IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM :

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

W.P.No.17721 of 2008
and
M.P.No.1 of 2008

Tvl. Venkateswara Trading Co.,
rep. by its Proprietor A.G.Ramesh,
34/3/1, Vellore Main Road,
Arcot, Vellore District. .. Petitioner

vs

1.The Tamil Nadu Sales Tax Appellate Tribunal,
rep. by its Secretary,
City Civil Court Buildings,
High Court Campus,
Chennai – 600 104.

2.The Appellate Assistant Commissioner (CT),
Fort Round, Vellore – 1.

3.The Deputy Commercial Tax Officer,
Arcot, Vellore District. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the first respondent in T.A.No.297 of 2005 dated 1.4.2008 and quash the same as illegal, arbitrary and against facts of the case.

For Petitioner	:	Mr.S.Kaarthick for Mr.K.Soundararajan
For Respondents	:	R1- Tribunal Mr.V.Prashanth Kiran, Government Advocate for R2, R3

ORDER

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

The petitioner challenges an order passed by the Sales Tax Appellate Tribunal on 01.04.2008 confirming the concurrent findings in the orders of assessment and first appellate authority in regard to the assessment of turnover of a sum of Rs.3,05,600/-.

2. The impugned order relates to the period 2002 – 03. Several issues emanate out of order of assessment dated 28.05.04. However, Mr.S.Kaarthick, appearing for, Mr.K.Soundararajan, for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate, appearing for Commercial Taxes Department would agree that the sole issue to be decided relates to the turnover as stated above.

3. There was an inspection at the check post by the roving squad on 11.04.2002 and a tanker carrying oil at the instance of the petitioner was intercepted. The appellant's contention that the tanker contained RBD palm Oil (palm oil) and that the sale constituted second sales of palm oil. The transaction was verified by the assessing authority, who sought particulars from the petitioner in substantiation of its claim of second sales.

4. Notably, and this is an admitted position, no documents were produced by the petitioner to establish that the sale was a second sale or, for that matter, that the oil contained in the tanker was palm oil. On the other hand, the documents indicated that the oil was being transported to Tvl. Venkateswara Refineries, Vellakoil, Erode District.

5. The transport was covered by bill no.8 dated 10.04.2002. The Tribunal notes, and rightly, that the very fact that the tanker was headed towards a refinery would indicate that the product in the tanker was crude oil as there was no need to transport palm oil to a refinery. We asked the learned counsel for the petitioner to explain this position but he has no answer in this regard.

6. More importantly, if at all the transaction constituted second sales, it was for the petitioner to have produced the documents in support of the claim of exemption and discharged the burden under Section 10 of the Act. Section 10 relates to 'burden of proof', and specifically requires the person claiming exemption to produce material in support of such claim. Hence, the assessee could well have supported its claim by producing the purchase bill from its vendor to establish that the oil in the container was only palm oil. This has not been done. The petitioner could also have sought testing of the oil in the tanker by a testing agency to set at rest the dispute in regard to the contents of the tanker. This was also not done.

7. Hence we are not persuaded to disturb the concurrent findings of the authorities and confirm the order of the Tribunal. In the

interests of completion and clarity, we extract below, the relevant portion of the impugned order:-

> *"7. The point for consideration in this appeal is:*
> *Whether the assessment made on the turnover of Rs.3,05,600/- and penalty of Rs.20,646/- confirmed by the first appellate authority is sustainable or not?*
> *8. It is seen from the records that the appellant was originally assessed on a total and taxable turnover of Rs.69,59,912/- and Rs.25,73,548/- respectively in the proceedings dated 23.5.2003 for the year 2002-2003 under the Tamil Nadu General Sales Tax Act, 1959. Their place of business was inspected by the Enforcement Wing Officers on 11.2.2003 and they noticed excess stock of sun flower oil for Rs.26,852/- and RBD Palm Oil for Rs.5680/- and deficit stock of Groundnut Oil to the tune of Rs.4150/- totalling to Rs.36,682/-. On that basis, the Assessing Officer had added three times addition for probable omissions and estimated the turnover at Rs.5,11,423/-. At the time of vehicular check conducted by the Roving Squad on 10.4.2002 it was noticed that the appellant had transported one tanker load of crude palm oil to the tune of Rs.3,05,600/- whereas the bill was issued for RBD Palm Oil to one Tvl.Venkateswara Refineries, Vellakoil, Erode District covered by Bill No.8 dated 10.4.2002. Accordingly, the Assessing Officer revised the assessment under Sec.16 of the Tamil Nadu General Sales Tax Act, 1959 and levied penalty thereof. Aggrieved against the above order, the appellants have preferred an appeal before the Appellate Assistant Commissioner (CT) Vellore, who in turn partly modified and partly dismissed the appeal for the reasons stated thereon. Against the above order, the present appeal has been filed by the appellant before this Tribunal.*
> *9. The only dispute involved in this appeal is that the sale of crude oil was to the tune of Rs.3,05,600/-. The only contention of the assessee is that goods transported was only refined oil and not crude palm oil and the product concluded by the assessing officer without proper verification is not correct.*
> *10. The contention of the Revenue is that the sale of crude palm oil under transit was not covered by purchase bill to the tune of Rs.3,05,600/-. The*

assessee's contention is that it is only refined oil and therefore, there is no need to levy tax.
11. On perusal of the records it is seen that if it is a refined oil, there is no need to transport it the refinery company and there would not been supply of refined oil to the Refinery Company. The physical verification of the goods transported in the vehicle was made by the Roving Squad Officers and it revealed transport of crude palm oil only. From this it is very clear that from Arcot to Vellakoil only crude palm oil alone has been transported for the purpose of refining. From this, it is very clear that the appellant had sold tanker load of crude palm oil to Tvl.Venkateswara Refineries, Vellakoil, Erode District since it is not exempted item. Therefore, the contention of the assessee can not be accepted. Hence, we see no reason to interfere with the order of the first appellate authority in this regard to that effect."

8. The Tribunal has also proceeded to confirm levy of penalty under Section 16(2) (d) in view of the wilful suppression which has been established. We agree.

9. This writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
15.10.2024

Index:Yes/No
Neutral Citation:Yes
ssm

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

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To

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