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.9461 of 2004 & WPMP.No.11040 of 2004

SGS Petro Organic (P) Ltd.,
Chennai-10 ...Petitioner

Vs

1.The Commercial Tax Officer,
Ayyanavaram Assessment Circle,
Chennai.

2.The Joint Commissioner (CT),
Suo Motu Revision, Chennai.

3.The State of Kerala, rep.by the
Secretary, Department of
Revenue, Trivandrum, Kerala.

4.The State of Andhra Pradesh,
rep.by the Secretary, Department
of Revenue, Hyderabad,
Andhra Pradesh.

5.The State of Karnataka, rep.by
the Secretary, Department of
Revenue, Bangalore, Karnataka.

6.The Union Territory of Pondicherry,
rep.by the Secretary, Department
of Revenue, Pondicherry. ...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 files of the second respondent herein in Ref.No.MM3/17466/98 SMR No.311/98 dated 29.10.1998 and quash the same.

For Petitioner	:	Mr.N.Inbarajan
For Respondents 1 & 2	:	Mrs.G.Dhanamadhri, GA
For Respondent-6	:	Ms.V.Usha, AGP (Pondi)
For Respondents 3 to 5	:	No appearance

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

We have heard Mr.N.Inbarajan, learned counsel for the petitioner, Mrs.G.Dhanamadhri, learned Government Advocate appearing for respondents 1 and 2 and Ms.V.Usha, learned Additional Government Pleader appearing for the sixth respondent.

2. This writ petition has been filed by the petitioner - a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956 on the file of the first respondent challenging the order passed by the second respondent exercising his suo motu revisional power, setting aside the order dated 25.7.1997 passed by the Appellate Assistant Commissioner (CT) VI, Chennai, who allowed the appeal filed by the petitioner and restoring the order of assessment passed by the first respondent dated 31.3.1997. The matter arises under the provisions of the Central Sales Tax Act, 1956 (for short the Act) for the assessment year 1994-95.

3. The manual return was filed by the petitioner for the assessment year under consideration. On verification of the accounts, the Assessing Officer found that there were transactions effected by the petitioner to other States including the Union Territory of Puducherry. Subsequently, the place of business of the petitioner was inspected by the officers of the Enforcement Wing on 27.9.1994. Pursuant to such an inspection, the Assessing Officer proposed to reject the plea of the petitioner that the products such as kerosene were stock transferred to their branches in the other States treating the same as inter-state transactions.

4. The Assessing Officer accordingly completed the assessment by order dated 31.3.1997 and what weighed in his mind in doing so were two factors namely that (i) same day, same quantity and same transport carrier and (ii) the dispatch of goods from Madras to their branches was not in the ordinary course of business, but in compliance of specific orders for specific quantities of the goods.

5. The assessee, aggrieved by that, filed an appeal before the First Appellate Authority, who examined the records and

found that the branches of the petitioner maintained an order, which indicated the date, time, names of parties, contact person, phone number, order which was booked, relevant date, serial number of the order, invoice number and date, quantity and local rate. The First Appellate Authority also found that the goods were transported under the delivery note in Form XX, which had been duly endorsed by the Check Post Officer containing the names of the consignor and the consignee. The First Appellate Authority concluded that except the statement that the same lot they sold on the same date in the same transport carrier, the Assessing Officer did not come out with any other clinching evidence to substantiate that the sales were inter-state sales. Accordingly, the appeal filed by the petitioner was allowed by order dated 25.7.1997. The Revenue did not file any appeal against the said order dated 25.7.1997.

6. Thereafter, the Joint Commissioner chose to exercise his revisional powers and issued a show cause notice proposing to interfere with the order passed by the First Appellate Authority dated 25.7.1997. The petitioner filed their objections to it. Yet, the Joint Commissioner was of the view that delivery of goods to the intended customer in the same tanker made it abundantly clear that only based on pre-existing contract for sale, they moved the goods, but they tried to show it as a branch transfer/consignment sales. The correctness of the order passed by the Joint Commissioner dated 29.10.1998 is the subject matter of this writ petition.

7. In our considered view, the First Appellate Authority rightly appreciated the documents, which had been placed on record and more particularly the delivery note in Form XX. Neither the Assessing Officer nor the Joint Commissioner doubted the veracity or validity of the delivery note, which is a statutory form. The only issue would be as to whether the goods were sold in the other States/UTP in the same transport carrier and would it tantamount to a case of inter-state sales and not that of a branch transfer.

8. An identical issue was considered by the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu rep.by Deputy Commissioner (CT), Chennai (North) Division Vs. Tvl.P.M.P. Iron and Steel India Ltd. [W.P.No.12507 of 2001 dated 17.11.2009] wherein it was held that the mere fact that the goods dispatched by the assessee and received by the agents have been sold on the very same date after their arrival or the next day itself could not be a reason to hold that the transactions were inter-state sales. In the said case, the assessee produced before the Appellate Authority the copies of sale pattials, invoices rendered by the agents as well as the excise gate pass and the above said documents clearly proved that the

transactions were consignment sales as held by the Appellate Authority. Further, by referring to the decision of this Court in the case of Sri Ganesan Traders Vs. Union of India [reported in (1994) 95 STC 273], it was also held in the decision of the Hon'ble Division Bench of this Court in the case of Tvl.P.M.P.Iron and Steel India Ltd., that the burden of proof was on the assessee to prove to the satisfaction of the Assessing Officer that the particulars furnished in Form F were true and genuine and that the assessee therein proved with documentary evidence before the Authorities that the particulars furnished by him were true and genuine and in the absence of any contra material to disprove the stand taken by the assessee, the Authority erred in treating the transaction as an inter-state sale.

9. A similar view was taken by another Hon'ble Division Bench of this Court in the case of M/s.Advance Paints (P) Ltd. Vs. CTO, Valluvar Kottam Assessment Circle [W.P.No.14193 of 2001 dated 09.12.2019] by following the decision of the Hon'ble Division Bench of this Court in the case of Tvl.P.M.P.Iron and Steel India Ltd.

10. The above decisions would fully apply to the case on hand and consequently, the necessary conclusion will be to hold that the impugned order is unsustainable in law.

11. For all the above reasons, the writ petition is allowed, the impugned order is set aside and the order passed by the First Appellate Authority dated 25.7.1997 is restored. No costs. Consequently, the connected WPMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commercial Tax Officer,
Ayyanavaram Assessment Circle,
Chennai.

2.The Joint Commissioner (CT),
Suo Motu Revision, Chennai.

3.The Secretary to Government of Kerala,
Department of Revenue,
Trivandrum, Kerala.

4.The Secretary to Government of Andhra Pradesh,
Department of
Revenue, Hyderabad, Andhra Pradesh.

5.The Secretary to Government of Karnataka,
Department of Revenue,
Bangalore, Karnataka.

6.The Secretary to the Union Territory of Pondicherry,
Department of Revenue, Pondicherry.

+1cc to Mr.N.Sriprakash, Advocate SR.8105
+1cc to the Special Govt. Pleader(Taxes) SR.8551

W.P.No.9461 of 2004 &
WPMP.No.11040 of 2004

AAB(CO)
CB(09/03/2021)