IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No. 7470 of 2003

The State of Tamil Nadu,
represented by
The Deputy Commissioner (CT),
Madurai Division,
Madurai. ..Petitioner

Vs.

1. Tvl.S. Sankaralinga Reddiar

2. The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Addl. Bench),
Madurai – 20. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the second respondent relating to the common order made in MTA Nos. 583 of 97 dated 20.04.2000 and quash the same as illegal.

For Petitioner :: Mr. TNC Kaushik
Addl. Govt. Pleader (T)

For Respondents :: No appearance for R1

ORDER

S. VAIDYANATHAN,J.

AND

MOHAMMED SHAFFIQ,J.

The writ petition is filed challenging the order of the Appellate Tribunal, which has modified the order of the First Appellate Authority remitting the matter back to the Assessing Officer by holding that the appeal filed by the assessee must have been allowed.

2. Brief facts of the case are:

(a) The petitioner is engaged in the business of sale of cotton yarn. For the assessment year, 1993-94, the place of business of the petitioner was inspected by the officers of Commercial Tax Department on 22.02.1995. During the course of inspection, certain records were seized. On the basis of records seized, the Assessing Officer proceeded to hold that the assessee has suppressed transactions of sale of goods to the extent of Rs.33.33 lakhs and proceeded to levy tax on the same. It may be relevant to note that the above conclusion of suppression was arrived at by the Assessing Officer on the basis of certain entries made in a Diary marked "B". Aggrieved by the same, the petitioner challenged the same by way of an appeal before the Appellate Assistant Commissioner in Appeal No. 227/1996. The First Appellate Authority, after relying upon various judgments, came to the conclusion that the ingredients of sale were absent and therefore, the assessment order treating the above turnover as representing transaction of sales of goods cannot be sustained. After finding so, the First Appellate Authority, however, remitted the matter back to the Assessing Officer with a direction to prove the above aspects in order to confirm the inter-state sales. The relevant portion of the order of the First Appellate Authority is extracted hereunder:

> *" Further, their Lordships of the Supreme Court reported in 9 STC 353 and 35 STC 24 the following three essential ingredients must be proved to confirm a "sale". They are (i) There should be an agreement between the parties for the purpose of transferring the title to goods which pre-supposes*

capacity to contract (ii) it must be supported by money consideration (iii) as a result of such transactions the property must actually pass in the goods. But, in the present case, the Assessing Officer had not proved the above aspects, but simple presumed the "interstate sales" based on the entries in the slip. As the assessment cannot be made on mere assumption and presumption in the absence of material proof for the interstate sales, the assessment made on the turnover representing interstate sales is not justifed. In view of the foregoing reasons, the matter is remitted back to the Assessing Officer with a direction to prove the above aspects in order to confirm the interstate sales involved in the above transactions."

(b). The said order was carried in appeal by the first respondent herein before the Tribunal. The Tribunal, after considering the submissions made on either side and on perusing the records, confirmed the finding of the First Appellate Authority in holding that the essential ingredients of sale were absent and thus, the conclusion arrived at by the Assessing Officer regarding sale suppression cannot be sustained. In view of the same, the learned Tribunal also proceeded to state that there was no reason for the matter to be remanded back. The relevant portion of the order of the

Tribunal is extracted hereunder:

"*In the present case, the Assessing Officer has not proved any movement of goods from the appellants at Madurai to outside the State dealers beyond any doubt. Merely, the fact that the entries noted in the incriminating records alone is not sufficient to determine the character of interstate sales. The conditions prescribed under Section 3 of the CST Act, 1956 should be proved beyond the shadow of doubt. Therefore, the suppression culled out from slip No.4 is also remitted back to the Assessing Officer for fresh consideration and disposal on the above said lines. Further, their Lordships of the Supreme Courtreported in 9 STC 353 and 35 STC 24 the following three essential ingrediences must be proved to confirm a ' sale'. They are (i) There should be an agreement between the parties for the purpose of transferring the title to goods which pre-supposes capacity to contract (ii) it must be supported by money consideration (iii) as a result of such transactions the property must actually pass in the goods. But, in the present case, the Assessing Officer had not proved the above aspects, but simple presumed the "interstate sales" based on the entries in the slip. As the assessment cannot be made on mere assumption and presumption in the absence of material proof for the interstate sales, the assessment made on the turnover representing interstate sales is not justifed. In view of the* *foregoing reasons, the matter is remitted back to the Assessing Officer with a direction to prove the above aspects in order to confirm the interstate sales involved in the above transactions. Here also, we are of the view that the learned Appellate Assistant Commissioner (CT) instead of allowing this case, basing on the conclusion he had already arrived at, wrongly remanded the matter back to the Assessing Officer. In view of the above facts and circumstances of these case, the assessments are hereby set aside and the assessment itself being set aside the levy of penalty on this score is also set aside in all the nine appeals. "*

From the above extract, it is clear that both the Appellate Authorities had concurrently found that the following ingredients which are essential for a sale are absent, viz.,

i) There should be an agreement between the parties for the purpose of transferring the title to goods which pre-supposes capacity to contract;

ii) It must be supported by money consideration;

iii) As a result of such transactions the property must actually pass in the goods.

3. While the First Appellate Authority after finding that the essential ingredients to constitute a sale are absent had remanded the matter back to the Assessing Authority, the Tribunal howeer found that the remand was unnecessary in view of the fact that the assessments have been made without even the existence of the essential ingredients to constitute a "sale".

4. We find merit in the above reasoning of the Tribunal insofar as it has set aside/modified the order of the First Appellate Authority, remanding the matter back to the Assessing Authority after finding that the essential ingredients to constitute a "sale" (referred to supra) are absent. It is also relevant to note that whether a transaction constitutes a " sale of goodsor otherwise is essentially a mixed question of fact and law. Thus, the order of the Tribunal whichis under challenge does not give rise to any question of l aw much less substantial question of law as the order of the Tribunal is primarily one of finding of fact and thus unless shown to be perverse would not warrant interference. We do not find any perversity in the order of the Tribunal.

S. VAIDYANATHAN,J.

AND

MOHAMMED SHAFFIQ,J.

nv

5. For all the above reasons, the writ petition stands dismissed. No costs.

(S.V.N.J.) (M.S.Q.J.)
16.12.2022

nv

W.P. No.7470 of 2003