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.36616 of 2005

Lanco Packers ... Petitioner

-vs-

1.The Commercial Tax Officer,
Park Road Circle,
Erode.

2.The Joint Commissioner (SMR) (CT),
Chepauk,
Chennai – 600 005. ... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the records on the file of the second respondent in SMR.No./204/98(N1/109521/97), dated 31.08.2001, and quash the same.

For Petitioner : Mr.R.Vasumithiran
for Mr.N.Inbarajan

For Respondents : Mr.V.Prasanth Kiran,
Government Advocate (T).

ORDER

We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner has challenged the impugned order passed by the second respondent - Joint Commissioner, in exercise of the power under Section 34 of the Tamil Nadu General Sales Tax Act,1959, whereby the second respondent reversed the assessment completed by the first respondent vide Assessment Order, dated 31.10.1995, for the Assessment Year 1992-93.

3. The specific case of the petitioner appears to be that the petitioner had purchased 5,21,946 kgs. of turmeric from local agriculturists in Tamil Nadu and about 85,000 kgs. of turmeric was sold to various merchant exporters, who eventually exported the turmeric abroad to buyers. It is, therefore, submitted that this sale effected to the exporters was sale in the course of inter-State trade and commerce and, hence, exempted from payment of purchase tax under Section 7-A of the TNGST Act. A specific reference is made to Section 7-A (1) (c) of the Act, wherein, an exception has been provided in the case of sale effected in the course of inter-State trade or commerce. The petitioner has relied upon a circular issued by the Principal Commissioner and Commissioner of Commercial Tax, wherein it has been clarified that if revision of assessment order has already been passed for the period between 07.12.1994 and 19.10.1997, the Assessing Officers may be instructed not to take coercive action to

collect tax due for the aforesaid period. It is submitted that the impugned order passed by the second respondent - Joint Commissioner ignores not only the above circular but also the specific language in Section 7-A (1) (c) of the Act,1959.

4. The Writ Petition is opposed by the respondent - Department, stating that the petitioner has an alternative remedy by way of appeal before the Appellate Assistant Commissioner. That apart, it is submitted that the petitioner has accepted before the second respondent - Joint Commissioner, regarding the liability of tax under Section 7-A as per the clarification of the Commissioner (Commercial Taxes). A reference has been made to a paragraph from the impugned order of the second respondent – Joint Commissioner, dated 31.08.2001, which reads as under :

"I heard Thiru A.Natarajan, Authorised Representative, and perused the records carefully. At the time of hearing, the Authorized Rep. contended that purchases under dispute may be liable to tax under Sec.7-A but as per the clarification of the Commissioner (Commercial Taxes), it i not assessable. He referred to the circulars issued by the Commissioner (Commercial Taxes) viz.L.Dis.Acts Cell III/95808/94, dated 7.12.94, Letter Acts Cell I/89349/98 dt.17.11.99 and Circular Acts Cell I/99, dt.12.9.2000. Relying on these, he contended that the relevant turnover is liable to tax from 20.10.97 only. He has also contended that instructions were issued not to revise

any assessment for the period from 7.12.94 to 19.10.97. Since the assessment was made on 31.10.95, he contended that it is covered by the guidelines issued in the circulars."

It is, therefore, submitted that the Writ Petition deserves to be dismissed.

5. We have heard the arguments advanced by the learned counsel for the petitioner and also the respondent-Department.

6. The order passed by the first respondent – Commercial Tax Officer originally on 31.10.1995 had not clearly discussed the issue on the proposal to include the turnover for levy of tax. The Appellate Assistant Commissioner, by an order, dated 07.08.1997, in Appeal No.101/96, allowed the petitioner's appeal with the following observations :

> *"As far as the appellants are concerned, they have sold the turmeric consignments purchased from non-dealers to dealers outside this State, who in turn have effected the purchases in compliance with the export orders received from the foreign buyers and it is only the other State dealer who has effected the export sales. Thus it can be seen that the sales by the appellants are only sales in the course of Inter-State trade and hence the provisions of Section 7A (i) (c) of the TNGST Act,1959 are not applicable to the present case. The fact that the goods have been ultimately exported outside the country, it cannot be argued that the sale effected by the appellants to the exporters are*

not Inter-State sales, which have been allowed exemption as per the provisions of Section 5 (3) of the C.S.T.Act1956. Hence, the transactions do not come under the purview of the Section 7A (1) (c) of the TNGST Act,1959."

It it, thereafter, the second respondent issued a show cause notice under Section 34 of the Act, which has culminated in the impugned order.

7. We are of the view that the order passed by the second respondent – Joint Commissioner has not taken note of the exclusion provided in Section 7-A (1) (c) of the Act, which reads as under :

> *"7-A (1) (c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce."*

8. The matter requires a detailed consideration. Under the circumstances, we are inclined to quash the impugned order and remit the case back to the second respondent – Joint Commissioner to pass a fresh order within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to produce all documents to substantiate that there was indeed an inter-State sale of turmeric and the turmeric was exported out of the country by the merchant exporters.

9. Writ Petition stands disposed of in the above terms. No costs.

(S.V.N.,J.)

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

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking Order
dixit

To

1.The Commercial Tax Officer,
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Chepauk,
Chennai – 600 005.

S.VAIDYANATHAN,J.

AND
<u>C.SARAVANAN,J</u>.

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