



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4426 of 2004

The State of Tamil Nadu,
Represented by
The Deputy Commissioner (CT),
Madurai.

... Petitioner

-Vs-

1.Tvl.T.K.Srinivasan & Co.,
Theni.

2.The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench),
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the second respondent pertaining to the order in M.T.S.A.No.23/99 dated 28.04.2000 and quash the same as illegal.

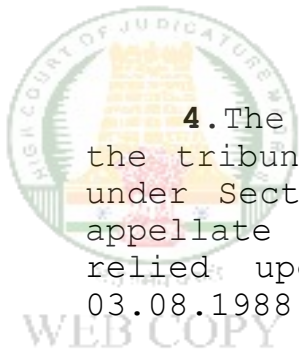
For Petitioner : Mr.R.Sureshkumar
Government Advocate
For Respondents : No appearance

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the second respondent pertaining to the order in M.T.S.A.No.23/99 dated 28.04.2000 and quash the same as illegal.

2.The State is the petitioner herein, who challenges the order passed by the second respondent, ie., the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Madurai, dated 28.04.2000.

3.The first respondent dealer / assessee, since suffered with order of assessment, seems to have filed an appeal before the Assistant Commissioner (CT), Madurai (South), in CST No.88 of 1997 relating to the assessment order 1995-96 under the Central Sales Tax Act, 1956 [hereinafter referred to as "CST Act" in short]. The Assistant Commissioner in fact deleted the disputed amount from the assessment made on turnover of Rs.22,27,759/- involving a tax effect of Rs.1,78,221/-.



4.The grounds urged on behalf of the petitioner State before the tribunal are that as per the expression 'turnover' as defined under Section 2(J) of the CST Act, the said deletion made by the appellate authority is bad. The learned Government Advocate also relied upon the earlier order passed by the Tribunal dated 03.08.1988 in the case of **Tvl.H.L.C.Limited Neyveli and others.**

5.It is the further case of the petitioner State before the Tribunal is that, when the turnover was not reported in Form-1, definitely, levy of penalty would be warranted, since Form-1 is incorrect, as per the decision of this Court made in W.A.No.1013 of 1997 dated 30.04.1998 in the case of **Chennai Textile Chemicals Private Ltd.**

6.Canvassing these points, the learned counsel appearing for the petitioner State would submit that, all these points were raised before the second respondent tribunal and those issues have not been considered in proper perspective and accordingly, since they have rejected said appeal, the said order, which is impugned herein is liable to be interfered with, he contended.

7.I have considered the said rival submissions made by the learned counsel appearing for the petitioner State and have perused the materials placed before this Court.

8.In the order impugned, the second respondent tribunal has narrated the aforesaid facts as well as the grounds urged by the State and by dealing with the same, the Tribunal has given the following findings:

"6.The only point of determination in this appeal is:

Whether the order of the Appellate Assistant Commissioner (CT) is sustainable?

7.Point:

We have gone through the entire records relating to this appeal in detail. A perusal of records, it is revealed that the Assessing Officer, while making assessment, had taken a turnover of Rs.22,27,759/- being the Charges received by the dealers towards handling and insurance charges. The Assessing Officer also levied penalty under Section 9(2) of the CST Act read with Section 12(3)(b) of the TNGST Act. On appeal, the Appellate Assistant Commissioner (CT) allowed the case against which the appellant / State filed the present appeal before this Tribunal;

8.The close scrutiny of the appeal records revealed that the Appellate Commissioner (CT) had



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dealt with the case of the respondent in detail and had given his findings as follows:

"... All along the higher judicial forums have propounded that the appellants even if separately charged in the sale bill, it forms part of the sale price as coming the inclusive clause of the definition of sale price. In the instant case, the question is something different. The appellants had proved by a separate agreement with reference to the packing charges. The buyer had described the condition for packing and had allowed 3-5% as charges incurred for such packing. So, the sale price charged by the appellants is less the packing charges and the sale value of cotton is fixed or charged in the bill and not the packing charges that had been reimbursed from the purchaser by a separate debit note. The packing charges did not form part of the sale price as alleged. In the sale bill, it is not included in the taxable turnover and will not also come under the definition of sale price. Here, the decision of the Madras High Court in the case of State of Tamilnadu vs. Feeders Lloyd Corporation (P) Ltd., reported in 56 STC 191 come into operation, the High Court while dealing with the handling charges had held that,

"handling charges were a matter entirely within the subject of contractual under standing between the dealer and the customer and if those charges were actually paid for and shown separately, the provisions of Rule 6(c) of TNGST Rules, 1959 should be applied to such transaction"..

As the appellants had not charged in the sale bill, it cannot be taken for the sale price exigible to tax, 43 STC 203 is not applicable to this case. The assessment made on a turnover taken from the books does not form part of the sale price and the assessment made on the said turnover is set aside".

From the perusal of the above, we come to a conclusion that the Appellate Assistant Commissioner (CT) had rightly deleted the assessment made on the turnover of Rs.22,27,759/- along with the penalty. We do not find any valid reasons to interfere with the order of the

<https://hcservices.ecourts.gov.in/> Appellate Assistant Commissioner (CT). Moreover,



the Department had not produced any material evidence to rebut the contentions raised. In view of the above facts and circumstances of the case, the order of the Appellate Assistant Commissioner (CT) is upheld and consequently the appeal filed by the State stands dismissed.

In the result, the State Appeal stands dismissed."

9. Having gone through the said findings given by the Tribunal, this Court finds no error in the said decision taken by the Tribunal especially inasmuch as it has been found by the Tribunal that the State had not produced any material evidence to rebut the contention raised on behalf of the assessee dealer.

10. In that view of the matter, the order passed by the second respondent in M.T.S.A.No.23/99 dated 28.04.2000, which is impugned herein, does not require any interference from this Court, as the same is to be sustained. In the result, this Writ Petition fails and hence, it is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar (CS)

SM

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the Order may be utilized for official purposes, but, ensuring that the copy of the Order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO
The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Madurai.

W.P.No.4426 of 2004

16.09.2021

CM(ASO) (CO) /RS (22.10.2021) 4P 2C