IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.15533 of 2004

M/s. Thamana Vinyl Traders
6, Nyniappa Naicken Street
Chennai - 600 003.

... Petitioner

Versus

1. The Tamil Nadu Sales
Tax Appellate Tribunal (Addl. Bench)
Rep. by its Secretary
City Civil Court Building
High Court Compound
Chennai - 600 104.

2. The Appelllate Assistant Commissioner (CT)-I
Kuralagam Annexe
Chennai - 600 108.

3. The Deputy Commercial Tax Officer
Evening Bazaar Assessment Circle
Chennai - 600 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the first respondent herein in STA No. 776/2001 and its files, quash the order dated 15.03.2004 made therein and further direct the second respondent restore the order of the second respondent herein dated 03.05.2000 passed in A.P. CST No. 165/1999 on his files which is in favour of the petitioner herein.

For Petitioner : Mr.Ravindran
for M/s.Chandran Karuppiah & Ramani

For Respondents : Mr. V.Prashanth Kiran,
Government Advocate (Taxes)

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The prayer made in this writ petition is to issue a writ of certiorarified mandamus to call for the records pertaining to the proceedings of the first respondent dated 15.03.2004 made in STA.No.776 of 2001, quash the same and consequently, restore the order of the second respondent dated 03.05.2000 passed in A.P.CST No.165 of 1999 on his file, which is in favour of the petitioner herein.

2.The facts leading to the filing of this writ petition are as follows:

The petitioner is a registered dealer on the file of the third respondent. During the assessment year 1997-98, they had effected purchases from the dealer situated at Daman in the Union territory of Goa, Daman and Diu, who was exempted from paying the tax for a period of 15 years from the date of registration by Gazette notification bearing No.5.4.87 F in (R&C)(2) dated 20.04.1997 issued by the Union of Territory of Goa, Daman & Diu and hence, has no requirement to issue 'E1' declaration Form to the petitioner. In view of the same, the petitioner obtained Form 'C' declaration from its buyer and filed the same to the third respondent along with a copy of the notification in support of its claim for exemption under section 6(2)(b) of the CST Act. On scrutiny of the same, by an order of assessment dated 15.09.1999, the third respondent, placing reliance on the Andhra Pradesh High Court decision in the case of Sri Krishna Rice Mills reported in 104 STC 475, denied the exemption claimed by the petitioner on the ground that both 'E1' Form and 'C' Form declarations are mandatory and ultimately, levied tax at 4% on a turn over of Rs.70,94,619/- on which the petitioner had claimed exemption on transit sale. Challenging the same, the petitioner went on appeal before the second respondent, who by order dated 03.05.2000, allowed the appeal and set aside the order of assessment passed by the third respondent. Feeling aggrieved, the State has preferred an appeal in STA No.776/2001 before the first respondent/ Tribunal. By order dated 15.03.2004, the Tribunal, after having held that since the petitioner had not furnished Form E1 declaration, they could not be granted exemption under section 6(2)(b) of the CST Act, 1956, allowed the appeal filed by the State, thereby setting aside the order passed by the second respondent and restoring the order passed by the third respondent. Therefore, the petitioner is before this court by way of the present writ petition with the aforesaid prayer.

3.The only issue that arises for consideration in this writ petition is, whether Form 'C' and Form 'E1' declarations are mandatory for claiming exemption under section 6(2) of the CST Act, 1956.

4.According to the learned counsel appearing for both sides, the issue involved herein is squarely covered by the decision of this court in state of Tamil Nadu v. Chordia Electricals [(2000) 120 STC 34 Mad], wherein, it was held that “Form 'C' and Form 'E1' declarations are mandatory for claiming exemption”. The relevant passage of the said decision is usefully extracted below:

> “9.Section 3 of the CST Act prescribes the conditions on which the sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce. Section 3(b) of the CST Act provides that the sale shall be deemed to have taken place in the course of inter-State trade or commerce when the sale or purchase is effected during the movement of the goods from one State to another and under Explanation 1 to Section 3 of the C.S.T. Act, where the goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Section 6 of the C.S.T. Act imposes the liability to tax on inter-State sales of goods other than electrical energy effected in the course of inter-State trade or commerce during that year. Sub-section (2) of Section 6 of the CST Act grants exemption from the levy of Central sales tax on inter-State sale, if the subsequent sale was effected during the movement of goods from one State to another in favour of the Government or to a registered dealer provided the conditions prescribed in Sub-section (2) of Section 6 are complied with. Admittedly, it is not a case falling under the second proviso to Sub-section (2) of Section 6 of the Act as the assessee has not established that the sale of the goods was exempt under the provisions of the TNGST Act or was subject to tax at a rate lower than 4 per cent. Therefore, the assessee will be eligible to get exemption under Sub-section (2) of Section 6 of the CST Act, if and only if the assessee satisfies the statutory conditions prescribed in the first proviso to Sub-section (2) of Section 6 of the Act. One such condition is the furnishing of C form and other condition is the furnishing of E-1 form. The assessee has not filed the necessary C form inspite of several opportunities.

10. The next question that arises is on failure on the part of the assessee to produce C form or to comply with the conditions prescribed in Sub-section (2) of Section 6 of the C.S.T. Act, which is the State that has the power to levy the tax on the inter-State sale. A clue to the question is found in the proviso to Section 9 of the C.S.T. Act. Ordinarily, the State from which the movement of the goods commences is empowered to levy tax on inter-State sale of goods. However, under the proviso to Section 9 of the C.S.T. Act in the case of a subsequent sale, in respect of same goods, during the movement from one State to another, the State empowered to levy tax is the State from which a registered dealer has obtained or could have obtained C form in connection with the purchase of goods. The assessee-dealer, in this case, is the first purchaser and he could have obtained C form from the State of Tamil Nadu and the State of Tamil Nadu has the jurisdiction to levy sales tax. The view of the Appellate Tribunal that the State of Tamil Nadu has no jurisdiction as the sale took place outside the State of Tamil Nadu is plainly erroneous in law as the assessee being a registered dealer in Tamil Nadu could have obtained C form from the State of Tamil Nadu, and since the assessee failed to fulfil the conditions prescribed in Sub-section (2) of Section 6 of the Act, in the case of the subsequent sale by the assessee to a dealer in Andhra Pradesh, the State of Tamil Nadu has the requisite power and authority to levy and collect tax under the CST Act in respect of the sale subsequent to the first sale. Our view arrived at on the interpretation of the provisions of Sections 3, 6, 8 and 9 of the CST Act is supported by several decisions of the High Courts of this country. ....

17. The uniform view taken by all the High Courts clearly establishes that under the proviso to Section 9 of the C.S.T. Act, the assessee-dealer could have obtained C form from the State of Tamil Nadu and since he failed to obtain necessary C form and produce the same before the authorities as contemplated under Sub-section (2) of Section 6 of the Act, the State of Tamil Nadu has the jurisdiction to levy tax under the CST Act. The Tribunal, however, completely omitted to take into consideration the proviso to Section 9 of the C.S.T. Act for its conclusion that the State of Tamil Nadu has no jurisdiction to levy the tax. We are, therefore, of the view that the view of the

> Appellate Tribunal is plainly erroneous in law and under the provisions of Section 9, particularly the proviso to Sub-section (1) of Section 9 of the Act, the State of Tamil Nadu is empowered to levy tax on the subsequent inter-State sale effected by the assessee during transit from one State to another for his failure to produce the C form and to comply with the conditions prescribed under Sub-section (2) of Section 6 of the Act. Consequently, we hold that the order of the Appellate Tribunal that the State of Tamil Nadu has no power to levy tax is erroneous in law and the order of the Appellate Tribunal to that extent is liable to be set aside and accordingly, it is set aside."

5. Applying the ratio laid down in the aforesaid decision to the facts of the present case, wherein the petitioner has to necessarily furnish Form E1 declaration so as to claim exemption on transit sales under section 6(2)(i) of the CST Act. Admittedly, they did not produce 'E1' Form before the third respondent. Since the petitioner did not fulfil the statutory conditions to claim exemption, we are of the view that the third respondent / assessing officer as well as the first respondent / Tribunal were justified in holding that the petitioner / assessee was not entitled to claim the exemption and the turnover in question was to be taxed at the rate of 4 per cent.

6.In such view of the matter, this writ petition deserves to be dismissed and is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary
Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench)
City Civil Court Building
High Court Compound
Chennai - 600 104.

2. The Appelllate Assistant Commissioner (CT)-I
Kuralagam Annexe
Chennai - 600 108.

3.The Deputy Commercial Tax Officer
Evening Bazaar Assessment Circle
Chennai - 600 001.

+1cc to Mr.B.Raveendran, Advocate SR. No.63690
+1cc to Special Government Pleader (Taxes) SR. No.64170

W.P.No.15533 of 2004

AJS (CO)
PR (11/01/2022)