IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM

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

Tax Case Revision No.20 of 2019

M/s.Shyam Textiles Limited,
No.34/12-1, Archana Complex,
4th Cross, Lalbagh Road,
Bangalore - 560027. ...Petitioner

Vs

The State of Tamil Nadu,
Represented by the Deputy
Commercial Tax Officer,
(Now Commercial Tax Officer)
Harbour I Assessment Circle,
Chennai. ...Respondent

PRAYER: Revision under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 30.08.2018 passed in T.A.No.34/2014.

Against the order passed by the Deputy Commissioner (CT) -1, Greams Road, Chennai -6, made in Appeal No.AP.219/2009 dated 10/09/2013 and against the order passed by the Deputy Commercial Tax Officer, Harbour 1, Assessment Circle, Chennai RC.B2/2014/2006/2003-04, dated 31/08/2006.

For Petitioner: Mr.V.Srikanth

For Respondent: Mr.Mohammed Shaffiq, SGP

Order of the Court was made by T.S.SIVAGNANAM,J

This revision has been filed by the petitioner/dealer under Section 38 of the Tamil Nadu General Salex Tax Act, 1959 ('TNGST Act' for brevity) challenging the correctness of the order dated 30.08.2018 passed by the Sales Tax Appellate Tribunal (Additional Bench) (for short, the Tribunal) Chennai in TA.No.34 of 2014.

2. The tax case revision was admitted on 15.04.2019 on the following substantial questions of law:

> "(i) Whether the Appellate Tribunal ought to have allowed the appeal completely in the light of the documents including the original form XXAs produced at the time of hearing of the appeal containing the seal of the check post officer, as proof for movement of goods from Chennai to Bangalore?
>
> (ii) Whether the Appellate Tribunal was justified in totally ignoring the set of documents filed at the time of hearing that included the original form XX as issued by the clearing and forwarding agent containing the seal of the check post officer?"

3. However, today, we reframe the substantial question of law to the following effect:

> "Whether the appellate Tribunal was justified in ignoring the original form XXA declarations containing the seal of the check post officer and the lorry receipt issued by the transporters, furnished at the time of hearing of the appeal and also verified by the Tribunal and the Additional State Representative, as evidence to prove movement of goods from Chennai to Bangalore?"

4. We have heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the respondent.

5. The short issue which falls for consideration is whether the petitioner-dealer had proved the movement of goods from Chennai to Bangalore and whether the production of Form XXA (under Rule 35A of the TNGST Rules) would suffice to establish the plea taken by the petitioner-dealer that there was movement of goods from Chennai to Bangalore.

6. The petitioner is a registered dealer under the provisions of the Karnataka General Sales Tax Act having its place of business at Bangalore. They purchased HDPE granules by way of high sea sales and the goods moved from Chennai Port and were detained on 07.05.2003 by issuance of a detention notice.

7. The petitioner filed writ petition before this Court in W.P.No.35721 of 2003 challenging the detention notice and the writ petition was disposed of by order dated 08.12.2003 directing the petitioner to pay a sum of Rs.33,440/- being the tax component and directing the respondent to release the goods. Pursuant to the order, the goods were released on 30.12.2003.

8. It is the case of the petitioner that on 06.01.2004, the goods were taken to Bangalore accompanied by Form XXA, lorry receipts and other documents. The respondent issued notice dated 05.07.2006 stating that on verification of the movement register at the border check post, namely Tamil Nadu-Ranipet Check Post at Serkadu, Hosur Check Post and Thiruthani Check Post for the period from 30.12.2003, it was seen that the goods have not moved from Chennai to Bangalore. This was the allegation made in the notice dated 05.07.2006. The petitioner submitted their objection dated 02.08.2006 reiterating that the goods have moved and the check post authority had affixed the seal. The Assessing Officer, after receipt of the reply, confirmed the proposal made in the notice dated 05.07.2006 and completed the assessment by order dated 31.08.2006.

9. We find from the operative portion of the order, the Assessing Officer has not commented upon the correctness of the stand taken by the petitioner qua the movement of goods effected from Chennai accompanied with Form XXA and other records, but proceeded to levy tax on the transaction solely on the ground that the petitioner was not a registered dealer on the file of the respondent in the State of Tamil Nadu. Aggrieved by such order, the petitioner preferred appeal before the Appellate Deputy Commissioner (CT)-1, Chennai in A.P.No.219 of 2006. The appeal was dismissed by order dated 10.09.2013. Aggrieved over the same, the petitioner preferred appeal to the Tribunal, which has been dismissed.

10. We note that the Tribunal has not given any independent reasons, but merely reiterated what has been stated by the First Appellate Authority in a slightly different language.

11. In our considered view, the Tribunal, being the last fact finding authority, should have made an endeavor to consider the grounds raised by the petitioner, more particularly, the ground that the petitioner had produced a copy of Form XXA containing the seal of the Check Post Officer. Unfortunately, the Tribunal did no such endeavor.

12. So far as the First Appellate Authority is concerned, he would state that the copies of the documents produced by the petitioner do not contain the seal of the check post. Before us, the copy of Form XXA, one of the duplicate of which is retained by the petitioner, has been produced and a colour photostat copy of the same reveals that there is a round seal indicating it to be a seal of the check post. The date and time of the check post, where the seal was affixed, is not clear from the photostat copy.

13. It is not in dispute that the petitioner, at the first instance, by their reply dated 02.08.2006, had relied upon Form XXA to state that the goods moved from Chennai to Bangalore. However, the Assessing Officer appears to have not done any verification, after receiving the petitioner's reply dated 02.08.2006. As such an exercise had not been done and as the Assessing Officer stated that the check post record did not reveal the movement of the said vehicle, the petitioner should have been confronted with such record.

14. Therefore, we are of the view that the initial burden cast upon the petitioner in terms of Rule 35A of the TNGST Rules was discharged and the onus shifts on the Revenue to establish that the stand taken by the petitioner stating that Form XXA contained the seal of the Check Post Officer was incorrect. This exercise has not been done. As noted above, though the Assessing Officer referred to the verification said to have been done in the check post before issuing a notice dated 05.07.2006, he has not made any verification after the petitioner submitted their reply dated 02.08.2006. In fact, while completing the assessment, the Assessing Officer conveniently did not touch upon the said issue but levied tax on the transaction only on the ground that the petitioner was not a registered dealer in the State of Tamil Nadu. As mentioned above, the Tribunal could have examined as to veracity of the stand taken by the dealer.

15. Thus, considering all these issues, we are of the view that the benefit should enure in favour of the petitioner-dealer as the Revenue failed to discharge the onus cast upon them.

16. In the light of th above observations, the Tax Case Revision is allowed. The reframed substantial question of law is answered in favour of the petitioner. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1. Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. The Deputy Commercial Tax Officer,
(Now Commercial Tax Officer)
Harbour I Assessment Circle,
Chennai.

3.The Deputy Commissioner (CT)-1,
Greams Road, Chennai -6

4. The Deputy Commercial Tax Officer,
Harbour I Assessment Circle,
Chennai.

+1 cc to The Government Pleader Sr.No. 12985

TC(R).No.20 of 2019

BS(CO)
RMP(30/03/2021)