IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM :

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

W.P.No.18456 of 2008
and
MP.No.1 of 2008

M/s.Maharaj Enterprises
Represented by its Proprietor
A.Padmanabhan
No.7, Bye Pass Road, Poonamallee,
Chennai-600 056. ... Petitioner

vs

1.The Tamil Nadu Sales Tax Appellate Tribunal,
Main Bench
Represented by its Secretary,
City Civil Court Building,
Chennai – 104.

2.The Appellate Assistant Commissioner (CT) VI,
VI Floor, Kuralagam Annex,
Cheqx nnai-108.

3.The Deputy Commercial Tax Officer,
Porur Assessment Circle,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the impugned proceedings of the first respondent in T.A.No.11/2005 and quash the impugned order dated 2.5.2008 as illegal and contrary to the law laid down by the recent order of the Madurai Bench of the Madras High Court in W.P.(MD)Nos.809 to 816/2006.

For Petitioner : Mr.P.Rajkumar

For Respondents: R1 – Tribunal

Mr.C.Harsha Raj (for R2 & R3)
Additional Government Pleader

ORDER

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

The petitioner has challenged an order of the Sales Tax Appellate Tribunal (STAT/Tribunal) dated 02.05.2008 relating to the period 1997-98.

2.The issue that arises for consideration relates to transactions in respect of which the assessee has claimed exemption under Section 6(2) of the Central Sales Tax Act, 1956 (CST Act) on the ground that the transactions were transit sales.

3.A pre-assessment notice had been issued to the petitioner suspecting transactions made to two entities by name Logesh Enterprises and Surya Enterprises. In the notice, the assessing authority had referred to an inspection on 19.06.1998, where the documents relating to transactions with the aforesaid two entities had been discovered.

4.According to the assessing authority, the Registration Certificates of the two entities had been cancelled, on 31.03.1996 in the case of Logesh Enterprises, and on 31.03.1997 in the case of Surya Enterprises. Hence, the authority was of the view that the transactions qua unregistered dealers had been camouflaged and exemption claimed as transit sales. The proposal was thus to deny exemption in respect of those transactions along with levy of penalty.

5.By way of reply, the assessee reiterated the exemption claimed in the Returns filed, and also produced Form C that had been issued on 09.12.1998 in the case of Surya Enterprises and on 05.05.1998 in the case of Logesh Enterprises by their respective assessing authorities.

6.The assessee pointed out that those forms have been issued by the Commercial Tax Officer, Sattur Assessment Circle and that due enquiry could have been made with that assessing officer to verify the genuineness of the transactions.

7.Notwithstanding the objections that had been raised, an assessment order came to be passed confirming the proposals. The assessee filed an appeal before the first Appellate Authority assailing the assessment order, who on consideration of the matter conduced an investigation / enquiry with the Deputy Commercial Taxes Officer, Sattur Assessment Circle.

8.That assessing officer appears to have confirmed that those two entities (Logesh Enterprises and Surya Enterprises) were not assessed by that assessment circle and that the Forms produced by the petitioner had not been supplied by that assessment circle.

9.The turnover relating to the transactions with the two entities as aforesaid was thus treated as an interstate sale and the exemption claimed was rejected. As regards the Forms filed, the appellate authority eschewed the same, holding that their source was unknown. The penalty was set aside on the ground that the appellants had filed the necessary Forms and holding that there was no wilful evasion on the part of the assessee.

10. That apart, he finds that the turnover had itself been disclosed in the books of accounts and the assessment had been completed on the

basis of the accounts. As against the deletion of the penalty, no appeal has filed by the Commercial Taxes department and the deletion of penalty has hence attained finality.

11. The petitioner challenged the denial of exemption and filed an appeal before the STAT. The STAT, by order dated 02.05.2008 proceeds to confirm the concurrent findings of the assessing officer and first appellate authority, holding that the Forms that had been produced by the assessee before the Officer were non-genuine and that the registration certificates of the two entities had been cancelled even prior to the dates of transaction. It is as against this order that the assessee is before us.

12.In the course of the hearing on 23.09.2024, we had specifically directed the Revenue to produce the communication inter se the assessing officers of the purchasing and selling dealers, that had persuaded the assessing authority to conclude that the Declarations in Form C were not genuine. We had also called for the C Form Register maintained in the assessment circles by the assessing authorities that would contain the details of the C Forms issued in that circle.

13.The directions were necessitated by virtue of the fact that it is the practice of the Department to maintain a register of C Forms issued by that Circle and it would have been a matter of ease for the authority to produce the register to establish that the C Forms in question are non-genuine.

14.We, prima facie, found no reason barring the denial of the same by the officer of Sattur Assessment Circle, to disbelieve the C Form Declarations. Normally the Bench would be very reluctant to re-visit factual details as the orders of the Tribunal would be final on this score. However the orders of the authorities were bereft of even basic particulars such as the date of the communication exchanged between the officers. Hence the intervention at this stage.

15.Learned Additional Government Pleader appearing for R2 and R3, would, on instructions, confirm that no C-Form register is available. Neither is any communication inter se the officers, as referred to by the assessing officer available to establish the position that the C Forms are not genuine.

16.In the absence of any records such as the C Form Register or the communication from the assessing authority of Sattur Assessment Circle, we are not inclined to disbelieve the claim of the petitioner. The petitioner has produced copies of the four (4) C Forms at pages 39 to 45 of compilation dated 29.07.2008. The serial numbers of the Forms are TN/H 012639, TN/J 513076, TN/J 513079, TN/J 513080. In light of the discussion as above, we see no reason to disallow the C Forms produced. No doubt, it is for the assessee to establish its claim of exemption. In this case, primary particulars such as the details of selling dealers and the C Forms issued by the officer have been produced.

17.The presumption is, no doubt, rebuttable, and the Department is at liberty to establish that the particulars produced are false. Though the Department has alleged so, it has failed to prove the falsity of the claim, as it alleges. There is nothing to disprove the C Forms produced by the petitioner. As regards the cancellation of the registration of the selling dealers, the factum of cancellation was not available in public domain as it is today, and the petitioner cannot be made to suffer on this count. Their burden hence stands discharged.

18.The pendency of the writ petition necessitates the maintenance of the records for production before the Court, if required. Hence, we draw adverse inference from the fact that there is no material on record to support the allegations on the basis of which the exemption claimed has been rejected.

19.In fact, the first appellate Authority has, based on the existence of the very Forms that he has negated, chosen to delete the penalty. While so deleting the penalty, he states thus:

> *'7.The third and last dispute relates to the levy of penalty of Rs.414689 under Section 9(2) of CST Act 1956 read with Section 16(2) of the TNGST Act 1959, it was found that the appellants have claimed by filing the C-forms received from the parties concerned, but the appellants does not have the machinery or source to verify whether the forms has been relates to parties concerned or relates to some other person. There is no willful evasion is available on their part and on the basis of the turnover which is available in the books of accounts, the assessment has been completed and only the reasons available disallowing exemption claimed under transit sales, since the assessing authority found that the forms were not issued by the assessing authority concerned. So, by going through the above merits, it was found that the levy of penalty of Rs.414689- levied under Section 16(2) of the TNGST Act 1959 read with Section 9(2) of the CST Act 1956 is set aside by relying 104 STC 61 in the case of Tvl.Shanmugananda & Co. Vs. State of Tamilnadu and the relief claimed by the appellants in this regard are allowed.'*

20.The appellate authority has rendered a categoric finding that there was no willful default on the part of the assessee in claiming the exemption and reliance is placed on the C Forms produced. Hence, the existence of the C Forms, and their genuineness has been accepted in the deletion of penalty and this order has been accepted by the Commercial Taxes Department. We are of the considered view that some weightage must be attributed to this position/while deciding the question of merits as well.

21.The impugned order is set aside and this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J]　　[G.A.M., J]
17.10.2024

Index:Yes
Speaking order
Neutral Citation:Yes
vs

To

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City Civil Court Building, Chennai – 104.

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