

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Orders Reserved On 19.03.2021	Orders Pronounced On 25.03.2021
----------------------------------	------------------------------------

W.P.Nos.36544 to 36546 of 2005

M/s.Sri Karthikeya Spinning &
Weaving Mills (P) Ltd.,
Rep., by its Managing Director,
Mr.G.R.Karthikeyan,
Uppilipalayam, Coimbatore-18. .. Petitioner in all W.Ps.

-vs-

- 1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Coimbatore.
- 2.The Assistant Commissioner (Commercial Taxes),
Fast Track Assessment Circle-I,
Coimbatore. .. Respondents in all W.Ps.

Petitions under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus to call
for the records of the first respondent in its proceedings in
CTSA Nos.53/00, 52/00 and 51/00 dated 07.10.2004 and quash the
same as illegal and restore the order of the First Appellate
Authority passed vide proceedings in CST 3/99, 4/99 and 5/99
dated 15.10.99 respectively.

For Petitioner : Ms.R.Hemalatha
(In all W.Ps.)
For Respondents : R1 - Tribunal
(In all W.Ps.) : R2 - Mr.Mohammed Shaffiq,
Special Government Pleader

COMMON ORDER

T.S.Sivagnanam, J.

The petitioner is a spinning mill engaged in the business of spinning and weaving of cotton yarn and allied products and is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") and the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act") on the file of the second respondent.

2.Since the facts are identical in all the three writ petitions, it would suffice to take note of the facts in W.P.No.36544 of 2005.

3.The petitioner had originally reported a taxable turnover of Rs.1,41,04,903/- under the CST Act for the year 1988-89 and filed monthly returns in accordance with Rule 18 of the Tamil Nadu General Sales Tax Rules, 1959.

4.The petitioner's case is that they are in the practice of effecting transfer of goods on consignment basis to their agents situated in other States as provided under Section 6-A of the CST Act and such stock transfer or branch transfer or on consignment basis has been exempted under the CST Act. The petitioner had appointed consignment agents in Bombay and Calcutta and goods were transferred on consignment sale basis to those agents. The Assessing Authority by proceedings dated 31.05.1990, allowed exemption on the said turnover, but subsequently based on the inspection conducted by the Enforcement Wing Officials, in the place of business of the petitioner on 05.03.1993, revised the assessment disallowing the claim of exemption originally granted by order dated 05.11.1996.

5.Aggrieved by such order, the petitioner preferred appeal before the Deputy Commissioner (Appeals) (CT) and the appeal was allowed and the matter was remanded to the Assessing Officer with direction to consider the claim for exemption on the ground that the sales were consignment sales. The petitioner, in support of their claim for exemption, had furnished Form-F declaration as per Section 6(a)(2) of the CST Act and contended that upon issuance of Form-F declaration, it is deemed that the transaction was a transfer of stock to other States in a manner other than by way of sale and the Form-F declaration having been accepted by the Assessing Authority, the original assessment was completed on 05.11.1996, the same cannot be reopened. On remand, the Assessing Officer disallowed the claim of exemption on the ground that there has been violation of the terms and conditions of the agreement entered into between the parties and

the movement of goods are not been proved.

6. Aggrieved by such order, the petitioner filed appeal before the first appellate authority, who allowed the appeal partly by order dated 15.10.1999. Aggrieved over the same, the State preferred appeal to the Tribunal, which has been allowed by the impugned order.

7. Ms. R. Hemalatha, learned counsel appearing for the petitioner contended that the Tribunal mechanically restored the order of the Assessing Authority without taking note of the facts and circumstances under which, the assessment has been framed and the order is against the principles of natural justice. Further, it is submitted that the Tribunal, being a final fact finding authority, was bound to record independent reasons on the facts placed before it and cannot merely toe the line of the Assessing Authority without rhyme or reason. Further, the Tribunal brushed aside the finding of the first appellate authority with regard to the particulars of the consignment transfer noted in the declaration forms and the modus operandi adopted by the petitioner aided by the voluminous statements filed in support of their claim, which clearly prove that the goods did not move in pursuance to a pre-contract and the Tribunal merely brushed aside the finding of the first appellate authority. Thus, the Tribunal was not justified in reversing the well considered order passed by the first appellate authority, which was passed after a full-fledged hearing and taking note of the facts as well as various judgments, which were relied on by the petitioner. In support of her contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Ashok Leyland Ltd., vs. State of Tamil Nadu & Anr. [(2004) 134 S.T.C. 473 (SC)]. On the above grounds, the learned counsel prays for interfering with the impugned order passed by the Tribunal.

8. Mr. Mohammed Shaffiq, learned Special Government Pleader while seeking to sustain the order passed by the Tribunal, submitted that during the inspection, it was found that the disputed turnover was outright inter-State sales, as the goods were dispatched based on specific orders placed by the brokers on behalf of the other State brokers. Further, the Tribunal noted that the place of business of the broker at Coimbatore was inspected by the Enforcement Wing Officials on 05.03.1993 and from the records and evidence gathered in the inspection made, the Assessing Authority has identified dispatches for the years 1988-89 to 1990-91 as made to other State dealers based on orders of the brokers specifying exact quantity of yarn, the specific rate and amounts involved, the transporter and the petitioner have dispatched the goods in direct relation to those orders and concluded the relevant dispatches as outright inter-

State sales and levied tax.

9. Further, the Tribunal has referred to the statement given by the brokers. After taking note of the records, the Tribunal held that the argument of the petitioner that the brokers mainly acted as liaison persons, who did not actually deal with the goods, is incorrect. Thus, it is submitted that the Tribunal, after considering the evidence on record, concluded that the transaction is an outright inter-State sale and the same has been camouflaged as consignment sale for wrong claim of exemption and for evasion of tax and therefore, the Form-F declaration has to be held to be a false document and though the Tribunal has not said it in as many words, the net result is that the Form-F declaration cannot be relied upon by the petitioner and the Assessing Officer was justified in revising the turnover.

10. Heard the learned counsels for the parties and carefully perused the materials placed on record.

11. Before we examine as to whether the Tribunal was justified in reversing the order passed by the first appellate authority, we first take note of the legal aspect as to what would connote an inter-State sale.

12. The Hon'ble Supreme Court in *English Electric Company of India Ltd. vs. Deputy Commercial Tax Officer & Ors.* [(1976) 38 S.T.C. 475 (SC)], explained as to what would qualify to be an inter-State sale or what can be regarded as an inter-State sale. It was held that when the movement of goods from one State to another is an incident of the contract of sale, it is the sale in the course of inter-State trade falling under Section 3(a) of the CST Act. It does not matter in which State the property in goods passes and what is decisive is whether the sale is one which occasions the movement of goods from one State to another. It was further held that the inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of contract and it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It was pointed out that it is also not necessary for a sale to be deemed to have taken place in the course of inter-State sale or commerce that the covenant regarding inter-State movement must be specified in the contract itself and it will be enough if the movement is pursuance of and incidental to the contract of sale.

13. In the said case, the appellant-company had its registered office at Calcutta and branches at Bombay, Delhi, Madras and Lucknow, its main factory at Madras, where they manufactured certain goods. A Bombay buyer wrote to the Bombay

branch of the appellant therein asking for lowest quotation of the goods. The Bombay branch wrote to the Madras branch giving all the specifications and stating that the goods were for the Bombay buyer. The Madras branch, in reply, referred to the order of the Bombay buyer, gave the required particulars and mentioned that the price was f.o.r. Madras. The Bombay branch, thereafter, wrote to the Bombay buyer re-producing all the particulars, conditions of sale and mode of despatch as stated by the Madras branch and further, stated that the goods would be manufactured at the Madras branch factory. The Bombay buyer placed an order with the Bombay branch accepting all the terms and conditions. The Bombay branch placed an indent order addressed to Madras branch giving all the particulars, the buyer's name, order number and date. On receipt of an invoice from the Madras branch, the Bombay branch wrote to the Bombay buyer that some of the goods, against the order, were ready for despatch and asked for details of despatch instructions. The Bombay branch, thereafter, wrote to the Madras branch giving the despatch instructions and stating that the railway receipts and other documents should be sent to them for disposal. The Madras branch despatched the goods to Bombay by train and gave intimation to the Bombay branch. The goods were delivered to the Bombay buyer through clearing agents and the insurance charges were collected from the Bombay buyer. The appellant therein contended that there was no inter-State sale and that the sale was at Bombay, inasmuch as the Bombay buyer placed the firm order at Bombay, payment was made at Bombay, railway receipt was in the name of the Bombay branch, the goods were delivered at Bombay and there was no privity of contract between the Madras branch and the Bombay buyer. The Madras High Court held that the sale was an inter-State sale falling under Section 3(a) of the CST Act. The Hon'ble Supreme Court affirmed the decision of the Madras High Court holding that the inter-State movement of the goods from Madras to Bombay was the result of the contract of sale and the fact that the contract emanated from correspondence which passed between the Bombay branch and the company could not make any difference and the sale was therefore, liable to be taxed under Section 3(a) of the CST Act.

14. Section 3 of the CST Act deals with when is a sale or purchase of goods said to take place in the course of inter-State trade or commerce. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or 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 by title to the goods during their movement from one State to another.

15. The expression "sale or purchase occasions the movement of goods" means that either the contract of sale itself should

provide for the movement of goods or the movement of goods must be incidental to the contract, they are being no possibility of diversion of the goods for any other purpose or to any other State.

16. In *Moti & Co. vs. State of Tamil Nadu* [(1999) 113 S.T.C. 53 (SC)], the Hon'ble Division Bench held that it is settled law that a sale cannot be regarded as an inter-State sale unless the movement of goods is an integral part of the sale transaction; the movement must have been occasioned by the sale; the relation between the two should be that of cause and effect and sale being cause and movement its effect; and if the link is broken, the transaction cannot be regarded as an inter-State sale.

17. In *Ashok Leyland Ltd. (supra)*, the question involved was the interpretation of Section 6-A of the CST Act and the Hon'ble Supreme Court considered the issue as to whether re-assessment can be done on a dealer after the dealer has furnished declaration in Form-F and the assessment stood completed. It was held that by reason of sub-Section (2) of Section 6-A of the CST Act, a legal fiction has been created for the purpose of the CST Act to the effect that the transaction has occasioned otherwise than as a result of sale. On an analysis of the provisions of the CST Act, the Hon'ble Supreme Court held that the following propositions of law emerge:-

(i) The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed, an inquiry is to be made by the assessing authority for the purpose of passing an order on arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale.

(ii) Whenever such an order is passed, a legal fiction is created.

Legal fiction, as is well-known, must be given its full effect.

18. It was further held that the purpose of verification of the declaration made in Form F is to ascertain as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State. Further, it was held that the observations made by the Hon'ble Supreme Court in *Ashok Leyland Ltd. vs. Union of India* [(1997) 105 S.T.C. 152 (SC)] to the effect that the order passed under sub-Section (2) of Section 6-A of the Central Act can be subject matter of reopening of a proceeding under Section 16 of the State Act was not correct. It was further pointed out that it would not mean that even wherein such an order has been obtained by commission

of fraud, collusion, misrepresentation or suppression of material facts or giving or furnishing false particulars, the order being vitiated in law would not come within the purview of the aforementioned principle.

19. Before us, the learned Special Government Pleader seeks to bring the petitioner's case within the umbrella of paragraph 93 of the judgment in Ashok Leyland Ltd. [(2004) 134 S.T.C. 473 (SC)] (supra). It is his argument that the petitioner/dealer suppressed material facts, furnished false particulars and obtained the order and the Assessing Officer was fully empowered to revise the assessment regardless the fact that declaration in Form-F was submitted.

20. Bearing the above legal principles in mind, we proceed to examine as to whether the Tribunal was right in reversing the order passed by the first appellate authority.

21. On a careful reading of the impugned order passed by the Tribunal, it is clear that the Tribunal placed heavy reliance on the conclusion arrived at by the Enforcement Wing Officials, who had caused an inspection of the petitioner's place of business, the statements, which were recorded from the dealer, the inspection conducted in the place of business of the broker, the statements recorded from him, to conclude that the entire dispatches made by the petitioner has to be treated as outright inter-State sales and liable to be taxed accordingly.

22. The Tribunal, insofar as the levy of penalty is concerned, set aside the same to the extent indicated and remanded the matter back to the Assessing Authority for a proper consideration and for correct levy of penalty.

23. We have carefully gone through the order passed by the first appellate authority. As mentioned earlier, the revision of assessment was pursuant to an order of assessment passed by the Appellate Deputy Commissioner. The first appellate authority, in its order dated 15.10.1999, in paragraph 7 therein, has noted the direction issued by the Appellate Deputy Commissioner in the earlier round of litigation. The appellate Deputy Commissioner directed the Assessing Officer to verify the Form-F declaration filed and make fresh assessment, according to the provisions of the CST Act and not stopping with that, certain findings were recorded with regard to the nature of the agent. It was pointed out that the broker is a professional carrier acts as a conduit for the principal and agent and it is common in all lines of trade that the broker in certain cases obtained the payment from their agents and they are not transmitted to the principal and this will in no way alter the characteristics of the consignment sale. Further, the appellate

Deputy Commissioner held that from the photostat copies of the documents filed by the dealer, it was clear that there was an agreement and by the letter from the broker to the dealer and to the agent, it was found that the principal is still having the title of the goods at their agent's place and that in no case, there is a transfer of property to the agent's name. Further, the appellate Deputy Commissioner noted that the petitioner is in a position to show the closing stock balance available with the various agents in their accounts and if that is so, if there is transfer of goods with the agents, then the petitioner need not even show the value of stocks held with the agents in their accounts. The first appellate authority noted that though these were the observations and directions given by the appellate Deputy Commissioner, while remanding the matter to the Assessing Officer with direction to verify the Form-F declaration, the Assessing Officer failed to carry out the directions issued. After making such an observation, the first appellate authority proceeds to examine the transaction.

24. It is pointed out that the petitioner enters into an agreement with the agents, wherein it has been categorically stated that the goods remained the property of the petitioner till the date of sale and there is a condition that the agent should render accounts regularly and he may deduct the expenses incurred by him on behalf of the principal/petitioner.

25. The argument of the Revenue that payments were received in advance was also considered by the first appellate authority and it was found that the amounts, which were remitted into the bank account, were at times higher than the amount due for the dispatches and on several occasions, it was lesser than the amount due for dispatches and therefore, the first appellate authority accepted the stand of the petitioner that it is a running account maintained by them and the amount received cannot be considered as an amount sent not for a particular consignment.

26. With regard to the contention of the Revenue that the goods moved pursuant to an order passed by the broker and it contains all the details regarding the commodity, quantity, value, etc., the first appellate authority after examining the records, held that the goods dispatched were not according to the instructions of the broker, but according to the availability and the labour statement, which was filed by the petitioner was examined to consider the correctness of the submission and the first appellate authority has recorded that there were variations in dispatch of the goods as well as in realization of the value of the goods. Illustratively, the first appellate authority took up for consideration one of the transactions, which was done in the month of May, 1998. In

respect of the same, the broker indicated to send 70 bales of different varieties, but no dispatches were made during the said month. In June, 1998 there was no intimation received from the broker, but the petitioner has dispatched 50 bales and the first appellate authority also noted such type of varying transactions for different months. Further, the first appellate authority noted that the rate advised by the broker is Rs.370/- whereas, the proforma invoice rate has been mentioned as Rs.389.00/365.00/306.00, but the actual realisation for the dispatch is at the rate of Rs.322.00/356.00/294.00. The details given for the entire year and for each of the consignment agents were examined by the first appellate authority and on appreciation of the documents, it was held that there is no relation between the advice of the broker and the transfer of the goods. Thus, the first appellate authority concluded that the finding of the Assessing Officer that the goods moved pursuant to an order passed by the broker has not been factually established, the first appellate authority relied on the decision in the case of State of Orissa vs. Rolta Motor Ltd., [(1992) 87 S.T.C. 502] and Moti & Co. (supra).

27. Further, the first appellate authority once again took note of the finding recorded by the appellate Deputy commissioner in the earlier round, where a specific finding has been given regarding the role of the broker and such finding was endorsed by the first appellate authority in its order dated 15.10.1999. Furthermore, we find that the State did not challenge the order passed by the appellate Deputy commissioner in the earlier round and the State cannot be heard to say that it was only an order of remand. The order of remand was after making pointed observations and rendering factual finding and directing the Assessing Officer to verify the Form F declaration. Therefore, the finding rendered by the appellate Deputy Commissioner in the earlier round, will bind the Department. If that is so, then the Revenue cannot challenge the finding, wherein it has been held that the broker acted only to help the petitioner to know the prevailing market price and availability of market in other States to facilitate the petitioner to send enough goods according to the availability of the goods with them and it will not in any way change the nature of transaction of consignment agency sale.

28. The first appellate authority next considered the issue regarding receipt of payment in advance or discounting it in the bank. It was held that this will not change the character of sale for which proposition, the first appellate authority placed reliance on the decision in Peninsular Traders & Anr. vs. Deputy Commissioner, Sales Tax (Law), Kerala [(1998) 108 S.T.C. 575]. The decision was applied to the facts of the case and the first appellate authority on appreciation of the documents, held that

the receipt of payment in advance or discounting it in the bank cannot be a ground for rejection of consignment sales, since the goods moved to the other State in an agency transaction and the goods always remained the property of the petitioner/principal. The elaborate statements, documents, etc., which were filed before the first appellate authority, were considered and it was held that the petitioner has established beyond doubt that the goods moved pursuant to a contract, which was not only verified by the first appellate authority, but copies were furnished to the Department representative, which were also verified by the Department.

29. Thus, considering the fact situation, which prompted the first appellate authority to allow the appeal, we find that the Tribunal erroneously reversed such order by glossing over the nature of the documents, which were placed by the petitioner before the first appellate authority not only in the present round of litigation, but in the earlier round as well. That apart, the Tribunal did not advert to the findings rendered by the appellate Deputy Commissioner in the earlier round more particularly, with regard to the documentation, the nature of transaction and the role of the broker. The findings on these aspects had become final and the Assessing Officer had absolutely no jurisdiction to go beyond the finding of the appellate Deputy Commissioner in the earlier round. However, what the Assessing Officer did is to ignore the finding and merely acted based upon the directions of the Enforcement Wing Officials thereby abdicating its power as an Assessing Officer. That apart, as a subordinate statutory authority, the findings rendered by the appellate authority are binding on the Assessing Officer. These aspects have been ignored by the Tribunal while reversing the order passed by the first appellate authority.

30. Thus, for the above reasons, we find that the order passed by the Tribunal calls for interference.

31. Accordingly, the writ petitions are allowed, the impugned order dated 07.10.2004, passed by the Tribunal is set aside and the order passed by the first appellate authority dated 15.10.1999, stands restored. No costs.

sd/-

Assistant Registrar (CS VII)

/True Copy/

Sub Assistant Registrar

abr

To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Coimbatore.

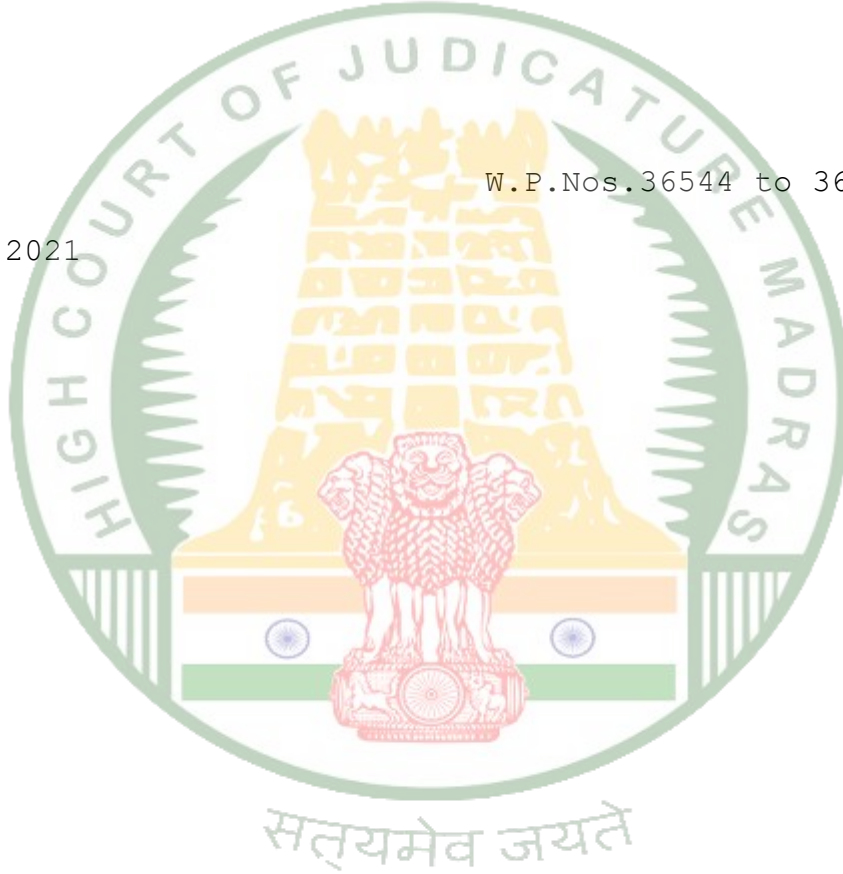
2.The Assistant Commissioner (Commercial Taxes),
Fast Track Assessment Circle-I, Coimbatore.

+1CC TO MR.R.HEMALATHA, ADVOCATE, SR.NO. 19387

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 20028

AJB (CO)
KKN 28.04.2021

W.P.Nos.36544 to 36546 of 2005



WEB COPY