IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.09.2024

CORAM

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

Writ Petition No.13029 of 2006

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

.... Petitioner

Vs

1 Tvl. Sharp Industries,
Kalappatti, Coimbatore.

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

.... Respondents

PRAYER: PETITION under Article 226 of the Constitution of India praying for issuance of writ of certiorari calling for the records on the files of the second respondent pertaining to order dated 29.05.2003 made in C.T.A.No.157 of 1998 and quash the same as illegal.

For Petitioner : Mr.V.Prashanth Kiran
Government Advocate

For Respondents : Mr.N.Prasad – R1
Tribunal - R2

O R D E R
(Order of the Court was made by Dr.ANITA SUMANTH,J.)

In this Writ Petition, the State challenges an order of the Tamil Nadu Sales Tax Appellate Tribunal (in short 'STAT'/'Tribunal') dated 29.05.2003 made in C.T.A.No.157 of 1998 relating to the period 1995-96 (in short 'period in question').

2. The petitioner is a dealer under the provisions of the Tamil General Sales Tax Act, 1959 (in short 'TNGST Act'). It had effected sales on monoblock pumps for the period in question. Exemption was claimed under the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act') as branch transfer.

3. The issue was taken up by the assessing authority and pre-assessment notices were issued. We are concerned with the proposal for rejection of the claim of branch transfer on the ground that the petitioner had engaged in interstate sales of goods that were camouflaged as branch/stock transfer to its branches at Bangalore, Trichur and Indore.

4. In the assessment dated 16.06.1997, the officer takes note of the findings of the inspection team that had inspected the premises on 19.09.1995. Various materials have been found that were part of the D7 records, leading the assessing authority to ultimately conclude by order dated 16.06.1997 that the entirety of the turnover relating to the Bangalore, Trichur and Indore branches of a sum of

Rs.4,81,93,863/- (Rs.4.81 crores approx.) was liable to be disallowed and brought to tax at the rate of 11.45%.

5. A careful perusal of the order of assessment reveals that though the entirety of the turnover relating to the aforesaid three branches has been made, the D7 records contain materials relating to transactions upto 13.09.1995 alone, as the inspection was conducted on 19.09.1995. However, the proposal under the pre-assessment notice was for disallowance of the claim qua the entire turnover claimed as branch transfer.

6. Though the replies filed by the petitioner before the assessing authority are not before us, the assessment order does not contain any observation or findings of the assessing officer relating to the material produced by the assessee in regard to branch transfers, for the period post 19.09.1995. There is also no allegation that such material was sought but not provided. In fact, the entirety of the assessment only touches upon the material found in the course of inspection and does not traverse beyond 19.09.1995, being the date of inspection.

7. We have posed a specific query to the learned Government Advocate as to whether the records reveal that there was any examination of the transactions for the period post 19.09.1995 and he would fairly submit that there was no notice/proposal/letter from the assessing authority specifically calling for records from the assessee in relation to the period post 19.09.1995.

8. Thus, we are faced with a position where while the exemption claimed has

been disallowed for the entirety of the turnover of the assessee for the period in question, the material on the basis of which that disallowance has been effected is restricted upto 19.09.1995 alone.

9. As against the disallowance made under order dated 16.06.1997, a first appeal was filed before the Appellate Assistant Commissioner. The officer delves into the issue in detail, again referring to D7 records only. We do not find in this order as well, any material to show or any observations to indicate to us that the assessee was called upon to furnish material for any period post 19.09.1995. There is no adverse finding to the effect that materials sought for were not produced by the assessee.

10. After a detailed examination of the records, the Appellate Assistant Commissioner partly sustains the claim of branch transfer, on the basis of the records recovered upto the period of inspection. Thus, the disallowance of a sum of Rs.4.81 crores stood reduced to Rs.1,90,27,304/- (Rs.1.90 crores approx.).

11. The transactions in relation to Bangalore had been accepted in entirety by the Appellate Assistant Commissioner and this part of the order has attained finality at this stage, as no appeal has been filed by the revenue challenging this order.

12. Incidentally, as regards the period 1992-93, the assessee had filed a Writ Petition challenging the disallowance of the stock transfer qua Bangalore in W.P.No.3039 of 2006 and the writ petition had been allowed on 29.12.2022. The

appeal by the revenue had been allowed by a Division Bench of this Court by order dated 29.12.2022. The benefit of that order is however unavailable to the State by virtue of the fact that the findings of the Appellate Assistant Commissioner qua turnover relating to Bangalore have attained finality and have not been carried in further appeal. There is no contest by the revenue on this position before us.

13. The respondent/assessee filed an appeal before the Tribunal as against that portion of the order that was adverse to it. Before the Tribunal, the assessee's appeals were numbered as CTA No.192 of 1999, relating to the period 1992-93, CTA No.191 of 1999, relating to the period 1993-94 and CTA No.157 of 1998 for the period 1995-96, the last of which is relevant to the present matter.

14. The specific ground raised by the assessee in that appeal related to the disallowance of stock transfer to an extent of Rs.1.90 crores. The revenue filed an enhancement petition in CTA No.31 of 2000 seeking reversal of the order of the Appellate Assistant Commissioner to the extent of reduction of the disallowance from Rs.4.81 crores to Rs.1.90 crores.

15. The Tribunal noted the position that the transactions of branch transfer had been brought to tax as domestic sales in the States of Madhya Pradesh and Kerala and there is a finding at paragraph 99 of the order that the goods dealt with in those depots had been received by way of stock transfer from the head offices and manufacturing centre at Coimbatore in the State of Tamil Nadu.

16. The Tribunal was thus of the view that the assessee had discharged the

burden with respect to the transactions that took place subsequent to 19.09.1995. No evidence has been let in by the revenue to disprove the same. We are in agreement with the conclusion of the Tribunal on this score. Learned counsel for the assessee would draw our attention to Section 6A of the CST Act, which relates to burden of proof in case of transfer of goods claimed otherwise than by way of sale.

17. Section 6A was inserted on 01.04.1973 and provides for burden of proof in the case of transfer of goods claimed otherwise than by way of sale. The provision states where any dealer claims that he is not liable to pay tax under the Act in respect of transfer of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for that purpose he may furnish to a dealer a declaration (in Form F) duly filled and signed by the principal officer of the other place of business or his agent or principal containing the prescribed particulars in the prescribed form obtained from the prescribed authority along with evidence of dispatch of such goods.

18. Till 2002, the assessee was in a position to obtain the benefit under Section 6A either by way of filing of Form F or by any other mode available to it. Vide Finance Act 2002, with effect from 11.05.2002, Section 6A(1) stood inserted

and provided that the filing of Form F was mandatory by insertion of the words *'if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of such sale.'* Section 6A(2) provides for inquiry that may be conducted by the authority to verify that all particulars set out in the declaration are true.

19. The Supreme Court, in the case of *Ashok Leyland Ltd. V. State of Tamil Nadu* (134 STC 473), placed an embargo on the assessing authority, making it clear that the inquiry to be carried out by the assessing authority under Section 6A(2) would have to be restricted to whether the particulars set out in Form F were correct and could traverse no further.

20. In the case before us, the assessee has filed declarations in Form F, which are part of the records. No other material is referred to in the orders of assessment, first or second appeal, to indicate that there were any transactions that were to be construed as adverse to the assessee. The year in question is 1995-96. While it was open to the authority to seek such particulars from the assessee to come to a conclusion that the transactions were camouflaged branch transfers, there has been no effort in this direction.

21. Mr.Prashanth would urge that seeing as the parties for the period both pre and post 19.09.1995 were identical, the modus operandi should also be assumed to be identical. We are not inclined to accept this submission as an assessment cannot be made on the presumptions and assumptions, but has to be based on tangible

material.

22. We find that the Tribunal has come to the right conclusion in examining the attempts of the Appellate Assistant Commissioner to bifurcate the transactions pre and post 19.09.1995 and has rendered a factual finding to the effect that the documents found in the inspection and noticed by the lower authorities, would lead to the conclusion that the disallowance must be restricted to a sum of Rs.81,73,208/.

23. Even before us, the revenue is not in a position to provide any materials in support of any addition over and above the sum of Rs.81,73,208/-. The findings of the Tribunal are to the effect that any addition over and above Rs.81,73,208/- would constitute an estimate for the period post 19.09.1995, and that such estimate was impermissible in law. We agree with this finding. In concluding so, the Tribunal has rejected the enhancement petition filed by the Department. Incidentally, the revenue is not in appeal against such dismissal.

24. The State has, in this Writ Petition, challenged only the order of the Tribunal in CTA No.157 of 1998, which is the appeal filed by the assessee/respondent for the period 1995-96, that had been allowed. It is only if the enhancement petition filed by the State had been allowed by the Tribunal, that the turnover would have stood enhanced from Rs.81.73 crores to Rs.1.90 crores. However, the dismissal of the enhancement petition has not been challenged at all.

25. In light of the above discussion, the order of the Tribunal dated 29.05.2003 stands confirmed and this Writ Petition is dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
02.09.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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To

The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
Coimbatore.

DR. ANITA SUMANTH,J.
and
MR. G.ARUL MURUGAN,J.

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W.P.No.13029 of 2006

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