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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2021

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN
and
THE HONBLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.14402 to 14404 of 2008
and
M.P.Nos. 1, 1 and 2 of 2008

M/s Gomathi Industries
Represented by its
Partner S. Uthami,
3/82 S.F.No.148/5
Chinna Goundan Valasu,
Kunnathur, Erode District. ...Petitioner in all W.Ps

Vs.

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench) Coimbatore,
Commercial Taxes Buildings,
Coimbatore-18

2.The Commercial Tax Officer,
Perundurai Assessment Circle,
Perundurai. ...Respondents in all W.Ps

W.P.No. 14402 of 2008: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records of the first respondent in its Order in CTSA No.448/03 dated 25.01.2008 and to quash the same as illegal and pass orders.

W.P.No.14403 of 2008: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records of the first respondent in its Order in CTSA No.447/03 dated 25.01.2008 and to quash the same as illegal and pass orders.

W.P.No.14404 of 2008: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records of the first respondent in its Order in CTSA No.449/03 dated 25.01.2008 and to quash the same as illegal and pass orders.

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(In all the petitions)

For Petitioner : Mr.S. Ramanathan

For Respondents : Mr.M. Venkateswaran
Special Government Pleader (Taxes)

COMMON ORDER

(Order was made by MOHAMMED SHAFFIQ, J.)

These writ petitions have been filed by the petitioner challenging the order dated 25.01.2008 passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore (for brevity, the Tribunal) relating to the respective Assessment Years 1997-98, 1998-99 and 1999-2000.

2.The petitioner is the manufacturer and dealer in Rig Spares and accessories. On 04.01.2000, its place of business was inspected and certain incriminating documents in the form of quotations were seized by the Enforcement Wing Officials, which were issued by the petitioner to its dealers. In order to ascertain the details of the quotations, the said officials sent notices to the concerned dealers, to which, some of the dealers sent their replies. Since the replies received were identical in nature, the officials concluded that the petitioner had effected sales, but not accounted in their books of accounts and thus, the figures mentioned in the quotations were sales suppression. Consequently, the respondent proposed to estimate the tax towards sales suppression, besides penalty. In response to the said notices, the petitioner submitted its objections stating that the quotations were issued to the intending buyers, who desired to know the price of the products, and that, all the quotations may not materialise into sale. Being dissatisfied with the same, the respondent passed the assessment orders on 28.06.2002 thereby confirming the proposed tax along with penalty.

3.Aggrieved by the assessment orders, the petitioner filed appeals before the Appellate Assistant Commissioner (CT), Erode and the details of the same are tabulated below:

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S.No.	A.P.No. (CST)	Proceedings No. and Date	Turnover under Dispute Rs.	Tax Rs.	Levy of Penalty Rs.
1	74/2002	CST 435720/97-98 dated 28.06.2002	Rs.41,200/-	Rs.4,120/-	Rs.6180/-
2	75/2002	CST 435720/98-99 dated 28.06.2002	Rs.5,00,036/-	Rs.50,004/-	Rs.75,006/-
3	76/2002	CST 435720/99-2000 dated 28.06.2002	Rs.4,95,425/-	Rs.49,543/-	Rs.74,315/-

By orders dated 05.12.2002, the appeals filed by the petitioner were allowed by the Appellate Authority. While doing so, it was observed that the interstate movements of goods has to be proved without passing of goods from Tamil Nadu to destinations outside the State; the Assessing Authority has not taken upon himself the exercise to find out that the sale of goods alleged were made from Erode to outside the State; there has been no further process exercised to prove that there were sales as per Section 3(1) of the CST Act, 1956; and the burden of proving the fact that a sale is taxable under this Act, is on the Assessing Authority. Ultimately, the Appellate Authority held that as per explanation 1 to section 3, there has not been any evidence for the delivery of goods to any carrier for onward transport and in the absence of such proof of sale or sale of suppression, the taxable turnover were ordered to be deleted and accordingly, the assessment made were set aside.

4.Challenging the orders passed by the First Appellate Authority, the Revenue went on appeals before the Tamil Nadu Sales Tax Appellate Tribunal. After examining the entire facts and circumstances of the case more particularly that during the course of inspection, incriminating documents were recovered and having observed that there was no cogent and clear reason for taking a different stand from the view taken by the Assessing Authority, the Tribunal reversed the orders of the First Appellate Authority and allowed the appeals, by orders dated 25.01.2008, which are impugned in these writ petitions.

5.We have heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.M.Venkateswaran, Special Government Pleader (Taxes) appearing for the respondents.

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6.Admittedly, the petitioner is a registered dealer under the TNGST and CST Acts and an assessee on the file of the second respondent herein. It could be seen that in respect of the assessment years in question, the second respondent passed the orders treating the amounts mentioned in the quotations recovered from the petitioner, as sales suppression and imposing tax at 10% along with penalty under section 9(2) of CST Act r/w Section 16 of the TNGST Act. On appeal, the said assessment orders were set aside by the First Appellate Authority, after holding that if the transaction was to be treated as an inter state sale in terms of Section 3(a) of the CST Act, there must be a sale of goods and movement of such goods from the one state to another, as a result or as an integral part of the sale, whereas, in this case, there was no proof available with respect to delivery of goods. However, the Tribunal was of the view that certain records were recovered from the petitioner's place of business and therefore, the orders of the Assessing Authority need not be interfered.

7.This Court is unable to agree with the findings so rendered by the Tribunal. According to Section 3 of the Central Sales Tax Act, 1956, to constitute an inter-state sale, the following essential ingredients have to be made:

a. There is a sale of goods.
b. There is inter-state movement of goods.
c. There is an integral/inextricable link between the sale and the inter-state movement.

Whereas, in this case, none of the ingredients has been made out. In the absence of any material evidence with respect to movement of goods, the quotations recovered from the business place of the petitioner, cannot be treated as sales. Hence, there was no inter-state sale taken place, as rightly held by the first Appellate Authority.

8.In similar circumstances, in W.P.Nos.14394 to 14396 of 2008 filed by the very same petitioner, a Division Bench of this Court, by order dated 05.04.2019, has allowed the said writ petitions by setting aside the order of the Tribunal. The relevant passage of the said order is profitably extracted below:

> "4.The Tribunal while reversing the order, committed a serious error in stating that when notices were issued to the persons who have obtained quotations, they did not appear and did not give any reply either accepting that they have purchased material from the petitioner or denied having purchased material from the petitioner, therefore concluded that

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> the quotations have fructified into sale. The finding rendered by the Tribunal is absolutely incorrect and the finding referred by the First Appellate Authority is fully justified and there were no grounds to reverse such a finding.”

9.In the light of the above stated discussions, this court has no hesitation to set aside the orders passed by the Tribunal. Accordingly, these writ petitions are allowed and the orders of the Tribunal are set aside. As a sequel, the orders passed by the Appellate Assistant Commissioner (CT), Erode, are restored. No costs. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench) Coimbatore,
Commercial Taxes Buildings, Coimbatore-18

2.The Appellate Assistant Commissioner (CT), Erode

3.The Commercial Tax Officer,
Perundurai Assessment Circle,
Perundurai.

+1cc to Mr.Ramanathan, Advocate SR. No.60537

W.P.Nos.14402 to 14404 of 2008
and
M.P.Nos. 1, 1 and 1 of 2008

MG (CO)
PR (28/12/2021)

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