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 Nos.28261, 28262, 33999 & 34372 to 34376 of 2004
& all connected pending WPMPs

M/s.Plastic Sales Corporation,
No.82, Mint Street,
Chennai-79 ... Petitioner in WP.Nos.28261, 28262, 33999, & 34372 to 34374 of 2004

M/s.Petro Plast Corporation
rep.by its Proprietor ...Petitioner in WP.No.34375/2004

M/s.Raj Chem Plast, rep.
By its Proprietor ...Petitioner in WP.No.34376/2004

Vs

1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), by its Secretary, City Civil Court Building, Chennai-104.

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

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

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarifed Mandamus

(i) to call for the records of the first respondent in S.T.A.No. 427/2002, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.CST.No.178/ 2001 dated 18.1.2002 (WP.No.28261 of 2004);

(ii) to call for the records of the first respondent in S.T.A.No. 429/2002, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.CST.No.179/ 2001 dated 18.1.2002 (WP.No.28262 of 2004);

(iii) to call for the records of the first respondent in S.T.A.No. 1390/2001, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No. 179/2000 dated 21.8.2000 (WP.No.33999 of 2004);

(iv) to call for the records of the first respondent in S.T.A.No. 1389/2001, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No.45/ 2000 dated 14.9.2000 (WP.No.34372 of 2004);

(v) to call for the records of the first respondent in S.T.A.No. 427/2002, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No.564/2001 dated 18.1.2002 (WP.No.34373 of 2004);

(vi) to call for the records of the first respondent in S.T.A.No. 429/2002, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No.563/2001 dated 18.1.2002 (WP.No.34374 of 2004);

(vii) to call for the records of the first respondent in S.T.A.No. 1385/2001, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No. 180/2000 dated 21.8.2000 (WP.No.34375 of 2004); and

(viii) to call for the records of the first respondent in S.T.A.No. 428/2002, quash the order dated 03.9.2003 made therein and further restore the order of the second respondent made in A.P.No.562/2001 dated 18.1.2002 (WP.No.34376 of 2004).

For Petitioners in all Wps. : Mr.S.Raveekumar

For Respondents 2 & 3 in all Wps. : Mr.Mohammed Shaffiq, SGP & Mr.R.Swarnavel, GA

COMMON ORDER

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

We have heard Mr.S.Raveekumar, learned counsel for the petitioners and Mr.Mohammed Shaffiq, learned Special Government Pleader and Mr.R.Swarnavel, learned Government Advocate (Taxes) appearing for respondents 2 & 3.

2. These writ petitions have been filed by the petitioners, who are registered dealers on the file of the third respondent herein under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

3. Since the facts are identical and the impugned order passed by the Tribunal is a common order, it would suffice to take note of the facts in W.P.No.28261 of 2004 wherein the name of the dealer is M/s.Plastic Sales Corporation, Chennai-79. The

relevant assessment year is 1991-92. They had reported a total and taxable turnover of Rs.44,35,257.50 Ps in their monthly return in Form I filed under the provisions of the Central Sales Tax Act, 1956. The books of accounts were called for and checked. However, the Assessing Officer completed the assessment vide order dated 31.3.1994 making certain additions and disallowances. The dealer was not aggrieved by that order.

4. Subsequently, a notice was issued to the dealer calling for the books of accounts to examine the correctness of the assessment done earlier. During such scrutiny, the Assessing Officer disallowed the exemption claimed by the dealer on high sea sales on the ground that there was interpolation of the name of the customer in the copies of the Bills of Entry, which were filed before the Sales Tax Authorities. 5. Ultimately, the assessment was completed by order dated 31.3.2001 and aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner (CT)-II, Chennai. Before the First Appellate Authority, various documents were produced, which were enumerated in paragraph 6 of the order passed by the First Appellate Authority and after considering the effect of those documents, the following findings were returned by the First Appellate Authority :

> "8. In fact, the customs duty has been paid by the high sea buyers through demand draft. Further, after clearing the goods from the Customs and clearing agents had dispatched the goods direct to the high seas buyers and raised bill for clearing and other charges in favour of the respective high sea buyers only. Thus, in all cases, it is obviously established that the goods have been sold on high sea sale basis by transfer of documents of title to the goods and that the goods have been cleared by the ultimate buyers through clearing agents from the Customs House after the date of high sea sales contract as well us subsequent to the date of invoice made by the appellants. The documents now produced by the appellants were also verified by the Departmental Representative and found in order, Further under Sec.4(2) of the CST Act, 1956, the documents of title in the course of import can only be the Bill of lading as held by the Hon'ble Sales Tax Appellate Tribunal (Main Bench) in T.A.Nos.369/97 and 370/97 dated 2.9.98 and not the Bill of Entry, as relied on by the learned Assessing

Authority. Moreover, in T.A.No.601/94 (Main Bench) dated 2.1.97 in the case of M/s.Narasimha Plastics, the Sales Tax Appellate Tribunal (Main Bench) has held that the provisions of Section 5(2) of the CST Act is not conjoint but disjoint having regard to the usage of the word or in between the first limb of the provisions and second limb of the provisions. Therefore, in order to make oneself eligible for exemption in respect of sale in the course of import, it is enough, if the importer satisfied either the first limb or the second limb and not the both.

9. In the instant case on band, while the goods were in high seas and before crossing the customs station, the appellants entered into contract with the high sea buyers and transferred the documents of title in favour of the high seas buyers as seen from the endorsement in the Bill of Lading Having regard to the endorsement available in the Bill of Lading in favour of the high seas buyers well before the goods had crossed the limits of the customs station, the appellants have satisfied the second limb of Section 5(2) of the CST Act, 1956; and hence the appellants are eligible for exemption as claimed by them as per Supreme Court decision reported in 111 STC 434, the learned authorized representative has relied upon the decision reported in 107 STC 75 and also submitted the xerox copies of the following decisions in support of his claim and pleaded to allow the claim :

1. T.A.No.369/97 and 370/ 07 (Main Bench) dated 2.9.98

2. The Supreme Court decision 1998 (78) ECR & 753 (SC) in Civil Appeal No.8870/ 96 dated 29.9,98 in the case of MMTC.

3. Andhra Pradesh High Court decision reported in 110 STC 394 1998 in the case of MMTC.

4. Ap.CST.261/98 dated 21.1.97 of the Appellate Assistant Commissioner (CT) VII, Chennai;

Therefore, the Assessing Officer is not, correct in disallowing the claim on high sea sales on the entries made in the Bill of Entry. Further, considering the facts and circumstances of the case and also respectfully following the above referred judgments, I set aside the assessments made under the TNGST Act, 1959. Accordingly, the point is answered.

10.1n fine, all the three appeals stand allowed. ”

6. The State, being aggrieved by such finding, preferred an appeal before the Tribunal and by the impugned order, the Tribunal reversed the order passed by the First Appellate Authority.

7. The learned counsel for the petitioners submits that the Bill of Lading is the document of title, which was verified by the First Appellate Authority and it was clearly established that the goods were dispatched to the ultimate high seas buyers, that they also paid duty, which was prior to the goods crossing customs barrier and that these facts were not only considered by the First Appellate Authority, but were also made available to the Department for verification. The Department verified and found the same to be correct. The First Appellate Authority subsequently recorded so in the order while allowing the dealer's appeal.

8. The learned counsel for the petitioners has also placed reliance on the decision of 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] in support of his contention.

9. Per contra, the learned Special Government Pleader, while seeking to sustain the impugned order passed by the Tribunal, has drawn our attention to various paragraphs of the impugned order and more particularly paragraph 16 of the impugned order. It is submitted that the Tribunal recorded that the original Bill of Entry for home consumption contained only the name of the actual importer ie. Tvl. Raj Chem Plast and that there was a difference between the Bill of Entry produced before the Department and the original bill available with the Customs Authority.

10. This finding stems out of the observation/finding rendered by the Assessing Officer. The order passed by the Assessing Officer was tested for its correctness by the First Appellate Authority, before whom, the dealer produced voluminous documents and in particular, Bills of Lading, which were documents of title and after verifying the documents and allowing the Department to verify, the First Appellate Authority found that the sales were genuine high sea sales. Therefore,

unless the Tribunal recorded factual finding that what was recorded by the First Appellate Authority was factually incorrect, the question of taking a conflicting view between the First Appellate Authority and the Tribunal would not arise. Hence, we are not agreeable with the submission made by the learned Special Government Pleader that there were conflicting views between the First Appellate Authority and the Tribunal.

11. The fact remains that the Tribunal touched upon the finding rendered by the First Appellate Authority. Admittedly, the Bill of Entry is not the document of title and even assuming that there are certain interpolations or corrections in the Bill of Entry, the question would be as to what is the effect of such corrections. This issue was considered by the Hon'ble Division Bench of this Court in the case of Kawarlal & Co., wherein the relevant portions read thus :

> "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.”

12. The view expressed by us in the preceding paragraphs is fully supported by the decision of the Hon'ble Division Bench of this Court in the case of Kawarlal & Co.

13. The learned Special Government Pleader has also placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s.Vellanki Frame Works Vs. CTO, Visakapatnam [Civil Appeal Nos.1322 and 1323 of 2019 dated 13.1.2021]. The learned Special Government Pleader has drawn our attention to paragraphs 32 and 32.1 of this decision.

14. In the said decision of the Hon'ble Supreme Court, on facts, it was found that even though the appellant suggested that the Bills of Lading were endorsed in favour of Radha (and other end-buyers) when goods were on high seas, but this bald assertion was not corroborated by any of the official documents, which formed the part of the process of importation, warehousing and clearance of goods. The finding rendered by the Hon'ble Supreme Court was after taking into consideration of the facts of the case and before doing so, the legal position was made clear and thereafter the legal position to the given facts was applied.

15. If we are called upon to do so in the instant case, we hold that the decision of the Hon'ble Supreme Court in the case of M/s.Vellanki Frame Works will not support the case of the Revenue as it is distinguishable on facts and the decision, which will support the case of the dealer is the decision of the Hon'ble Division Bench of this Court in the case M/s.Kawarlal & Co. Therefore, we find that the Tribunal committed a serious error in reversing the well considered order passed by the First Appellate Authority by touching upon the factual findings, which were recorded by the First Appellate Authority. Therefore, we have no hesitation to hod that the common impugned order passed by the Tribunal calls for interference.

16. Accordingly, the writ petitions are allowed, the impugned common order is set aside and the orders passed by First Appellate Authority are restored. No costs. Consequently, all connected pending WPMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), City Civil Court Building, Chennai-104.

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

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

+8ccs to Mr.S.Ravee Kumar, Advocate, S.R.Nos.20052, 20053, 20054 & 20055.

+1cc to the Government Pleader(Taxes), S.R.Nos.20219, 20235, 20236, 20237.

WP.Nos.28261, 28262, 33999 & 34372 to 34376 of 2004 & all connected pending WPMPs

GPL(CO)
CSR 17.04.2021