IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.37713 to 37715, 37719 & 37731 of 2002

The State of Tamil Nadu,
The Deputy Commissioner (CT),
Coimbatore Division,
Coimbatore. ...Petitioner in all cases

Vs

1. Tvl.Bharath Heavy Electricals Limited,
   Ramachandrapuram,
   Hyderabed - 500 032.

2. The Secretary,
   The Tamilnadu Sales Tax Appellate
   Tribunal (Additional Branch),
   Coimbatore - 18. ...Respondents in all cases

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to call for the records relating to the common order dated 28.11.2000 of the second respondent made in C.T.A.Nos.69 to 73 of 1996 and quash the same by issue of Writ of Certiorari.

For Petitioner: Mr.Md.Shaffiq, SGP assisted by
(in all cases) Ms.G.Dhanamadhri, GA

For Respondents: Mr.M.P.Senthil Kumar for R1
(in all cases) R2 - Tribunal

COMMON ORDER

(Made by T.S.Sivagnanam,J)

These writ petition has been filed by the Revenue challenging the common order dated 28.11.2000 passed by the

Tamil Nadu Sales Tax Appellate Tribunal, Coimbatore ('the Tribunal' for brevity) in C.T.A.Nos.69 to 73 of 1996. By the said order, the Tribunal allowed the appeals filed by the first respondent-assessee and set aside the assessments made under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as 'CST Act') done by the Commercial Tax Officer, Podanur assessment circle.

2. The facts, which are necessary for the disposal of the writ petitions, are as hereunder:

The first respondent dealer-assessee is a registered dealer under the provisions of the CST Act in Hyderabad. The Commercial Tax Officer, Podanur assessment circle, while examining the records of M/s.Universal Heat Exchanges Limited, Coimbatore, (hereinafter referred to as 'UHEL') found that they had executed certain orders for fabrication of machinery for the first respondent-assessee with the raw materials supplied by the first respondent, according to the drawings and specifications. M/s.UHEL despatched the finished products to various places in other states as per the orders of the first respondent-assessee. The Assessing Officer was of the view that since the furnished goods manufactured by M/s.UHEL moved to other states from the State of Tamil Nadu, the State of Tamil Nadu is the appropriate State to assess the transactions under Section 9(1) of the CST Act. The Assessing Officer noted that the first respondent-assessee is not a registered dealer under the CST Act. Therefore, he treated them as a non-resident dealer in Tamil Nadu and the sales effected by them from Tamil Nadu was treated as inter-state sales on behalf of the first respondent-assessee, who had supplied the raw materials to M/s.UHEL for fabrication of machinery under required specifications. Accordingly, assessments were made for the assessment years 1985-86 to 1989-90 under the CST Act. Aggrieved by the same, the first respondent-assessee filed appeals before the Appellate Assistant Commissioner, Coimbatore and by common order dated 12.10.1995, the appeals were dismissed.

3. Aggrieved by the said dismissal, the first respondent-assessee preferred appeals before the Tribunal, contending that the Assessing Officer as well as the first appellate authority has not appreciated the nature of transaction and proceeded to treat as inter-state sales, notwithstanding the fact that there is no privity of contract between M/s.UEHL and the ultimate parties with whom the assessee had entered into composite engineering contract. It is also contended that the contract between the assessee and the sub-contractor M/s.UEHL, pursuance to which fabrication was done and the fabricated items were despatched according to the instructions of the assessee, do not result in a completed sale at Coimbatore. It is further contended that the assessee only secures components for

completing the contract entered into for the purpose of pure labour work. Therefore, the stand taken by the Assessing Officer and the first appellate authority that the assessee had effected sales of such fabricated components from the State of Tamil Nadu is erroneous. Further, it is contended that the assessee raised running bills on the customer based on the contract and this does not in any manner situs affect the sales or turnover assessable, if any, and the object of the running bill is only to realise the consideration under the contract in a phased manner. The assessee also contended that the items mentioned are only components fabricated at Coimbatore forming part of the entire system, which is covered by the contract and the components are despatched from other States on line similar to that adopted with the job worker at Coimbatore. Therefore, it was contended that there is no inter-state sale by the assessee from Coimbatore, as it only constitutes collection of various components and spare parts to fulfill the contract, which is composite. Further, without prejudice to the said contention, the assesee stated that the Assessing Officer, Podanur Assessment Circle has no jurisdiction. The assessee also placed before the Tribunal the sub-contract, which was executed in favour of the UEHL, dated 24.06.1983 to demand consideration as to what is the nature of the work entrusted. The Revenue reiterated this fact taken by the first appellate authority and sought to sustain the said order.

4. The Tribunal, after elaborately considering the factual aspects or more particularly terms and condition of the sub-contract and the sample which was produced before the Tribunal, had held that the first respondent-assessee was having a composite contract for manufacture of finished products to be supplied in various States and in compliance of such transaction, they entered into a sub-contract for supply of certain goods with M/s.UEHL at Coimbatore and after finishing the job work on the raw materials supplied, such components were taken to the respective site of the customers of the assessee. Further, the Tribunal found that the title to the goods was never transferred from the State of Tamil Nadu to the ultimate buyer in other States and therefore, it is not a case that the sale was completed as per the condition stipulated in Section 3 (a) of the CST Act. The Tribunal referred to the provisions of the Act, the factors which are to be taken into consideration to constitute sale in the course of inter-state trade of commerce and took note of the various decisions, more particularly, the decision in the respondent-assessee case in Bharat Heavy Electrical Limited Vs. Union of India and others [1996 (4) SCC 230] and held that that goods have not moved from the State of Tamil Nadu to the ultimate buyer in the other State and as a result, no sale or incidence of sales has taken place in the State of Tamil Nadu. The alternate submission made by the

assessee that the Assessing Officer has no jurisdiction was also considered by the Tribunal and it was held that the Commercial Tax Officer, Podanur Assessment Circle does not have jurisdiction to assess the first respondent-assessee. Accordingly, the Tribunal allowed the appeals by order dated 28.11.2000. Aggrieved over the same, the Revenue is before us by way of these writ petitions.

5. We have elaborately heard Mr.Mohammed Shaffiq, learned Special Government Pleader assisted by Ms.G.Dhanamadhri, learned Government Advocate, appearing for the petitioner and Mr.M.P.Senthil Kumar, learned counsel appearing for the first respondent-assessee.

6. Section 3 of the CST Act falls under Chapter 2, which is a chapter dealing with formulation of principles for determining when sale or purchase of goods takes place in the course of inter-state trade or commerce or outside a State or in the course of import or export. Section 3 explains as to when a sale or purchase of goods is said to take place in the course of inter-state trade or commerce. To qualify as a sale to have been taken place in the course of inter-state trade or commerce, two conditions have been stipulated, which are highly exclusive on account of the use of the expression "or". The conditions are as follows:

> A Sale or purchase of goods shall be deemed to take place in the course of inter-state trade of commerce if the sale or purchase
> (a) occasions the movement of goods from one State to another or
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Therefore, if the sale or purchase occasions the movement of goods from one State or another, it would qualify for a sale in the course of inter-state trade or commerce or if a sale or purchase is effected by a transfer of documents of title to the goods during the movement from one State to another, it would qualify as a sale in the course of inter-state trade or commerce.

7. To appreciate the transaction done by the first respondent-assessee, we have to examine as to whether it would fall under Clause (a) or (b) of Section 3 of the CST Act. This factual exercise has been done by the Tribunal and in our considered opinion, rightly, the Tribunal took note of the sub-contract entered into between the first respondent-assessee and M/s.UEHL, dated 24.06.1983. The terms and conditions of the said sub-contract have been extracted in paragraph 14 of the impugned order passed by the Tribunal. On a perusal of the same, it is abundantly clear that what has been entrusted to M/s.UEHL is

only a job work. The contract entered into by the first respondent-assessee with a party in Orissa or any other State is the main contract, for which, the assessee has entered into a sub-contract by supplying raw materials, so as to enable the sub-contractor to manufacture as per the design supplied by the first respondent-assessee. The first respondent-assessee has further instructed the sub-contractor, upon permission of the job worker to despatch the goods directly to others where the contract is being performed and is being fulfilled by the first respondent.

8. The question, as to whether movement of goods from the State of Tamil Nadu, at the instance of the sub-contractor, to another State, could be construed as a sale in the course of inter-state trade or commerce. Indisputably, the title to the goods, though in the form of a raw material, continued to remain with the first respondent-assessee. What was entrusted with the UEHL was only a job work and the specifications have been clearly set out in the sub-contract. Therefore, the Tribunal rightly took into consideration the nature of the transaction and also took note of the important fact that the contract is a composite contract executed by the first respondent outside the State of Andhra Pradesh, for which, the first respondent showed various materials pertaining to various job workers for various purpose and the contracts were executed only by the first respondent at the designated place, which is situated outside the State of Andhra Pradesh.

9. Therefore, on facts, we find that the Tribunal has not committed any error for us to substitute our opinion. Furthermore, the manner in which the Tribunal has appreciated the nature of contract and as to how the title to the goods was never transferred to M/s.UEHL are all findings on facts, which are perverse or unsustainable for us to interfere under Article 226 of The Constitution of India. In fact, the decision in the assessee's own case in Bharat Heavy Electrical Limited (cited supra) sets out the legal position, which was noted by the Tribunal and we have examined the facts and held in favour of the first respondent-assessee. Therefore, we are of the considered view that the impugned order does not require interference at our hands.

10. Accordingly, these Writ Petitions stand dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Deputy Commissioner (CT),
   Coimbatore Division,
   Coimbatore.

2. The Secretary,
   The Tamilnadu Sales Tax Appellate
   Tribunal (Additional Bench),
   Coimbatore - 18.

+5ccs to Mr.G. BASKAR, Advocate, S.R.No.3861 TO 3865
+1cc to the Special Government Pleader, Highcourt,
Madras,S.R.No.3891

SSP(CO)
SM/05/03/2021

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