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-State sale. It is only then that Section 6(2) may be attracted in order to make such subsequent sale exempt from levy of sales tax. However, the proviso to sub-section (2) of Section 6 prescribes further conditions and it is only on fulfilment of those conditions that the subsequent sale stands exempted. If those conditions are not satisfied, then notwithstanding the fact that the sale is a subsequent sale, the exemption would not be admissible to such subsequent sales. This is the scheme of Section 6 of the CST Act, 1956.

24. Thus, the argument of the learned counsel for the petitioner that there was an E-1 transaction cannot be countenanced in the facts of the present case.

25. Only such transaction would be exempted under section 6 (2) of the Central Sales Tax Act, 1956. This is on the underlying principle under the Central Sales Tax Act, 1956 that subsequent sale of goods in the course of interstate trade and commerce are not taxed twice.

26.In the light of the above discussion, I am inclined to allow the above writ petitions. Accordingly, all the writ petitions are allowed and the impugned orders are quashed. Consequently, connected miscellaneous petition are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Check Post Officer,
Deputy Commercial Tax Officer,
Check Point-II, Hosur,
Krishnagiri District.
- 2.The Deputy Commercial Tax Officer (CT),
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Karaikal.

W.P.Nos.22802 to 22804 of 2013

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