IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.3.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT PETITION NO.24972 OF 2004

M/s.Suresh Industries, rep.
By its Proprietor V.Suresh
No.38, Thatha Muthiappan Street,
Chennai-600 001. ... Petitioner

Vs

1. The Sales Tax Appellate Tribunal (Additional Bench), by its Secretary, City Civil Court Building, Chennai
2. The Appellate Assistant Commissioner (CT)-II, Kuralagam Annexe, Chennai-1.
3. The Commercial Tax Officer, Peddunaickenpet (North) Assessment Circle, Chennai-1.
4. The State of Tamil Nadu, rep.by the Deputy Commissioner (CT), Chennai East Division. ... Respondents

Petition under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarifed Mandamus to call for the records relating to the order passed by the first respondent in S.T.A. No.1668 of 2001 dated 06.10.2003, quash the same as unsustainable and consequently confirm the order passed by the second respondent in A.P.No.300 of 1999 dated 28.2.2001 granting exemption from tax on the high sea sales effected by the petitioner.

For Petitioner : Mr.M.A.Mudimannan

For Respondents 2 to 4 : Mr.R.Swarnavel, GA

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

We have heard Mr.M.A.Mudimannan, learned counsel for the petitioner and Mr.R.Swarnavel, learned Government Advocate (Taxes) appearing for respondents 2 to 4.

2. The writ petition has been filed by the dealer registered on the file of the third respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short, the Act) and the Central Sales Tax Act, 1956 challenging the order passed by the first respondent dated 06.10.2003 allowing the appeal filed by the Revenue and setting aside the order passed by the second respondent in A.P.No.300 of 1999 dated 28.2.2001.

3. The assessee is a dealer in camphor and for the assessment year under consideration namely 1992-93, they were assessed on a total and taxable turnover of Rs.1,38,31,366/- and Rs.30,94,502/- respectively. Subsequently, scrutiny of the assessment was made, in which, the Assessing Officer found that the assessee claimed exemption on a turnover of Rs.4,70,000/- being high sea sales of synthetic camphor, that on verification of the Bill of Entry, the Assessing Officer came to the conclusion that there was an interpolation in the Bill of Entry and that the name of the customer had been inserted whereas in the original copy available with the Customs Department, the name of the ultimate buyer/customer was not found. Therefore, the Assessing Officer disallowed the claim of high sea sales on the ground that the document filed by the dealer did not conclusively prove the claim of high sea sales and accordingly levied tax at 8% under the Act and also levied penalty under Section 16(2) of the Act.

4. Aggrieved by the order of assessment, the petitioner filed an appeal before the First Appellate Authority namely the second respondent. From the order dated 28.2.2001 passed by the First Appellate Authority, we find that the petitioner produced the following documents :

> "1. Bill of Lading dated 10.11.92;
> 2. Agreement between Sulur Tea Depot on high sea sales dated 27.11.92;
> 3. High sea sales invoice of the appellant dated 07.2.92;
> 4. Bill of Entry filed mentioning the account of Sulur Tea Depot dated 14.12.92;
> 5. Duty paid through demand draft by Sulur Tea Depot on 21.12.92;
> 6. Clearing Agents arranged the delivery of goods mentioning their name as

consignor and Sulur Tea Depot as consignee. The goods were sent by the clearing agents Tvl.A.P.Srinivasan & Co., Madras through Roadlines in Truck No.TMA 6366 and TN 28 X 7515 on 24.12.92 to Sulur with consignment note Nos.381 and 382 dated 24.12.92;

7. Ledger copy of Sulur Tea Depot p.154 indicating the transactions and the entries duly verified and signed by the Assessing Officer."

5. The First Appellate Authority verified those documents and the Departmental Representative also verified the documents and the First Appellate Authority recorded in his order dated the documents produced by the petitioner were verified by the Departmental Representative and found to be in order. Thus, on appreciating the documents placed before it, the First Appellate Authority allowed the appeal filed by the petitioner.

6. Aggrieved by the said order passed by the First Appellate Authority dated 28.2.2001, the State preferred an appeal before the Tribunal, which reversed it by the impugned order solely on the ground that it was recorded by the Assessing Officer that there was interpolation in the Bill of Entry.

7. The question would be as to whether the Bill of Entry can be regarded as title to the goods. There can be no quarrel over the legal position that the Bill of Entry is never treated as a document of title under the Customs Act, 1962. Rather, the Bill of Lading is the document of title, which should contain the name of the ultimate buyer. In the instant case, the Revenue did not dispute the fact that the duty was paid by the ultimate buyer and except for the alleged interpolation in the Bill of Entry, there was no other adverse finding rendered either by the Assessing Officer or by the Tribunal against the dealer.

8. In identical circumstances, the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. Kawarlal & Co. [reported in 2011 SCC Online Mad. 1492] dismissed the tax case appeal filed by the Revenue, the relevant portions of which read as follows :

"9. The only ground on which the Revenue seeks to disallow the claim of exemption is that the Bill of Entry furnished by the assessee and the one available with the Customs Department were at variance with each other, particularly as regards the name. As far as this contention is concerned, the first Appellate Authority pointed out that when the Bill of Lading endorsement was made even before the goods crossed the Customs Station, the sale thus concluded therein, on the mere contention of the Assessing Officer that the Bill of Entry had the assessee's name and the customs duty was paid only on the imported value and not on the high seas value, were without any merit.

10. Given the fact that the Bill of Lading is the document of title and admittedly it carried the name of the ultimate buyer and that there was no denial of the fact that the assessee had transferred the goods before it crossed the Customs Station, rightly the said authority granted relief in favour of the assessee. As rightly pointed out, the only ground on which the claim was rejected was the difference in the name found in the Bill of Entry available with the assessee and the one with the Customs Authorities. It is of relevance to note herein that the Bill of Lading dated 05.05.1992 was endorsed in favour of the first purchaser M/s.Micro Labs Limited, Hosur; invoices dated 26.05.1992 and the date of crossing the Customs Station was given as 25.06.1992. On the said details available as regards the Bill of Lading and the invoices raised in favour of the ultimate buyer, we have no hesitation in holding that with the title to the goods thus endorsed even before it crossed the Customs Station, the claim of the assessee could not be denied just based on the Bill of Entry which is admittedly not a document of title. As regards the second Bill of Lading dated 22.12.1992 and the invoices of the ultimate purchaser dated 19.2.1993, even herein too, even before the date of crossing the Customs Station on 15.03.1993, the Bill of Lading was endorsed in favour of the purchaser. We do not find that the Revenue could successfully canvass its case based on the entries on the name found in the Bill of Entry.

11. It may be of relevance to note that the Bill of Entry is never treated as a document of title under the Customs Act. Under Section 46 of the Customs Act - Entry of goods on importation - the importer has to file Bill of Entry before the proper officer, which may be for home consumption or for ware housing. Only on filing the Bill of Entry for home consumption that the goods are allowed to be cleared after the payment of required customs duty. "Importer" is defined under Section 2(26), which reads as follows:

"2(26) "Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer"

12. In the light of the said definition and read in the background of Sections 46 and 47 of the Customs Act, we do not think that the Revenue can successfully canvass its case based on entries in the Bill of Entry. In the absence of any details as to whether the said entries relate to the one in the Bill of Entry for home consumption or any Bill of Entry for warehousing, the Revenue's revision merits to be dismissed.”

9. Further, the learned counsel for the petitioner has rightly placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of State Trading Corporation of India Vs. State of Tamil Nadu [reported in (2002) 149 ELT 3] wherein it was held that Section 47 of the Customs Act, 1962 refers to clearance of goods for home consumption, while Section 68 of the Customs Act deals with clearance of warehoused goods for home consumption, that in this case, the goods had been warehoused and the clearance for home consumption was made under Section 68 of the Customs Act, after the title to the goods had been transferred to the buyers and that the duty paid by the buyer would qualify for high sea sales.

10. Since we find that the Tribunal has not rendered any finding to dislodge the factual finding arrived at by the First Appellate Authority, there is no justification for the Tribunal to reverse the order passed by the First Appellate Authority.

11. For all the above reasons, the writ petition is allowed, the impugned order passed by the Tribunal is set aside and the order passed by the First Appellate Authority dated 28.2.2001 is restored. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Sales Tax Appellate Tribunal (Additional Bench),
by its Secretary,
City Civil Court Building, Chennai.

2. The Appellate Assistant Commissioner (CT)-II,
Kuralagam Annexe,
Chennai-1.

3. The Commercial Tax Officer,
Peddunaickenpet (North) Assessment Circle,
Chennai-1.

4. The Deputy Commissioner (CT),
Chennai East Division.

+1cc to M/s.K.Jayachandran, Advocate, S.R.No.20331
+1cc to the Special Government Pleader (T), S.R.No.20218

WP.No.24972 of 2004

PM(CO)
CS/20/04/2021