IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

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

W.A.No.388 of 2008
and
M.P.No.1 of 2008

Tvl. Ram Dev Traders
Rep. by its Proprietor,
No.26, Strotten Muthia Street,
Chennai – 79. .. Appellant

vs

1.The State of Tamil Nadu
Rep. by its Secretary,
Dept. of Commercial Taxes and
Religious Endowments,
Fort St.George, Chennai – 600 009.

2.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai – 5.

3.The Joint Commissioner III (SMR),
Commercial Taxes Department,
Chepauk, Chennai – 5.

4.The Commercial Tax Officer,
Sowcarpet – II Assessment Circle,
191, N.S.C.Bose Road, Wavoo Complex,
Chennai – 79.

5.The Deputy Commercial Tax Officer (Main),
Sowcarpet Assessment Circle – II,
191, N.S.C Bose Road, Wavoo Complex,
Chennai – 79.

6.The Manager,
Indian Overseas Bank, Sowcarpet Branch,

143, N.S.C.Bose Road, Chennai – 79.

7.The Union of India
Rep. by its Dept. of Revenue and Finance,
New Delhi. .. Respondents

Prayer : Appeal filed under Section 15 of Letters Patent against order dated 24.11.2006 made in W.P.No.6606 of 1999.

For Appellant : Mr.S.Rajesh

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by
Mr.C.Harsha Raj,
Additional Government Pleader

JUDGMENT
(Delivered by Dr.ANITA SUMANTH.,J)

This writ appeal is filed challenging an order of the writ court dated 24.11.2006.

2. Writ petitioner is the appellant. The prayer in writ petition was for a certiorari quashing an order passed by the Joint Commissioner in suo motu revision under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). The impugned order is dated 12.11.1997 and revises an order passed by the first Appellate Authority reversing order of assessment dated 28-7-95.

3. The facts are follows. The writ petitioner / appellant is an assessee under the TNGST Act and the Central Sales Tax Act, 1956 ('CST'). It had imported zip fasteners in coils from Taiwan during the year 1991 - 92.

4. According to the writ petitioner, some of those imports, dealt

with under two Bills of Entry, were sold to one M/s. Mir Syndicate, Srinagar, Jammu & Kashmir on high seas basis and the writ petitioner thus, took the benefit of exemption under the provisions of Section 5(2) of the CST Act.

5. Before the assessing authority, the writ petitioner relied on two High Seas contracts dated 02.04.1991 and 25.01.1991 between itself and said Mir Syndicate. Our attention is drawn to clauses in those agreements to the effect that it was the purchaser (Mir Syndicate) that was to remit customs duty and clear the goods.

6. Reliance was also placed on other documents, such as bills of entry that were produced at the time of assessment. The assessing authority was, however, of the view that the writ petitioner had not provided clinching evidence to establish the factum of High Seas sales and thus disallowed the claim. The turnover was finalized on the basis that the transactions constituted domestic sales, liable to tax under the provisions of the TNGST Act.

7. An appeal was filed before the first Appellate Authority who reversed the order of assessment being of the view that sufficient proof had been adduced by the writ petitioner. In suo motu revision, the order of assessment was restored by the Joint Commissioner, who was of the view that the documentation produced did not support the case of the writ petitioner.

8. The writ court has confirmed the order of suo motu revision primarily on the ground that the Bill of Entry was in the name of Mir

Syndicate and also finds that events were presumed to have taken place post the factum of import.

9. The writ court, reiterating the views of the Joint Commissioner and assessing officer have proceeded on the basis that the Bill of Entry as well as sequence of events post import also did not support the case of the writ petitioner that it was Mir Syndicate that had cleared the goods. They were of the view that no evidence has been produced by the writ petitioner to support its contentions.

10. We have heard the submissions of Mr.S.Rajesh, learned counsel appearing for appellant / writ petitioner and Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.C.Harsha Raj, learned Additional Government Pleader for the respondents.

11. The facts are not in dispute. The admitted sequence of dates and events are as follows:-

(i) the petitioner had entered into two contracts with Mir Syndicate on 02.04.1991 and 25.01.1991;

(ii) there is a stipulation under those contracts that the incidence of customs duty is to be borne by Mir Syndicate

(iii) Bill of Entry bearing nos. 18783 & 013401 dated 28.05.91 & 9.08.91 reveal the importer as being Mir syndicate

(iv) Mir Syndicate had filed a writ petition in W.P. No.589 of 1991 before the High Court of Jammu & Kashmir and in that affidavit, it had projected itself as being the importers liable for payment of customs duty.

(v) The prayer in that writ petition (WP No.589 of 1991) was for the benefit of customs duty exemption for concessional rate of duty for import.

12. According to the writ petitioner, the above writ petitions would establish that it is Mir Syndicate which is the importer and it has categorically owned up to the liability of customs duty.

13. However, the sale consideration has been effected only on 20.09.1991 post the dates of the two contracts, being 02.04.1991 and 21.05.1991. There is no dispute on this position as the documents issued by the bank at the time of clearance of the payments are available at pages 17 to 20 of compilation dated 24.04.2007 and attest to this fact.

14. In light of the fact that both the imports as well as the payments have been made only post the dates of the high seas contracts we see no merit in the contention of the writ petitioner that the sales have been made on high seas basis.

15. Section 5(2) of the CST Act reads as follows:-

> *"A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the Territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs Frontiers of India."*

16. The basis of a claim under Section 5(2) is that the sales/purchase occasions the import or is effected by a transfer of documents of title to the goods, before the goods cross the Customs frontiers of India. In this case, the imports have taken place on 28.05.1991 and 09.08.1991 but the sale consideration been paid only on

20.09.1991 long after the imports. The sale has never been concluded on 20.09.1991 when the consideration has been remitted. The execution of the agreements on an anterior date mean much to us as, in our view, they constitute mere self-serving documents.

17. In light of the discussion as aforesaid, we see no merit in this writ appeal and dismiss the same. The order of the writ court stands confirmed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
20.08.2024

Index:Yes
Neutral Citation:Yes
ssm
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DR. ANITA SUMANTH,J.
and
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