IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

W.P.Nos.41272 to 41274 of 2002

The State of Tamilnadu represented by
The Deputy Commissioner (CT)
Coimbatore Division, Coimbatore.

.... Petitioner in the above W.Ps.

vs

1. Tvl. Palani Andavar Mills Limited,
   Dhali Road, Udumalpet.

2. The Secretary,
   The Tamilnadu Sales Tax Appellate Tribunal
   (Additional Bench), Coimbatore.

.... Respondents in the above W.Ps

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for records relating to order of the second respondent made in C.T.A.Nos.356, 357 and 358 of 1998 dated 12.07.2001 and quash the same.

In all W.Ps.

For Petitioner	:	Mr.C.Harsha Raj Additional Government Pleader
For Respondents	:	Mr.N.Prasad – R1 R2- Tribunal

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The State has filed these three Writ Petitions challenging a common order of the Tamil Nadu Sales Tax Appellate Tribunal (in short 'STAT'/'Tribunal') dated 12.07.2001 for the periods 1992-93, 1993-94 and 1994-95.

2. The issue in question relates to whether certain transfers effected by the respondent, are depot transfers as claimed by the assessee/first respondent, or constitute interstate sales as alleged by the State. Pre-assessment notices had been issued proposing to treat the depot transfers of yarn as camouflaged interstate sales and the assessee/respondent had made objections to the same.

3. Overriding the objections, orders of assessment had come to be passed on 20.05.1996 bringing the turnover to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') as interstate sales.

4. The assessee had filed first appeals and by order dated 07.04.1998, the appellate authority was of the view that there was

sufficient material for the assessee to establish its case. However, since there had been no detailed verification conducted at the stage of assessment, the assessments were set aside and remanded back to the assessing authority for fresh disposal after undertaking verification of all documents produced by the assessee. A time frame was also fixed for the same.

5. As against the said remand, the assessee filed appeals before the Tribunal as it was of the view that the onus to establish its claim had been sufficiently discharged by production of necessary documents even at the first instance. By a detailed order dated 12.07.2001 wherein the Tribunal has conducted a thorough examination of all relevant documents and evidences produced before it, the claim of depot transfers was accepted. The findings of the Tribunal at paragraphs 22, 23 and 38, read as follows:

> *22] In view of the above legal position raised by the learned Counsel for the appellants, the entire documents were verified with reference to the records and we would give a positive finding as under:*
> *a] The assessee had established depots/agents and was maintaining them at their own expenses:*
> *b) The products were dispatched by the Head Office on requisition in the form of delivery notes issued to the depot/agent without any reference to any particular contract of sale or a particular buyer or person.*

c] For the exit of the goods, Form XX delivery notes were prepared in the name of the branch/agent concerned or delivery challans issued.
d] Consigned goods were in the name of depot/agent outside the state.
e) Transport charge were paid by the assessee
f) Delivery of goods were taken by the staff of the depot/agent outside the state.
g] Thereafter, the goods were taken to the depot/agent and were stored and stock statement maintained.
h] The property in the goods remain with the appellants till they were sold by the depots/agents to any particular buyer on appropriation at the discretion of the depot/agent
i] Delivery of gods were subsequently effected by the depots/agents to various buyers by their own sale bills
j] The goods were not conduited to a particular buyer through the depot/agent outside the State.
k] The depot/agent in other States are registered under the respective Sate for the purpose of sales tax and have been assessed to sales tax in that state.
l] The goods were neither manufactured according to the specification of a particular customers nor particular goods were meant for a particular customer so as to include the possibility of any diversion.
m] The depot/agent had the discretion to deliver the goods in any quantity or to any customer of their choice.
n] The depot/agent had not acted as conduit pipe, as there was no agreement or correspondence with the head office to make it sure that the appellants was aware as to whom the goods wore likely to be supplied from the depot/agent from time to time.
o] The depot/agent had absolute discretion to supply the goods of any quantity from the stock lying with the depot/agent situated outside the State.
p) None of the contents of Form F produced was found to be incorrect .
23] These observations would flow from out of the perusal of the documents produced by the appellants and also the bulk of the documents which are available with them. The learned

Additional State Representative could not advert to counter the argument of the learned Authorised Representative. When once the records and documents have been examined, the issue with reference lo the specific provision of the CSI Act regarding inter-state sales/branch transfer, the provisions adumbrated under the CST Act under Section 3,4,6 and 6-A are stated under:

....

38] We would further record the findings as under:
i) There was no recovery of any incriminating records or anamath records for treating the transaction as inter- state sales:
ii) The assessment has been made on the basis of assumptions and no instance of the goods being 120 on bac dispatched to the ultimate buyer in other State has been proved.
iii) From F declaration filed was found to be correct and no mala fide could be adduced in the facts and circumstances of the Case.
iv] The disposal of the goods on the same day or within two or three days are not fatal in claiming exemption on the branch transfer/depot transfer/agent effected by the appellants on the basis of the established principles of law settled by the higher appellate forums as stated above.

6. There is nothing stated before us that would override the findings of the Tribunal. The bulwark of the Department's case is that sales had been made either on the same, or the day after the transfer. Such sales, according to the assessing authority, militates against the genuineness of the transactions. However, this fact cannot, by itself, result in an adverse inference, in the absence of any other material to support the allegation that the transfers were, in fact, inter-state sales.

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

7. We draw support, in this connection, from two decisions of the Division Bench of this Court in *State of Tamil Nadu V. P.M.P. Iron and Steel India Limited and another* ((2010) 28 VST 370) and *Advance Paints (P) Ltd. V. The Commercial Tax Officer and another* (W.P.No.14193 of 2001 dated 09.12.2019) that have concluded likewise.

8. We find no necessity to intervene in the impugned order of the Tribunal dated 12.07.2001 and confirm the same.

9. These Writ Petitions are dismissed. No costs.

[A.S.M., J]   [G.A.M., J]
21.11.2024

Index:Yes/No
Neutral Citation:Yes
Speaking order
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To
The Secretary,
The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore.

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