IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-09-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.36116 of 2003

M/s.Jothilakshmi & Co. ... Petitioner

-vs-

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

2.The Deputy Commercial Tax Officer,
Mailamchandai-II Assessment Circle,
Trichy-20. ... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the records of the first respondent in its proceedings in Madurai Tribunal State Appeal No.47/98, dated 22.10.2002, quash the same as illegal and restore the order of the First Appellate Authority passed vide proceedings in A.P.No:CST 11/97, dated 14.05.1998.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.C.Harsharaj,
Government Advocate.

ORDER

This Writ Petition has been filed against the impugned order passed by the first respondent - Tamil Nadu Sales Tax Appellate Tribunal in M.T.S.A.No.47/98, dated 22.10.2002. By the impugned order, the Tribunal has set aside the order, dated 14.05.1998, passed in A.P.No:CST 11/97, filed by the petitioner, wherein the Appellate Assistant Commissioner had allowed the appeal filed by the petitioner and, thereby, reversed the order passed by the second respondent – Deputy Commercial Tax Officer.

2. The dispute pertains to the claim of the petitioner of movement of goods otherwise than by way of sale to a consignment agent of the petitioner. The petitioner had filed Form-F before the second respondent along with sale list. But, the second respondent refused to accept the claim, stating merely on the strength of Form-F and sale list, such inference cannot be made. The Appellate Assistant Commissioner allowed the appeal filed by the petitioner, placing reliance on a decision of the Andhra Pradesh High Court in ***State of Andhra Pradesh* v. *Andhra Pradesh Dairy Development Corporation Ltd*.**, (1994) 95 STC 478. Thereafter, the first respondent Appellate Tribunal allowed the appeal filed by the State with the following observations:-

> *"6..... In spite of giving reasonable opportunity for hearing the appeal, which is pending from 1998 onwards, the respondent / assessee is not able to produce any evidence before us for claiming exemption. In the above circumstances, we are of the view that the Appellate Assistant Commissioner (CT) is not correct in placing reliance only on 'F' Form to claim exemption. Accordingly, we set aside the order of the Appellate Assistant Commissioner (CT) in respect of the exemption allowed on the turnover of Rs.2,98,245/-.*
>
> *In the result, the State appeal is allowed."*

The petitioner seeks reversal of the above said order of the Tribunal.

3. The learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in *A.Dhandapani* v. *State of Tamil Nadu and Another*, (1995) 96 STC 98, and submitted that the writ petition has to be allowed. She further submitted that the view taken by the Andhra Pradesh High Court also supports the case of the petitioner.

4. This Writ Petition is opposed by the learned counsel for the respondent – Department, stating that though Rule 4 (3-A) of the Central Sales Tax (Tamil Nadu) Rules,1957, has been held to be directory, nevertheless the petitioner was required to produce such documents that may be required to prove the transaction. It is submitted that the petitioner has not discharged the burden of proof in terms of the test laid down by the Division Bench in *A.Dhandapani's* case, cited supra.

5. By way of a rejoinder, learned counsel for the petitioner submits that there is no dispute that Form-F is a genuine document and, therefore, on the strength of the documents that were produced before the original authority, the Writ Petition deserves to be allowed, by reversing the decision of the first respondent - Appellate Tribunal.

6. We have considered the arguments advanced by the learned counsel for both the parties. We have also perused the provisions of Section 6-A of the Central Sales Tax Act,1956, and Rule 4 (3-A) of the Central Sale Tax (Tamil Nadu) Rules,1957. The Division Bench of this Court in *A.Dhandapani's* case referred to above has laid down the test in Paragraph 22, which is reproduced below :

> ***"22.*** *As a result of the aforesaid discussions, the following conclusions emerge:*
>
> *(i) Rule 4(3A) of the CST (TN) Rules is directory and not mandatory. Contravention of the said rule does not warrant punishment. When form F is filed by a dealer, he chooses or elects the mode of proving that the transfer of the goods is otherwise than by way of sale. Therefore, he has to prove that the particulars contained in form F are true. In the event he fails to prove that the particulars rrentioned in form F are true and no other material evidence is placed before the authority to support the stand of the dealer that the transfer of goods is otherwise than by way of sale, the decision or inevitable result would be that the*

transfer of goods is by way of sale in the course of inter-State trade or commerce, as such, it is exigible to sales tax under the CST Act.

(ii) The enquiry required to be made under section 6A(2) of the CST Act is confined to find out the truth or otherwise of the particulars contained in form F and for this purpose other evidence if any produced by the dealer other than the particulars contained in form F is also to be considered. In the course of such enquiry, it is open to the authority to call for any other information in order to verify the truth or otherwise of the particulars contained in the declaration filed in form F. The "any other information" may be that which rule 4(3A) of the CST (TN) Rules require a dealer to maintain, except the one required under rule 4(3A)(d) or any other evidence relating to the issue, in order to adjudicate whether the particulars mentioned in form F are true. The copies of the bills issued by the agents to the purchasers as required by rule 4(3A)(d) need not be produced, nor it is open to the assessing authority to call for such bills.

(iii) In W.A. No. 911 of 1994 which arises out of W.P. No. 10649 of 1994, assessment has been made for the assessment year 1992–93 on March 31, 1994, on the basis that sub-rule (3A) of rule 4 of the CST (TN) Rules has not been complied with. As we have held that the said rule is directory and not mandatory, and the enquiry for the purpose of section 6 of the CST Act, as per section 6A of the CST Act, has to be confined to the matters stated in sub-section (2) thereof as explained by us in the earlier portion of this judgment and as the enquiry has not been held in such manner the assessment order is liable to be set aside and the

Deputy Commercial Tax Officer, Pollachi West/East/Rural, has to be directed to redo the assessment in the light of this judgment. Accordingly, we allow W.A. No. 911 of 1994, modify the judgment of the learned single Judge, set aside the assessment order dated March 31, 1994 and remit the matter to the Deputy Commercial Tax Officer, Pollachi, to redo the assessment in the light of this judgment and in accordance with law.

(iv) As pointed out earlier, notices have been issued by the department in respect of assessment years up to 1991 and also in respect of the earlier years which are contrary to the judgment in question and in respect of which, as pointed out earlier, the Special Commissioner and Commissioner for Commercial Taxes in his minutes dated July 20, 1994 issued on July 28, 1994, has made it clear that closed cases prior to March 31, 1992 are not to be reopened and pending cases including remanded cases will have to be dealt with on the basis of the judgment of the learned single Judge, out of which the present appeals arise. We direct that if on the basis of the notices so far issued, the department decides to pursue action, they shall give a minimum time of eight weeks to the dealers to file their objections, if any, and then proceed with such cases in accordance with law and in the light of this judgment.

(v) All the other writ appeals are disposed of in terms of what has been stated above.

(vi) The order of the learned single Judge under appeal stands modified accordingly.

(vii) There will be no order as to costs."

7. In our view, the petitioner has not satisfied the requirement, as laid down in the above decision. That apart, the scope of revision under Article 226 of the Constitution of India is confined only to the decision making process and not the decision *per se*. We do not find any error in the procedure adopted by the first respondent Tribunal while allowing the State's Appeal. Therefore, this Writ Petition is devoid of merit. The Writ Petition is dismissed accordingly. No costs.

(S.V.N.,J.)

(C.S.N.,J.)
22-09-2022

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To

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