IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2024

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.2721 of 2000
and W.M.P.No.4179 of 2000

G.Sekar,
Sri Krishna Traders,
No.82-A, Gingee Road,
Tindivanam. ... Petitioner

versus

1.The Deputy Commercial Tax Officer (Additional),
Tindivanam.

2.The Appellate Assistant Commissioner
of Commercial Taxes, Cuddalore.

3.The Hon'ble Sales Tax Appellate Tribunal,
Represented by its Secretary,
Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for and quash the impugned proceedings of the third respondent passed in T.A.No.1253/95 dated 15.07.1998.

For Petitioner	:	Mr.P.Rajavelu
For Respondents	:	Mr.TNC.Kaushik Additional Government Pleader for R-1 & R-2 Tribunal for R-3

ORDER

[*Order* of the Court was made by ***G.ARUL MURUGAN, J.***]

The writ petition is filed challenging the orders of the Tamil Nadu Sales Tax Appellate Tribunal, Chennai in T.A.No.1253/95 dated 15.07.1998.

2. The petitioner is a dealer in groundnut kernel and gingelly seeds and registered both under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") and under the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act"). The petitioner has filed a return for the assessment year 1992-93 by reporting a taxable turnover of Rs.15,04,912/- and 2,87,912/- under the CST.

3. The petitioner had claimed second sale exemption on the purchase of gingelly seeds of 95,310 kgs. The accounts were called for and verified by the Assessing Officer and by the assessment order dated 02.06.1995, the claim of the second sale of gingelly seeds by the petitioner to the extent of 50,917 kgs was disallowed and estimated the sale value at Rs.7,17,464/-.

4. The Assessing Officer has disallowed the claim on the ground that M/s.Sri Valli Traders from whom the petitioner claims exemption of a second sale is not a registered dealer and further the petitioner had not submitted a valid document to establish that the goods have moved from Madras to Tindivanam and the petitioner had not discharged the burden of proof that the goods are exempted and are not liable to be taxed and determined the taxable turnover of Rs.16,30,912/- and Rs.10,05,376/-.

5. In the appeal preferred by the assessee, the Appellate Assistant Commissioner, Cuddalore, in Appeal No.CST.50/95 dated 06.10.1995, dismissed the appeal confirming the orders of assessment as the non existence of the seller M/s.Sri Valli Traders is established by the revenue and further the sale bill has been issued without actual movement of goods.

6. In the second appeal preferred by the assessee, Tamil Nadu Sales Tax Appellate Tribunal, by order dated 15.07.1998 in T.A.No.1253/95 dismissed the appeal confirming both the orders of assessment and the appellate authority. Assailing the impugned orders, the assessee has preferred the above writ petition.

7. Mr.P.Rajavelu, learned counsel for the petitioner/assessee contended that the seller M/s.Sri Valli Trader's registration had been renewed in the year 1992-93 and the same was cancelled only on 13.04.1993 and therefore when the purchase was made by the petitioner, the said M/s.Sri Valli Traders was a registered dealer and therefore the purchase made cannot be disputed. It is his further contention that when the petitioner had produced the necessary bills, the finding that there had been no actual movement of goods has no relevance and by producing the renewal receipt of M/s.Sri Valli Traders, they have discharged their burden that the earlier sale was a second sale.

8. Per contra, Mr.TNC.Kaushik, learned Additional Government Pleader for the respondents 1 and 2 argued that the petitioner failed to submit any materials to establish the actual movement of goods and the documents filed by the petitioner were found to be not genuine which has also been confirmed by the inspection carried out by the Enforcement Wing.

9. He further submitted that it has been established by the revenue that M/s.Sri Valli Traders, seller of the petitioner, is not a registered dealer as the registration stood cancelled in the year 1990 and also there has not been actual movement of goods and the bills had not been handed over in the checkpost and in view of the same, the petitioner had failed to discharge their burden of proof under Section 10 of the TNGST Act and sought for dismissal of the writ petition.

10. Heard the rival submissions and perused the materials available on record.

11. The petitioner who is a registered dealer in groundnut kernel and gingelly seeds had filed the return for the assessment year 1992-93 by claiming exemption of gingelly seeds of 95,310 kgs on the ground of second sale. The accounts were called for and verified by the Assessing Officer. The claim of second sale from M/s.Sri Valli Traders was disallowed as it was found that M/s.Sri Valli Traders was not a registered dealer.

12. On analysing the document submitted by the assessee and also the inspection report of the Enforcement Wing Officials dated 02.02.1993, it was found that the registration of M/s.Sri Valli Traders under the TNGST

Act was cancelled with effect from 01.04.1990. Further the purchase bills submitted by the assessee from M/s.Sri Valli Traders, no seal of any checkpost was found and holding that there had been no movement of goods from Madras to Tindivanam and the bills have only been obtained at a later date to cover the purchases effected from the unregistered dealers to evade the tax due, the assessee had manipulated the records, the Assessing Officer had passed assessment order disallowing the claim of the second sale in respect of M/s.Sri Valli Traders.

13. The assessee had preferred an appeal before the Appellate Assistant Commissioner, Cuddalore and had contended that the registration certificate of M/s.Sri Valli Traders was available till 1992-93 and the purchase bills submitted by the assessee are for a prior period when the registration was valid and therefore the purchase of gingelly seeds from M/s.Sri Valli Traders is only a second sale.

14. However, the Appellate Assistant Commissioner on finding that the revenue had established the fact that the registration of M/s.Sri Valli Traders has been cancelled with effect from 01.04.1990 and the documents have been fabricated and produced by the assessee when there had been no actual handling of goods, confirmed the orders of assessment.

15. In the second appeal, the Tribunal by finding that the premises of M/s.Sri Valli Traders was inspected on 02.02.1993 by the Enforcement Wing Officials and it was found that M/s.Sri Valli Traders has issued sale bills without handling any goods and further came to the conclusion that the registration of M/s.Sri Valli Traders was cancelled on 13.04.1993 with effect from 01.04.1990.

16. The Tribunal also, by noticing that there was no seal of any checkpost on verification of the bills of M/s.Sri Valli Traders by the inspecting officials and further the sale bills have not been received from any checkpost, had arrived at the conclusion that there had not been any actual movement of goods from Madras to Tindivanam. By holding so, it is observed that the bills have only been obtained on subsequent dates to cover all the aforesaid purchases from unregistered dealers and therefore the primary element of movement of goods did not exist.

17. The relevant portion of the order of the Tribunal dated 15.07.1998 is extracted hereunder:-

> *"**15**. We have carefully gone through the submissions of both the learned counsel for the appellants and the learned State Representative for the Department. The learned assessing officer rejected their claim of exemption on the aforesaid turnover (Rs.5,25,720/-) being the estimated sales turnover, corresponding purchases of which were effected from Tvl.Valli Traders, 55, Kandappa Chetty Street, Chennai-1, who were non-existing dealers. Before the learned assessing officer, the dealer has also produced xerox copies of departmental receipts and other documents towards the proof of renewal of registration for the year in question. The learned counsel for the appellant had submitted that once purchases are effected from registered dealers, subsequent cancellation of registration cannot alter the claim of exemption and inturn he pleaded relief as sought for by them. The contention putforth by the learned counsel for the appellants both in the grounds of appeal and arguments advanced at the time of hearing of appeal are not acceptable and convincing ones. Perusal of the connected records would go to show that the registration certificate of Sri Valli Traders, 55, Kandappa Chetty Street, Chennai-1 was cancelled only on 13.4.93 by the concerned authority after thorough verification. The inspection officials while verifying the bills of Tvl.Sri Valli Traders, Chennai noticed that, there was no seal of any checkpost. That apart, they further noticed that the copy of the aforesaid bills have not been received from any checkpost by the concerned authority. Considering this from any angle, we are of the view that the dealer has not moved any goods from Madras to Tindivanam. But, instead obtained the bills on subsequent dates to cover all the aforesaid purchases from unregistered dealers locally. It is an admitted fact that in this case, the primary element of movement of goods did not exist. In the light of the aforesaid observations, we are inclined to hold that the claim of exemption on the aforesaid transactions effected from Tvl.Sri Valli Traders, Chennai, proved to be a non-existent bill traders and that apart, the learned assessing officer has rightly rejected their claim of exemption which was sustained by the first appellate authority are will within order considering as a whole, we are of the opinion that, the assessment made on the aforesaid disputed turnover by the learned assessing officer, which was sustained by the first appellate authority on appeal are well within order and thus we find no grounds to interfere with the findings of the first appellate authority in that regard. Therefore, we sustain and confirm the assessment made on the aforesaid disputed turnover."*

18. As per Section 10 of the TNGST Act, the burden of proof for proving any transaction that the dealer is not liable to tax shall lie on the dealer. As such, the burden was always on the dealer to prove the point of first sale.

19. In the instant case, the assessee had not discharged the burden of proof under Section 10 of the TNGST Act by proving the first sale. Further the finding of fact has been arrived at consistently by the authorities that the bills purchased from M/s.Sri Valli Traders cannot be accepted as they are not registered dealer, the bills produced also had been found to be manipulated and there had not been any actual movement of goods.

20. In view of the above, we do not find any error or illegality in the finding of fact arrived at by the Tribunal and accordingly, the Writ Petition is ***dismissed***. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

[A.S.M.J.,] **[G.A.M.J.,]**
02.12.2024

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
sri

To

1.The Deputy Commercial Tax Officer (Additional),
Tindivanam.

2.The Appellate Assistant Commissioner of Commercial Taxes,
Cuddalore.

3.The Secretary,
Sales Tax Appellate Tribunal,
Chennai.

Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.
sri

W.P.No.2721 of 2000 and
W.M.P.No.4179 of 2000

02.12.2024