



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2024

WEB COPY

CORAM

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

W.P.No.32048 of 2007

M/s.Pee Vee Tex,
55, Elementary School II Street,
Karuvampalayam, Tirupur.

... Petitioner

Vs

1. The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore
rep. by its Secretary,
Coimbatore.

2. The Appellate Assistant Commissioner (CT),
Pollachi.

3. The Commercial Tax Officer,
Tirupur South Assessment Circle,
Tirupur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in CTA No.89/01 and quash the order dt. 21.12.2006 passed therein.



WEB COPY

W.P.No.32048 of 2007



For Petitioner : Mr.C.Subramanian

For Respondents : R1 - Tribunal
Mr.V.Prashanth Kiran (for R2 & R3)
Government Advocate

ORDER

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

This Writ Petition is filed challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (in short 'Tribunal') dated 21.12.2006. The following are the three issues that arise from the order of the Tribunal.

i. Whether the tax of Rs.5,80,905/- being the turnover assessed by the Assessing Authority under section 7A for non-production of sale bill and confirmed by the Appellate Assistant Commissioner is correct?

ii. Whether the turnover of Rs.8,68,432/- disallowed by the Assessing Authority on the export sales claimed by the dealer and confirmed by the Appellate Assistant Commissioner is correct?

iii. Whether the levy of penalty of Rs.85,133/- by the Assessing Authority and confirmed by the Appellate Assistant Commissioner is correct?

2. The impugned order confirms an assessment made for the period 1995-96 under provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act'). The submissions of the petitioner and the respondent/Commercial Taxes Department on each of the issues are set out below in seriatim, with our findings and conclusions.

3. First Issue. The petitioner had claimed to have effected



purchases of hosiery yarn for an amount of Rs.5,80,905/-. It had however been unable to produce purchase bills and, before the authorities, had averred that the sales had been from a local registered dealer by name Park-in-Mills, Tiruppur. In the absence of sales bills, there was a proposal by the assessing officer to reject the turnover and levy purchase tax in terms of Section 7A of the TNGST Act.

4. In appeal, the petitioner had filed an affidavit that Park-in-Mills had confirmed the factum of purchase. Since the affidavit had been filed for the first time before the Appellate Assistant Commissioner, the matter had been remanded to the Assessing Authority for verification.

5. Even at that stage, no satisfactory evidence had been produced by the petitioner to establish the purchases of yarn. However, one consistent request of the petitioner was that, despite its inability to establish the factum of purchases, since the registration number of Park-in-Mills had been supplied, due enquiry may be made by the assessing authority into the transactions of Park-in-Mills that would serve to establish the petitioner's case.

6. In cases where the registration number of a selling/purchasing dealer is supplied, normally, the Assessing Authority is expected to look into the details in the context of the stand of the assessee, specifically to



determine the veracity or otherwise of its stand and to ascertain whether the enquiry supports its claim.

7. However, in the present case, this appears to be an exercise in futility for the reason that Park-in-Mills is, evidently, not in possession of necessary materials that would support the stand of the assessee. Had such requisite particulars, such as purchase/sale bills/invoices been available with Park-in-Mills, there would have been no difficulty for the assessee to have procured them even at the first instance.

8. Hence and at this juncture, at a distance of nearly 20 years from date of impugned order, we are of the categorical view that there is nothing to be gained in seeking an enquiry of the nature that the petitioner seeks before us now.

9. The finding and conclusions of the Assessing Officer and the Appellate Assistant Commissioner, as confirmed by the Tribunal are detailed and have taken note of all relevant aspects of the matter. They have, concurrently, referred to the provisions of Section 10 of the Act that place the burden of proof upon an assessee for substantiation of its claims. In the interests of completion, we extract relevant portions of order of assessment dated 25.11.1999 and first appellate authority dated 11.09.2000, below:



Order of assessment dated 25.11.1999:

The Department shall not go behind each and every dealer to find out whether tax had suffered on the said sales of the so called suppliers. On this direction, it is suggested that if the dealer would direct the so called suppliers to obtain and file the certificates from their respective assessing authorities to the effect that their said sales had passed through the regular books of accounts and that the supporting purchases had also suffered tax on earlier stages, in accordance with the provisions of Sec.10 of the Act, the burden of proving that any dealer or any of his transactions is not liable to tax under the Act shall lie on such dealer. Hence I overrule the objection filed and the levy of tax is confirmed.

Order of Appellate Assistant Commissioner dated 11.09.2000:

' . . the purchase details produced reveals the purchases made for Rs.3,73,000/- only. Moreover, the description of commodity is not elaborate. These sale bills are dated 20.12.1995, 27.12.95 and 5.1.96. However, the Park-in-Mills had supplied 42 bags of 30s yarn on 6.11.95 itself to the appellants. It is obvious from the above that the purchase bills produced have no relationship with the delivery of the yarn made to the appellants. Moreover, the delivery notes contain certain yarn delivery purchased from Salem Textiles on 6.11.95, 21 bags has also been mentioned. In the delivery note dt. 6.11.95 only 21 bags has been supplied

According to Rule 26 any dealer who sells goods shall give a sale bill for each and every sale but in the case on hand the debit voucher dated 30.3.96 has alone been raised. Obviously, this may be purchases from unregistered dealers by Tvl.Park-In-Mills. If it were only local purchase and second sales made by Tvl.Park-In-Mills there was no necessity for them to raise a delivery note only instead of raising second sales bill on the appellants. The appellants



claimed that the earlier seller should have been assessed. I find that the appellants have not discharged their burden of proof under Section 10 of the TNGST Act and proved that they had effected tax suffered purchase only.'

10. The Tribunal finds merit in the conclusions of both the lower authorities and confirms the same along with the factual findings recorded therein, by way of the impugned order.

11. We agree with the concurrent orders of the authorities. Section 10 of the TNGST Act, 1959 is entitled 'Burden of proof' and states that for the purpose of assessment of tax under the Act the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer. The provision goes on to enumerate the consequence of non-discharge of the burden imposed stating that in the case of a claim of second sale, if an assessee is unable to prove that the goods have already been subjected to tax, he will be deemed to be a first seller/first purchaser. The full onus of this burden falls on the petitioner and has, admittedly, not been discharged in this case.

12. In light of the aforesaid, the conclusion of the Tribunal to the effect that the levy of purchase tax is warranted in the absence of any material to support the petitioner's stand contains no infirmity and we confirm the same.



13. Second Issue: This issue relates to the exemption on a turnover of Rs.8,68,432/- claimed as export sales in terms of Section 5(3) of the Central Sales Tax Act, 1956 (in short 'CST Act'). Section 5(3) states as follows:

5. When is a sale or purchase of goods said to take place in the course of import or export.—

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

14. One of the statutory pre-conditions for claim of exemption under Section 5(3) is the nexus between the identity of goods qua the penultimate sale/sale preceding the export transaction, and the export itself. To put in other words, the petitioner, or any assessee who claims benefit of the exemption under Section 5(3), must be in a position to unambiguously establish that the identity of the goods/products, purchased/sold in penultimate sale, on the one hand, and those goods/products that are the subject matter of export, on the other hand, are one and the same.

15. In the present case, the petitioner claims to have purchased hosiery yarn that was converted into mens shorts sets. All the authorities



below have looked into the documents in detail rendering the following findings (i) the petitioner has filed purchase bills establishing the purchase of hosiery yarn (ii) the items exported are stated to be mens shorts sets (iii) the description of the goods exported reveals that the composition of the products exported is 90% cotton and 10% polyester yarn (iv) no purchase bills have been produced by the petitioner to establish the purchase of polyester yarn at any stage (v) it was never been the case of the petitioner that it was engaged in the manufacturing of any products that involve polyester yarn (vi) the explanation tendered at the stage of assessment was that along with mens shorts that it had manufactured, tops had been purchased from other manufacturers and, the mens shorts and tops together, would constitute ensembles that had been exported.

16. In light of the admitted facts adumbrated above, it appears clear to us that there is a mismatch between the products purchased by the petitioner and those exported. Even if one were to take a stand that the hosiery yarn purchased by the petitioner had been utilised in the manufacture of the mens shorts that had been ultimately exported, there is no bifurcation available between the export turnover relating to mens shorts and the tops.



17. We are, at this stage, concerned with the claim under Section 5(3), which has been rejected by the orders of the authorities both on the lack of identity between the products manufactured and those exported, as well as discrepancies in facts and figures relating to the export documentation. In this regard, the findings of the Appellate Assistant Commissioner in order dated 11.09.2000 are relevant and read as follows:

'5. (b).....In other words they have not given proper explanation as to how there can be supply of polyester knitted goods without the corresponding purchase for the same. There is no proof that they had effected purchase of polyester yarn or viscose yarn and manufactured the knitted goods. Hence their claim that the commodity sold and exported were the same cannot be accepted. The explanation of the word ensembles is not the issue or criteria for the disallowance made. The main contention of the Assessing officer is that the goods supplied is mens shorts whereas the goods exported is 90% plus 10% polyester knitted mens ensembles. Even if their contention of the shorts being the part of ensembles is accepted, the fact remains that they have not produced the purchase details regarding polyester yarn or Viscos yarn for the manufacture of 10% polyester knitted garments. Apart from the above I find that they have produced 4 bills with two different dates. In other words they have raised bill number 1 on 2.11.95 by and also on 30.3.96. They have raised bill No.2 on 12.12.95 and also on 30.3.96. When the order has been given on 2.11.95 by Parkin Mills and yarn delivered by them on 6.11.95 it is not known as to how there can be supply of 5016 sets of 308 mens shorts on 2.11.95 vide invoice 1/2.2.11.95. So also the order has been given on 12.12.95 and the yarn was supplied on 28.12.95, 1.1.96 and 5.1.96. For this there cannot be an export bill dated 2/12.12.95. Obviously the appellants



WEB COPY

W.P.No.32048 of 2007



have raised two sets of bills one on 2.11.95 and 12.12.95 and the others on 30.3.96. The above reveals that this records produced are not reliable and acceptable. Taking into consideration all aspects of the case, I hold that the disallowance of export sales is proper since the goods. ordered for and the goods exported are different. I sustain the disallowance made and dismiss the appeal relating to this issue.'

18. The petitioner relies on the judgment of the Hon'ble Supreme Court in the case of *State of Tamil Nadu V. Raman & Co. and others* (93 STC 185) confirming the decision in the case of *Govindan & Co. V. The State of Tamil Nadu* (35 STC 50).

19. The judgment of the Hon'ble Supreme Court in *Raman & Co.* (supra) is brief and settles the proposition that '*to claim benefit of tax on the ground that the sales effected by the assesseees are second sales, they need not show that their sellers had in fact paid tax at the first point and it is enough for them to show that the earlier sales were taxable sales and that the tax was really payable by their sellers.'*

20. We find that the decision in the case of *Govindan & Co.* (supra) is distinguishable on facts. The differences may be seen from the finding at paragraph 3 of the judgement in *Govindan and Co* (supra) as follows:

'To claim the benefit of tax on the ground that their sales are second sales, the petitioners need not show that their sellers have in fact paid tax and it is enough for them to show that the earlier sales were taxable sales and that the tax is really payable by their sellers.'



21. Thus, in that case, the factum of first sales was not in dispute at all, whereas in the present case, the respondents have categorically denied the factum of the first sales which the assessee was also not in a position to establish. In our view, this differentiation on facts would be critical based on which we reject reliance of the assessee on that judgement and confirm the addition.

22. *Third issue:* This issue relates to the levy of penalty under Section 12(3)(b) of the TNGST Act. Though learned counsel for the petitioner would submit that levy of penalty is excessive, the levy is a percentage of the disputed tax alone. In light of our conclusion in relation to the aforesaid two issues on merits, we find no avenue to intervene in the levy of penalty and thus confirm the same.

23. In fine, this Writ Petition is dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
05.08.2024

Index: Yes/No

Speaking order

Neutral Citation: Yes

sl

To

1. The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore
rep. by its Secretary, Coimbatore.



W.P.No.32048 of 2007



2. The Appellate Assistant Commissioner (CT),
Pollachi.



WEB COPY

W.P.No.32048 of 2007



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

sl

3. The Commercial Tax Officer,
Tirupur South Assessment Circle,
Tirupur.

W.P.No.32048 of 2007

05.08.2024