IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.3.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

WRIT PETITION NO.18136 OF 2005
&
WPMP.NOS.19690 & 19691 OF 2005

M/s.Sri Ramakrishna Mills (Coimbatore) Ltd., rep.by its Managing Director D.Lakshminarayaswamy ...Petitioner

Vs

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

2. The Deputy Commissioner (CT) (Appeals), Coimbatore.

3. The Assistant Commissioner (CT), Central Assessment Circle-I, Coimbatore. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent herein in his order in Coimbatore Tribunal Appeal No.95/98 dated 02.2.2005 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondents 2 & 3 : Mr.R.Swarnavel, GA

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

We have elaborately heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.R.Swarnavel, learned Government Advocate appearing for respondents 2 and 3.

2. The writ petition has been filed by the dealer, registered under the provisions of the Tamil Nadu General Sales Tax Act and the Central Sales Tax Act challenging the order dated 02.2.2005 passed by the first respondent Tribunal in Coimbatore Tribunal Appeal No.95/98

3. There are two issues dealt with by the Tribunal and decided against the petitioner. The first issue is with regard to the assessment made on the turnover of Rs.16,77,494/- pertaining to hank yarn obligation. The second issue related to the assessment made on the disputed turnover of Rs.7,86,81,405/-, which represented the cotton purchases effected by the petitioner from the Maharashtra Federation in the Maharashtra State.

4. In respect of the first issue pertaining to hank yarn obligation, we find that the Tribunal was right in holding that the hank yarn obligation represented the consideration received for the hank yarn manufactured and transferred to other mills' accounts to discharge the statutory obligation imposed for other mills by the Statutory Authority and in that process, they received the hank yarn obligation. Hence, the Tribunal was right in holding that the same represented the consideration received for the hank yarn manufactured and transferred to other mills' accounts. We find that the factual details are rightly re-appreciated by the Tribunal and that there are no reasons to interfere with the same. Accordingly, to that extent, the writ petition is dismissed and the order passed by the Tribunal is confirmed.

5. With regard to the second issue namely the purchases of cotton effected from the Maharashtra Federation, the said issue is covered in favour of the petitioner in the light of the Larger Bench decision of the Special Tribunal in the case of Jambai K.N.M.Textiles (P) Ltd. Vs. State of Tamil Nadu [reported in (2000) 118 STC 77]. This decision was followed in the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. Annamalaiar Mills Ltd. [reported in (2015) 83 VST 536] wherein the relevant portions read thus :

> ""5.The Tamil Nadu Sales Tax Appellate Tribunal, after verifying the facts stated above by the assessee, in the light of the documents referred to above and by applying the principles laid down by the Hon'ble Supreme Court in South India Viscose Ltd v. State of Tamil Nadu, reported in 48 STC 232 and also by applying the view of the TNTST, Chennai in the case in TC(A) Nos.2803 to 2805 of 1997 and TC (R) Nos.112 and 114 of

1998 etc dated 1.11.1999 [Jambai K.N.M. Textiles (P) Ltd. Vs. State of Tamil Nadu [(2000) 118 STC 77(TNTST)], was of the firm view that the transaction cannot be considered as local sale, but only as inter state purchase and the same was not liable to tax under the TNGST Act 1959 at the point of last purchase in the State and accordingly allowed all the five appeals.

6.For better appreciation, the findings of the Tribunal in paras 6 to 8 of the impugned order are extracted below:

"6.We heard the arguments put forth by the learned Authorised Representative and the learned Additional State Representative and carefully examined the records produced at the time of hearing along with the assessment records. The only point for consideration is:

Whether the disputed transactions in all the five years is an interstate purchase at the hands of the appellants or a local purchase liable to be taxed under the TNGST Act, 1959 i.e., whether the transactions fall under the definition of section 3(a) of the CST Act, 1956 or 2(n) of the TNGST Act 1959. The points involved in these cases are that the appellants/mill have placed an order with the Maharashtra State Co-operative Cotton Growers Marketing Federation vide their letter dated 11.2.1993 and further by a letter dated 19.2.1983, the Federation confirms the letter and as per that letter the specified quantity of cotton have been moved from Maharashtra to the godown of the appellants mill. The godown was under the Joint Custody of the appellants and sellers (Federation). It is also found that only after the payment of the sale price the goods have been delivered to the appellants. On the facts available as above, we examined whether the transactions fall under the category of (i)mentioned under section 3(a) of the Act or not. We have also examined the fact whether the transactions which falling under section 4 of the CST Act 1956. Regarding the first point whether the transaction is falling under section 3(a) of the CST Act, 1956, the relevant section is extracted below.

"Section 3(a) of the CST Act, 1956:

A sale or purchase of goods shall be deemed to take place in the course of interstate trade of commerce if the sale or purchase-

a) Occasions the movement of goods from one State to another; or

b)Is effected by a transfer of documents of title to the goods during their movement from one state to another.

Explanation 1: where 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.

Explanation: 2 Where the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State".

We examined whether the appellants' transactions fall under the above mentioned Section 3(a) of the CST Act 1956. If it falls under the above section, the local Act and the Section 4 of the CST Act, 1956 need not be applied. Section 3(a) of the CST Act, 1956 states that

"if the sale or purchase occasioned the movement of goods from one State to another".

So, we have to verify where the movement has been occasioned by any document. In this case, the appellants have already entered into a contract with the

Federation for the supply of cotton bales with quantity and quality. In this case, the appellants have already entered into a contract with the Federation for supply of specific number of cotton bales. The Federation moved the goods from Maharashtra to Tamil Nadu only in pursuance of that contract. It has been categorically held by the Supreme Court in various decisions. In the case of South India Viscose Ltd., v. State of Tamil Nadu, reported in 48 STC 232, "that if there is a conceivable link between the contract of sale and movement of goods from one State to another in order to discharge the obligation under the contract of sale the inter-position of an agent of the seller, who may temporarily intercept the movement, will not alter the interstate character of the sale". In this case, even considering the said depot as a branch of the Federation, the real fact that there is a movement in pursuance of contract from one State to another cannot be denied. Another point relied on by the learned Additional State Representative and the Appellate Assistant Commissioner is that since the property in goods have been transferred to the appellants in this state and as long as the payment was made the ownership of the goods remains with the Federation. Hence, the disputed transactions have to be considered as local sales. We have given careful consideration with reference to the facts of these cases. It is an admitted fact that the Federation has delivered the goods only after receipt of the payment in Tamil Nadu from the Godown. Because of this factor, the disputed transaction cannot be considered as local sale as per the decision of the Hon'ble Supreme Court in the case of Oil India Ltd. v. Superintendent of Taxes reported in 35 STC 445 wherein it has been held that a sale which occasions movement of goods from one state to another is a sale in the course of interstate trade, no matter in which State the property in the goods passes. It is not necessary that the sale must precede the inter statement movement in order that the sale may be deemed to have occasioned such movement. In this specific case the movement is in pursuance of the contract even if the goods have been transferred to the buyer in Tamil Nadu, the transactions cannot be considered as a local sales and very well fall under the definition of interstate sales defined under section 3(a) of the CST Act, 1956. The implication of section 4 and 4(a) of the CST Act 1956 has also been examined by the Hon'ble TNTST, Chennai in the case relied on by the appellants. We also have examined the fact since the transit insurance has been paid by the Federation for the goods where the transactions can be considered as a local sale. In this regard the learned Authorised Representative contended that the transit insurance charges have been paid by the appellants to the Federation. Anyhow this is not a vital point to decide the transaction whether it is a local sale or interstate sale.

7.We have examined the contract, delivery order, sales bills issued by the Federation, transport invoices etc. These records clearly show that the movement is in pursuance of the agreement entered into by the buyers regarding specific quantity. In the sale bill, the buyer has been mentioned as Annamalaiyar Mills Ltd., (the buyers) the sellers (Federation). In the lorry way bill accompanied the goods also has been mentioned the buyer as Annamalaiyar Mills and seller as Maharashtra State Co-operative Cotton growers Marketing Federation Ltd., Bombay. The above records clearly show that there is an interstate movement of cotton, which has been termed as local purchase by the Assessing Officer. The transactions are similar to the case decided by the TNTST, Chennai, in the case reported in TC(A) 2803 to 2805 of 1997, TC (R) no.112 and 114 of 1998 etc. Dated 1.11.1999.

8. We have also verified the fact with reference to the point mentioned in page 10 of TNTST, Chennai's order whether the disputed transactions relate to the movement of goods by the sellers without referring to any buyers and they have searched for buyers

after storing the goods in the godown at Tamil Nadu. The verification of the records revealed that the case is not so. In all the years, the goods have been moved with reference to the firm purchase order placed by the buyers specifying the quantity and variety of cotton. In these circumstances, this transaction cannot be considered as one brought from outside the State without referring to any buyers and for selling after receipt in Tamil Nadu. In this regard also, the disputed transactions cannot be considered as a local sale. In the above circumstances, we have no hesitation to decide the transactions as an interstate purchase not liable to tax under the TNGST Act, 1959 at the point of last purchase in this state and thereby we allow all the five appeals."

As the findings rendered by the Tribunal are based on material facts and supportive documents and sustained by sufficient reasoning, we find no reason to interfere with the same.

7.In the result, the Tax Case Revision is dismissed."

6. Hence, the petitioner shall succeed on the second issue.

7. In the result, the writ petition is partly allowed. The finding rendered by the Tribunal with regard to hank yarn obligation is confirmed and the finding rendered by the Tribunal with regard to the cotton purchases effected by the petitioner is set aside following the earlier decisions as mentioned above. No costs. Consequently, the connected WPMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

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

2. The Deputy Commissioner (CT) (Appeals),
   Coimbatore.

3. The Assistant Commissioner (CT),
   Central Assessment Circle-I,
   Coimbatore.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.15919
+1cc to the Special Government Pleader (T), S.R.No.16501

W.P.No.18136 of 2005 and
WPMP.Nos.19690 & 19691 of 2005

PMK(CO)
CS/07/04/2021