IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.2.2021
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA
Writ Petition No.11639 of 2004

M/s.Tractors & Farm Equipment Ltd., Chennai ...Petitioner

Vs

1.The Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Chennai, rep.by its Secretary, Chennai-104.

2.The Commercial Tax Officer, Chintadripet Assessment Circle, Chennai-86. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in T.A.No.114 of 1994 on its file, quash the order dated 22.12.2003 passed therein by the first respondent and further direct that the petitioner herein be granted exemption under Section 6(2)(b) of the Central Sales Tax Act, 1956 on a turnover of Rs.1,61,23,133/-.

For Petitioner : Mr.R.L.Ramani, SC for Mr.B.Raveendran

For Respondent-2 : Mr.Mohammed Shaffiq, SGP

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

We have heard Mr.R.L.Ramani, learned Senior Counsel appearing on behalf of Mr.B.Raveendran, learned counsel on record for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the second respondent.

2. This writ petition has been filed by the assessee challenging the order passed by the first respondent in Tribunal Appeal No.114 of 1994 dated 22.12.2003.

3. We need not labour much to decide the correctness of the order passed by the first respondent, as, in the assessee's own case, an identical issue was considered by the Hon'ble Division Bench of this Court in the decision reported in (1999) 112 STC 300. The said decision went in favour of the petitioner - assessee holding that the sale was an inter-state sale under Section 3(a) of the Act. The relevant portions of the said

judgment in the assessee's own case read thus :

> "6. In the case of Dharangadhara Trading Co. Ltd. [1988] 70 STC 92, the Supreme Court upheld the view that had been taken by the High Court that the delivery instructions given by the ultimate buyer to a Trading. Company which had bought the goods from a manufacturing company would be read as a part of the contract under which the manufacturing company, placed the goods on rail within the State of Tamil Nadu with instructions to deliver the goods to the ultimate buyers outside the State. It was not in dispute, in that case, that the instructions by the ultimate buyer had only been given to the Trading Company and not to the manufacturing company which, under the contract of sale of the goods with the Trading Company had despatched the goods by rail and thereby effected the sale to the Trading Company. If the delivery instructions given by the assessee to its vendor are read as a part of the contract between the assessee and his vendor, the contract itself must be held to have occasioned the movement of the goods, as the vendor was bound to comply with the delivery instructions and that delivery instructions clearly contemplated the movement of the goods from Tamil Nadu to destination outside Tamil Nadu. There is no dispute about the fact that the assessee did not take physical delivery of the goods from its vendor at any point of time, and the goods were delivered to the carrier by the vendor, and not by the assessee. Having regard to the decision of the Supreme Court in the case of Dharangadhara Trading Co. Ltd. [1988] 70 STC 92, the case of the assessee would fall under section 3(a) of the Act.
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> 7. The case of the assessee under Sub-section (b) of section 3 that the sale was effected, by transfer of documents of title though prima facie supported by the fact that the lorry receipts were handed over to the assessee after the goods had been placed on board the carrier under section 2(4) of the Sale of Goods Act, 1930, delivery of the documents of title can be completed by mere delivery and not necessarily by way of

endorsement we are not inclined to accept the assessee's case under section 3(b). The goods transported under the consignment note belonged to the assessee and not to its vendor, as the property in the goods passed on to the assessee at the time the goods were delivered to the carrier and was not postponed to the time when the lorry receipts were handed over to the assessee. Assessee did not acquire title by reason of the handing over of the lorry receipts, but under the terms of the contract which required delivery to the carrier.

8. The fact situation before the Supreme Court in the case of Commissioner of Income-tax, Madras v. Mysore Chromite Limited [1955] 27 ITR 128 on which reliance was placed is however different. The Constitution Bench therein held that in the case of f.o.b. sales, the vendor has a right in those goods and by postponing the point of transfer of title to the goods to the point at which the bill of lading was handed over to the vendee, and the passing of the title would take place only at the place where the receipts were handed over.

9. As we have found that the sale effected by the vendor of the assessee to the assessee was a sale occasioned the movement of goods from State to outside the State that sale was an inter-State sale under Section 3(a). Consequently, the order of the Tribunal levying tax on the second inter-State sale effected by the assessee cannot be sustained and is, therefore, set aside. The revision petition is allowed."

4. Following the said decision, the show cause notices issued to the assessee in respect of other years were also set aside. When the said judgment was placed before the Tribunal, the Tribunal, in paragraph 18 of the impugned order, noted the decision and held that the said decision would squarely applicable to the assessee's case for the assessment year under consideration also. However, the Tribunal committed an error in not correctly noting the ultimate relief for the assessment year 1980-81. In fact, in the last sentence of the said judgment, it was held that the order of the Tribunal levying tax on second inter-state sale effected by the assessee could not be sustained and was therefore set aside. Had the Tribunal noted this last sentence, the relief that should have been granted to the assessee was to allow the appeal and not to dismiss the same.

This would be sufficient to interfere with the impugned order.

5. Further, we may note that in the assessee's own case, an identical issue was the subject matter of proposed suo motu revision by the Joint Commissioner by issuing the notices dated 01.2.1996. The assessee filed W.P.Nos.4599 to 4603 of 1996 seeking to set aside the notices on the ground that the appeals were pending before this Court. The Revenue undertook before this Court not to proceed further till a decision is taken in the assessee's own case namely TCA.No.822 of 1986. However, the said tax case appeal was ultimately allowed in favour of the assessee in the decision reported in (1999) 112 STC 300. Thus, by recording the undertaking given by the Revenue, W.P.Nos.4599 to 4603 of 1996 were dismissed of by a common order dated 11.6.1996.

6. After the assessee succeeded before the Hon'ble Division Bench of this Court in TCA.No.822 of 1986, the Joint Commissioner concerned dropped the proposal to exercise suo moto revisional power by proceedings dated 24.11.1999 for the assessment years 1979-80, 1981-82, 1982-83, 1983-84 and 1984-85. However, in certain cases, the assessee paid tax and after the said decision of the Hon'ble Division Bench of this Court, the assesssee submitted a representation dated 26.6.2000 before the Principal Commissioner and Commissioner of Commercial Taxes, Chennai seeking refund. The said representation was favourably considered and the Principal Commissioner and Commissioner of Commercial Taxes, Chennai, by proceedings dated 29.6.2000, directed the Assessing Officer concerned namely the Commercial Tax Officer, Chintadripet Assessment Circle, Chennai to give effect to the orders of the Appellate Assistant Commissioner, refund the excess amount without delay and adjust the amount against the future demand with the consent of the dealer. Accordingly, consequential orders were passed by the Assessing Officer on 31.10.2000 and 10.11.2000 for the assessment years 1981-82 and 1982-83.

7. The above factors will clearly show that the Department was bound by the decision of the Hon'ble Division Bench of this Court in the assessee's own case namely (1999) 112 STC 300. Hence, we have no hesitation to hold that the impugned order passed by the Tribunal is incorrect.

8. In the result, the writ petition is allowed and the impugned order is set aside. The second respondent is directed to grant exemption to the petitioner - assessee under Section 6 (2)(b) of the Central Sales Tax Act on the turnover for the assessment year under consideration. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1.The Secretary, Tamil Nadu Sales Tax Appellate Tribunal, Additional
Bench, Chennai-104.
2.The Commercial Tax Officer, Chintadripet Assessment Circle,
Chennai-86.

+1cc to Mr.B.Ravindran, Advocate SR.No. 8568
+1 cc to Spl Government Pleader Sr.No. 8556

W.P.No.11639 of 2004

vsn II (CO)
A.SK(09/03/2021)

12.2.2021