IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.9.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case No.52 of 2016

M/s.National Engineering Industries,
rep. by its Authorised Signatory,
7-1, 2nd Floor, Wellington Estate,
No.53, Ethiraj Salai, Egmore,
Chennai 600 008. Appellant

Vs.

The State of Tamil Nadu, rep. by
the Joint Commissioner (CT),
Central Division, Chennai-6. Respondent

Tax Case filed under Section 38(1) of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, dated 31.3.2016 made in TA No.15 of 2012, and against the order of the appellate Deputy Commissioner (CT) III FAC kuralagam Annexe, Chennai-108, made in Appeal No.21/10 dated 01.03.2012, and against the order of the commercial Tax Officer, Egmore -I, Assessment Circle, made in TNGST No.0440516/2004-2005, dated 25.01.2010.

For Appellant : Mrs.C.Rekha Kumari
For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader(taxes)

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Assessee has filed this Tax Case under Section 38(1) of the TNGST Act, 1959 raising the following substantial questions of law arising from the order passed by the Tamil Nadu Sales Tax Appellate Tribunal on 31.3.2016 for the Assessment Year 2004-05, holding that the inter-State Sales made by the Assessee was taxable as local Sales under the provisions of the TNGST Act:-

"(i) Whether the inter-State sales to other States by the petitioner, in pursuance to agreement of sales, is assessable under CST Act, 1956 or TNGST

Act, 1959?

(ii) Whether the inter-State Sales effected by the petitioner in pursuance to agreement of sale, fall under section 3(a) or 3(b) of the CST Act?"

2. The reasons assigned by the learned Tribunal are quoted below for ready reference:-

"As per the Hon'ble Supreme Court Judgment reported in 19 VST 239 to claim sales under E1 sales, the first leg of transaction should necessarily be an interstate sales transactions. The transactions between the appellant dealers and their buyer situated in this State is local sales with local C form it is neither an E1 sales nor an interstates sales. In view of the Hon'ble Supreme Court in the case of A&C Projects And Technologies Ltd. Vs. State of Karnataka reported in 019 VST 0239 has held that to qualify of E1 transaction exemption the first transaction should be an interstate transactions. i.e there shall be movement of goods from one state to another in respect of the first transactions. In the instant case both the dealers reside in the State of Tamil Nadu and transactions is between the two Tamil Nadu dealers, such transactions effected before crossing the State boundary. Hence the Central Sales Tax Act would apply only when there is two States involved or continue to involve. Here the first transaction there was no two States involved. Sales invoices are made to above Tamil Nadu dealers also as interstate sales by collecting CST @ 4% for the above transactions the dealer received C forms issued by the Tamil Nadu Dealers. The appellant dealers wrongly claimed local sales as interstate sales and availed concessional rate of tax at 4% against C form. For the transactions the dealers have used the C forms issued by the dealers situated within Tamil Nadu. As per section 8(4) of the Central Sales Tax Act 1956 Act 1956, C forms can be issued for any sale in course of inter-state trade or commerce whereas, sales between the parties situated within the same State without any existence of interstate movement preceding the sale is only a local sales and C forms cannot be issued for such local sales.

Thus it is evident from the above-that as long as the transactions were effected within this State without actual movement of goods to another State at the start of first transaction it is liable to tax under the local TNGST Act only and the subsequent interstate sales made by you is an interstate sales liable to tax at 4% with C form and at 10% without C forms. It is immaterial on the final destination of the goods moved. In simple terms the first leg of transaction should be interstate transaction to qualify for assessment under Central Sales Tax 1956. Hence the claim interstate sales between two buyers residing within the State by issuing C forms pertaining to the same State is incorrect. These transactions are nothing but local sales assessable under the TNGST Act only.

In view of the above, we do not find any infirmity in the order of the first Appellate Authority viz, the Appellate Deputy Commissioner (CT)-III and upheld the impugned appeal order dated 01.03.2012 in AP No.21/10.

The TA filed by the appellant dealer herein is therefore dismissed."

3. The learned counsel for the Appellant/Assessee Mrs.C.Rekha Kumari submitted that the Tribunal as well as the Assessing Authority had fallen into error in misconstruing that the sale was between the parties viz, National Engineering Limited and M/s.Baynee Trading Company, which were located in Chennai and therefore, the inter-State movement of goods from the Assessee to the purchaser in Pondicherry, Union Territory viz., M/s.Gayathri Trading Company was not inter-State Sales. She submitted that the Purchase Order of goods in question was placed by Gayathri Trading Company, Pondicherry on M/s.Baynee Trading Company, Chennai, who, in turn, placed the Purchase Order on the Assessee, M/s.National Engineering Industries to supply the goods in question directly to M/s.Gayathri Trading Company, Pondicherry and she submitted that Gayathri Trading Corporation had issued 'C' Forms in respect of the inter-State Sales to the Seller M/s.Baynee Trading Company and to support the inter-State movement of goods, the Assessee M/s.National Engineering Industries issued Form E1 in respect of these transactions. Therefore, the conditions in respect of E1 Sales were duly satisfied and the supply of goods had taken place in respect of the pre-existing Contract between M/s.Baynee Trading Company and M/s.Gayathri Trading Company and the goods in question were sold by M/s.National Engineering Industries to M/s.Baynee Trading Company and the Consignee was duly shown in both Invoices and Purchase Orders as of M/s.Gayathri Trading Corporation, Pondicherry. Therefore, necessary elements for inter-State Sale were satisfied and the goods were supplied against 'C' Forms and therefore, the local tax could not have been levied on the Assessee. She submitted that the reasons given by the learned Tribunal in its impugned order that merely because two Dealers were situated within the State of Tamil Nadu

and therefore, inter-State sales could not have taken place is erroneous and therefore, the present Appeal deserves to be allowed. She relied upon the decision of a Division Bench in the case of Vinay Cotton Waste Company v. The State of Tamil Nadu (1986) 63 STC` 391 (Mad) in which, a co-ordinate Bench of this court held as under:-

> "We are not inclined to agree with the learned counsel for the assessee that an inter-State sale can take place only between two dealers in two different States. It is possible that even as between dealers in the same State, an inter-State sale can take place. Even if the seller and the buyer are in the same State, the buyer can call upon the seller to deliver the goods outside the State. In such a case, it will be an inter-State sale as it occasions the movement of the goods. In this case, though the assessee and his buyer are in the State of Tamil Nadu, the sale contract between them dated 27th September, 1979, in fact contemplates the movement of the goods from Coimbatore to Pondicherry. It could therefore be taken that it is the contract dated 27th September, 1979 that has occasioned the movement of the goods from Coimbatore to Pondicherry. Thus will be the position even if there is no subsequent sale by the assessee's buyer to the Pondicherry dealer. This is the view taken by the Tribunal in this case."

4. Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the Respondent/Revenue fairly submitted that the judgment of the Division Bench of this court would cover the facts of the present case and the learned Tribunal appears to have fallen into error in misconstruing the inter-State sale made by the Assessee as local sale.

5. The Seller in the present case is only M/s.Baynee Trading Company, who made the inter-State Sales and as per the pre-existing contract only the goods were transited by the Assessee to M/s.Gayathri Trading Company of Pondicherry and freight was also borne by the Assessee. In view of this admitted and clear facts, we are of the clear opinion there is nothing to establish that the sales in question are intra-State Sales leviable with local sales tax under TNGST Act and when the same transaction having already been taxed under the previous CST Act in the hands of M/s.Baynee Trading Company at 4% against 'C' Forms issued by the purchaser M/s.Gayathri Trading Corporation of Pondicherry cannot be taxed again as local sales in the hands of the Appellant M/s.National Engineering Industries.

6. We cannot appreciate the reason given by the learned

Tribunal in its impugned order that merely because the two parties viz., the Assessee M/s.National Engineering and M/s.Baynee Industries were located within the State of Tamil Nadu at Chennai, no inter-State sales could have taken place. This view taken by the learned Tribunal is not only contrary to the decision of the Division Bench of this court cited supra but also against the well established principles of inter-State Sales as envisaged under Section 3(a) of the CST Act, 1956. Therefore, the present Tax Case deserves to be allowed in favour of the Assessee and the question of law deserves to be answered in favour of the Assessee and against the Revenue.

Accordingly, the Tax Case is allowed. The order of the learned Tribunal in this respect is, therefore, set aside. No order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.
To
1.The Joint Commissioner (CT)
The State of Tamil Nadu,
Central Division, Chennai-6.

2.The Registrar
Tamil Nadu Sales Tax
Appellate Tribunal (Additional Bench), Chennai.

3.M/s.National Engineering Industries,
rep. by its Authorised Signatory,
7-1, 2nd Floor, Wellington Estate,
No.53, Ethiraj Salai, Egmore, Chennai 600 008.

4.The Appellate Deputy Commissioner(CT)III (FAC)
Kuralagam Annexe, First Floor,
Chennai-600 108.

5.The Commercial Tax Officer,
Egmore -I Assessment Cirlce
Spur Tank Road, Chennai-600 031

+1 cc to M/s.C.Rekha Kumar, Advocate Sr.No. 30994

Tax Case No.52 of 2016

NRJK(CO)
RMP(20/11/2020)