IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX APPEAL NO.4 OF 2022

Additional Commissioner of Sales Tax,
VAT III, Mumbai ....Appellant

V/s.
Sanman Trade Impex Ltd. ...Respondent

Ms Jyoti Chavan, AGP for Appellant.
Mr. Mihir Mehta a/w Mr. Suyog Bhave i/b PDS Legal for Respondent.

CORAM : K.R. SHRIRAM &
FIRDOSH. P. POONIWALLA, JJ
DATED : 26th JULY 2023

P.C. :

1 This appeal is impugning an order dated 21st June 2019 passed by the Maharashtra Sales Tax Appellate Tribunal, allowing the appeal filed by respondent.

2 During the period from 1st April 2010 to 31st March 2011, respondent had transferred the goods to their consignment agent namely M/s Akash Enterprises in the State of Rajasthan for the purpose of sale there. Under Section 6(A) of the Central Sales Tax Act, 1956 (the Act) the onus is on the dealer to show that the movement of the goods from one State, i.e., Maharashtra to another state, i.e., Rajasthan was occasioned by reason to transfer of such goods by respondent to his agent, not by reason of sale, if the dealer claims he is not liable to pay tax under the Act. For this purpose, the dealer may furnish to the Assessing Officer a declaration in Form F duly

filled and signed by his agent containing the particulars required alongwith the evidence of dispatch of goods. Admittedly, respondent has complied with these conditions of Section 6(A) of the Act. The forms were on record and were duly issued by the Rajasthan Sales Tax Department. The forms were thereafter verified by the Assistant Commissioner of Sales Tax, Investigation Branch, Mumbai, who found those forms were in order. Assistant Commissioner also issued intimation in Form No.604 on 9th July 2013 allowing the claim of approval of goods to agent, i.e., the movement of goods to the State of Rajasthan occasioned not by reason of sale.

3 Thereafter, on 17th March 2017, almost 4 years later, the Assistant Commissioner of Sales Tax, Mumbai, Investigation-A sent show cause notice to respondent proposing to disallow the F forms allowed earlier, for the reason that the Commissioner of Sales Tax, Rajasthan had issued a notification declaring these 'F' forms obsolete and invalid under Rule 17(10) of the Central Sales Tax (Rajasthan) Rules (the said Rules). Respondent's response to the show cause notice was rejected and an assessment order dated 30th March 2017 disallowing the F forms and raising a demand of Rs.84,36,916/- was passed. Respondent filed an appeal before the Deputy Commissioner of Sales Tax (Appeals) III, Mumbai challenging the assessment order. The said appeal was rejected. Against the said rejection, respondent preferred the appeal before the Tribunal.

4 One of the primary grounds raised was that the said rules mandatorily require that any notification declaring the F forms as obsolete and invalid

should be sent to all other States in India for reproduction of the same in their respective official gazette for the information of all concerned and the Rajasthan Government had forwarded the copy of notification to Maharashtra Government also but the Maharashtra Government which was required to publish the notification in its official gazette, failed to do so. Therefore, since there is a breach of the rules by the State itself, the assessment order has to be quashed.

5 The other ground which was raised was that the goods were transferred to M/s Akash Enterprises in the year 2010-2011 and the F forms were duly issued to the said agent by the Rajasthan Sales Tax Department. M/s Akash Enterprises was in existence when the F forms were issued and it was in existence till 31st March 2014. The registration of M/s Akash Enterprises was cancelled w.e.f. 31st March 2014 and by the notification dated 18th March 2016 the Sales Tax Department of Rajasthan declared the F forms obsolete and invalid stating the reason "firm does not exist". It is respondent's case that the firm may not be existing in 2016 but it did exist in 2010-2011 when the transaction happened.

6 The Tribunal after considering the law as laid down by the Apex court in ***State of Maharashtra Vs. Suresh Trading Company*** [1] held that the dealer was entitled to rely upon the certificate of registration of the other dealer and to act upon it. Whatever might be the effect of the retrospective cancellation of the other dealer, it could have no effect upon any person

1. (1997) 11 SCC 378

who had acted upon the strength of a registration certificate when the registration was effective. The Tribunal also observed that Hon'ble Apex Court had held that it was not the duty of persons dealing with registered dealers to find out whether a state of facts existed which would justify the cancellation of their registration. Relying upon the judgment in *Suresh Trading* (Supra), the Tribunal came to a conclusion that subsequent cancellation of registration certificate with retrospective effect cannot affect the right of another dealer to claim deduction. Therefore, the declaration by the Rajashtan Sales Tax Authorities in the year 2016 about the validity of F forms issued to M/s Akash Enterprises in the year 2010 cannot affect the right of respondent to claim the deduction for the transfers made in the year 2011.

7 The Tribunal had also relied upon similar view taken by the Madras High Court in ***Agfa-Gavert India Limited Vs. State of Tamil Nadu***[2] and ***Bell Ceramics Ltd. Vs. Deputy Commissioner of Commercial Taxes (Transition-3), Bangalore***[3].

8 The judgment of the Apex Court in ***State of Karnataka Vs. Ecom Gill Coffee Trading Private Limited***[4], relied upon by Ms Chavan, will be of no assistance to appellant since in that case the court held that the the ITC can be claimed only on the genuine transaction of the sale and purchase and if a dealer knowingly issues or produces a false tax invoice, credit or debit note,

2. (2001) 123 STC 108 (Madras High Court)

3. (2011) 38 VST 388 Karnataka High Court

4. 2023 SCC Online SC 248.

declaration, certificate or other document, such a dealer is liable to pay the penalty. In that case, the assessing officer had doubted the genuineness of the transactions and given cogent reasons on the basis of evidence and material on record. But in the case at hand, the assessing officer had himself found the F forms in order and issued the intimation in Form No.604 on 9th July 2013 allowing the claim of transfer of goods to agent (movement of goods to the State of Rajasthan occasioned not by the reason of sale).

9 Therefore, in our view no substantial question of law as proposed arises.

10 Appeal dismissed.

(FIRDOSH P POONIWALLA, J.) **(K.R. SHRIRAM, J.)**