IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No. 33817 of 2007

M/s. A.C. Enterprises
Rep.by its Proprietor
Mr. Sampath Joshi
No.7, Ponnappa Lane
Chennai - 600 003 .. Petitioner

Versus

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal (AB), 2nd Floor
City Civil Court Building
Chennai - 600 104

2.The Deputy Commissioner (CT)
North Division, Chennai

3. The Commercial Tax Officer
Moore Market (North) Asst.Circle .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in STA No.540/03 dated 05/09/07 and quash the same.

For Petitioner : Ms. C. Rekha Kumari

For Respondents: Mr. Prashant Kiran
Government Advocate (Taxes) for R2-R3

ORDER
(Order of the Court was made by R. MAHADEVAN, J)

The petitioner has filed this writ petition seeking to issue a Writ of Certiorari to quash the order dated 05.09.2007 passed in STA No.540/03 on the file of the first respondent/Tribunal.

2. The petitioner is a dealer in electrical and hardware items and they were assessed under the Tamil Nadu General Sales Tax Act (in short, the Act). According to the petitioner, most of the electrical and hardware items are being supplied by them to Government Departments as per their specification. During the assessment year 1996-1997, the petitioner received a purchase order from the Atomic Power Project, Kalpakkam to supply certain electrical goods and they in turn forwarded it to a supplier at Calcutta. The supplier at Calcutta consigned the goods on behalf of the petitioner and supplied it to the Atomic Power Project, Kalpakkam. Thus, the supply of the items made by the supplier at Calcutta is for and on behalf of the petitioner. The items so supplied were delicate to handle and in order to avoid mishandling, the petitioner directed its supplier in Calcutta to directly dispatch the items to Atomic Power Project, Kalpakkam. Therefore, during the original assessment, exemption was granted to the petitioner for transit sale under the Central Sales Tax (CST) Act, however, it was reversed under the Act by disallowing the claim of exemption on transit sale by treating it as a local sale. The reason for such rejection of the claim for exemption is that the Form E1 issued by the supplier from Calcutta contains the place of destination as Kalpakkam and in transit sale, the supplier should not be made aware of the purchaser's name and address.

3. Aggrieved by the order of assessment, the petitioner filed an appeal before the appellate authority by stating that the third respondent ignored the vital aspect that E1 form also contains the name of the petitioner as purchaser and so, it is evident that there was a transaction between the petitioner and the supplier at Calcutta and delivery alone was effected at Kalpakkam. Accepting the plea of the petitioner, the appellate authority allowed the appeal. As against the same, the Revenue preferred an appeal before the first respondent- Tribunal in S.T.A. No. 540 of 2003 and it was allowed on 05.09.2007. Aggrieved by the said order passed by the first respondent-Tribunal, the present writ petition is filed.

4. The learned counsel for the petitioner submitted that the order placed by the Atomic Power Project, Kalpakkam on the petitioner preceded the occasion of movement of goods from Calcutta, which has not been denied by the third respondent. When there is no break in journey during transit of goods and the petitioner did not handle the goods till the point of supply at Kalpakkam, the levy of sales tax under the Act by treating it as local sale is unsustainable and illegal. The petitioner genuinely claimed exemption on transit sales and complied with all the mandatory requirements such as production of E1 and C declaration forms. It is not disputed by the third respondent that the delivery of goods was taken by the purchaser at

Kalpakkam, which is one of the requirements to be proved by the petitioner for claiming exemption under Section 6 (2) of the CST Act. While so, the rejection of claim of exemption on the ground that in Form E1, the place of destination of goods is mentioned as Kalpakkam and therefore, the supplier knew the ultimate purchaser is not sustainable. The learned counsel for the petitioner, therefore, prayed for setting aside the order passed by the first respondent by allowing this writ petition.

5. The learned Government Advocate (Taxes) appearing for the respondents 2 & 3 submitted that the Department of Atomic Energy, Kalpakkam had placed purchase order with the supplier and the goods under dispute were bought from Calcutta and sold to the ultimate buyer against purchase order. Since the goods were imported against prior purchase order by Atomic Energy, Kalpakkam, it is a straight sale by the supplier to the petitioner. This was properly appreciated by the first respondent while allowing the appeal filed by the third respondent. The learned Government Advocate therefore prayed for dismissal of this writ petition.

6. We have heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 2 and 3.

7. The case of the petitioner is that they have received an order from the Atomic Power Project, Kalpakkam for supply of certain electrical goods. The purchase order so received has been forwarded by them to its supplier at Calcutta and they in turn supplied the goods directly to the Atomic Power Project, Kalpakkam. However, it is stated that such supply and/or delivery of goods effected by the supplier at Calcutta is for and on behalf of the petitioner and consequently, they are entitled to claim exemption under Section 6 (2) of the CST Act. But, such claim of the petitioner was rejected and the sale was treated as a local sale by the third respondent on the ground that form E1 issued by the supplier from Calcutta contains the place of destination as Kalpakkam and in a transit sale, the supplier may not be knowing the purchaser's name and address. Therefore, whether the supply of goods effected by the petitioner was a transit sale or it was a local sale, disentitling them from claiming exemption, has to be examined.

8. This issue is no longer res integra as it is covered by the Judgment passed by the Division Bench of this Court in the case of Vinay Cotton Waste Company vs. The State of Tamil Nadu reported in (1986) 63 STC 391 (Mad) wherein it was held as follows:-

> "We are not inclined to agree with the learned counsel for the assessee that an inter-state sale

can take place only between two dealers in two different States. It is possible that even as between dealers in the same State, an inter-state sale can take place. Even if the seller and the buyer are in the same State, the buyer can call upon the seller to deliver the goods outside the State. In such a case, it will be an inter-state sale as it occasions the movement of the goods. In this case, though the assessee and his buyer are in the State of Tamil Nadu, the sale contract between them dated 27th September 1979, in fact contemplates the movement of the goods from Coimbatore to Pondicherry. It could therefore be taken that it is the contract dated 27th September, 1979 that has occasioned the movement of the goods from Coimbatore to Pondicherry. This will be the position even if there is no subsequent sale by the assessee's buyer to the Pondicherry dealer. This is the view taken by the Tribunal in this case."

9. In the light of the above decision of the Division Bench of this Court, mentioned supra, we hold that the supply of goods effected by the petitioner through a supplier at Calcutta to the Atomic Energy Project, Kalpakkam cannot be regarded as local sales and it is a transit sale. Resultantly, the order dated 05.09.2017 passed by the first respondent-Tribunal in S.T.A. No. 540 of 2003 is liable to be set aside and accordingly it is set aside. The Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(Cs-V)

//True copy//

Sub Assistant Registrar

dhk/rsh

To

1.The Secretary
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City Civil Court Building
Chennai – 600 104

2.The Deputy Commissioner (CT)
North Division, Chennai

3. The Commercial Tax Officer
Moore Market (North) Asst.Circle

GPL(CO)
GMY(01/04/2022)