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W.P.Nos.18848 to 18850 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM :

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

W.P.Nos. 18848, 18849 & 18850 of 2008
M.P.Nos. 1, 1 & 1 of 2008

M/s.Travancore Cements Ltd.,
151/A, Karupparayan Kovil Street,
Pothanur Main Road,
Coimbatore – 641 023.
rep. by its Managing Director,
Sri.Rajendraprasad P.

.. Petitioner
in all WPs

VS

1.The Commercial Tax Officer,
P.N.Palayam Asst.Circle,
Coimbatore.

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

3.The Sales Tax Appellate Tribunal
(Additional Bench),
Rep. by its Secretary,
Dr.Balasundaram Road,
Coimbatore – 641 018.

4.The State of Tamil Nadu
Rep. by its Deputy Commissioner (CT),
Coimbatore.

Respondents

..

in all WPs

Prayer in W.P.No.18848 of 2008: Petition filed under Article 226 of the Constitution of India praying to call for the records of the common order of the 3rd respondent herein in STA No.187/2004 dated 10.03.2008 and issue a writ of certiorari or any other appropriate writ,



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order or direction under Article 226 of the Constitution of India, quashing the said order of the 3rd respondent.

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Prayer in W.P.No.18849 of 2008: Petition filed under Article 226 of the Constitution of India praying to call for the records of the common order of the 3rd respondent herein in STA No.189/2004 dated 10.03.2008 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the said order of the 3rd respondent.

Prayer in W.P.No.18850 of 2008: Petition filed under Article 226 of the Constitution of India praying to call for the records of the common order of the 3rd respondent herein in STA No.190/2004 dated 10.03.2008 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the said order of the 3rd respondent.

For Petitioner : Mr.Joseph Markos
Senior Advocate
for Mr.Abraham Markos
(in all WPs)

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader
for R1, R2, R4
R3 – Tribunal
(in all WPs)

COMMON ORDER

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

These three writ petitions relate to proceedings for the periods 1996 – 97, 1997 – 98 & 1999 – 00 ('periods in question') passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 ('TNGST Act').

2. The petitioner is a manufacture and dealer in Cement. In respect of the periods in question, assessments had been framed overriding the submissions of the petitioner that the sale price of the



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Cement as per its accounts was proper and had been arrived at in a scientific manner. The methodology for determination of turnover is set out under Rule 6 of the Tamil Nadu General Sales Tax Rules, 1959 (TNGST Rules), which sets out that, in determining taxable turnover, various deductions shall be made. One of the deductions, in clause (c) of Rule 6 relates to the component of freight.

3. In the present case, the difficulty arises on account of the fact that the petitioner had changed its method of invoicing on and from 05.10.1996. Prior to 05.10.1996, the sale invoice had contained the break-up between the cost of the cement and transport charges. It was on the total consolidated sale price (cement price plus transport charges), that the petitioner had been remitting taxes.

4. According to petitioner, this position continued even post 05.10.1996. The only difference was that on and from that date, the sale invoices reflected a consolidated sale price as, in the interest of administrative convenience, the petitioner has decided not to show bifurcation of the cement price and the transport charges under that invoice.

5. However, the State would not dispute the position that the petitioner had maintained accounts in respect of the transport / freight charges, that had been duly produced before the assessing authority.

6. This is the second round of litigation. Even in the order of assessment passed originally, the assessing authority had adopted the



stand that the turnover had not reflected the appropriate sale consideration insofar as the freight charges, according to him, had not been included in the sale price. Hence an addition of freight charges over and above the sale consideration referred to in the invoices/accounts, had been made.

7. The matter had travelled in appeal to the Appellate Assistant Commissioner (AAC), who had remanded the matter by order dated 31.08.2000 for re-examination of the issue. The conclusion of the AAC at paragraph 12 is as follows:-

"12. In the circumstances stated above, I'm of the opinion that these material facts were not at all deeply scrutinised and gone in depth. The Assessing Authority in a hasty approach had simply arrived an approximate freight charges on best of judgment and subjected it to tax without paying attention to any of the details furnished by the appellant, nor established his stand in clear terms beyond doubt. In the circumstances, I set aside the revision made along with its consequential penal levy and remand it back to the Assessing Officer for fresh consideration with a direction to examine the issue in depth by way of going through the costing of the cement price, nature of agreement if any, details of actual expenditure incurred towards branch transfer, nature its accounting both in the head office as well as in the branch, their consequential movement from Kottayam to Coimbatore and to purchasers bearing in mind of the various decisions rendered on freight by the higher judicial forums both under the context of provisions of TNGST and CST Act and then to pass appropriate orders according to law after affording the appellants a reasonable opportunity of being heard."

8. The remand was to enable the assessing authority to look



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into the transactions afresh. The direction was to examine the issue in depth by going through the costing of the cement price, nature of agreement if any, details of actual expenditure incurred towards branch transfer, nature of its accounting both in the head office and the branch, and freight, both inward and outward in the context of the judgments rendered on freight by the courts.

9. The assessment was taken up post remand. On a perusal of three assessment orders, the following points emerge :-

- (i) The accounts which were duly produced before the assessing authority contain the sale price of cement and all other expenditures, including specifically the component of freight. This aspect is not disputed.
- (ii) The sale invoice price shows a consolidated sale price, which, according to assessee, includes the freight charges. The assessing authority has also specifically recorded the contention of the assessee that there should be no further addition over and above the consolidated sale consideration as such an addition would constitute nothing but an estimate.
- (iii) No material has been found at any stage of the proceedings to indicate suppression or non-disclosure of receipts from freight.

10. We are of the considered view that none of the orders of assessment conduct an examination of the nature envisaged by the AAC in remand order dated 31.08.2000. No doubt, the assessing authority



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has attempted a cursory comparison of the transactions pre and post 05.10.1996 in the order for the period 1996 – 97, noting that the sale price was Rs.84,975/- for 10 tonnes of white cement vide invoices upto 5.10.96 and Rs.85,670/- for 10 tonnes vide invoice dated 26.11.1996.

11. We do not understand how the above figures support the department's contention that there has been suppression of freight in the second invoice dated 26.11.1996 as that figure is, in fact, higher than the sale price pre 05.10.1996. As far as 1997 – 98 is concerned, there is no question of comparison, as all the transactions have taken place post 05.10.1996. In this case, there is reference to a single invoice dated 31.3.1995 and again, we are unable to appreciate how, based on this invoice, the assessing officer comes to the conclusion of suppression.

12. As far as 1998 – 99 is concerned, three invoices had been examined, one dated 31.3.1995, the second, a depot transfer invoice dated 17.02.1999 and the third, an invoice dated 14.02.1999. Learned Additional Government Pleader would draw attention to the fact that the depot transfer invoice relates only to a transfer between Kottayam and Coimbatore and was for a sum of Rs.74,644/-. This price would, admittedly, not include a component of freight.

13. He compares this to the sale price under invoice dated 14.2.1999 which is also Rs.74,644, alleging that the price of the depot transfer (admittedly without the component of freight) is what has been



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adopted for commercial transactions as well.

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14. This submission does not take into account the fact that the two invoices selected are of different dates and hence would not support the argument of reduction in sale price. The depot transfer invoice dated 17.02.1999 would have had to be compared with the sale invoice relating to that consignment, to establish whether the sale price was the same as the depot transfer price. Likewise, the depot transfer in respect of the consignment sold under invoice dated 14.02.1999 would have been of an anterior date, and the price under that invoice ought to have been compared with the price under sale invoice dated 14.02.1999.

15. In our view, there is no merit in comparing depot transfer invoice dated 17.02.1999 with sale invoice dated 14.02.1999 as they relate to different consignments that could very have been priced differently. We are hence unable to accept the arguments of the revenue based on such solitary and incomparable instances.

16. The findings of the assessing officer have been confirmed concurrently both by the AAC and the Tribunal. However, we find that, the grounds taken by the petitioner both in the first and second appeal reiterate the consistent stand that the sale consideration included the component of freight charges. This reflects the correct position in law as settled by the Supreme Court in the case of *Black Diamond Beverages and another v Commercial Tax Officer, Central Section,*



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Assessment Wing, Calcutta and others [107 STC 219].

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17. We hardly need refer to the observations in that judgement since both learned counsel would concurrently agree that the freight outward is to form part of sale consideration. The question is as to whether this component of expenditure formed part of the sale consideration at all and on a careful consideration of the matter, particularly the fact that no material has been brought on record to dispute the version of the petitioner, we agree that the sale consideration does include the freight as well.

18. The petitioner has argued that the sale price as reflected in the accounts has to be unquestioningly accepted by the Department. Not necessarily so. It always open to the Department to investigate whether the price reflected in the accounts is correct. The Act provides for a mechanism in this regard in Section 12A of the TNGST Act, which deals with the assessment of sales shown in accounts at low prices. That provision reads thus:

"(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgment on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment."

19. The object of the above provision is to bring to tax turnover



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that, according to the authority, has been suppressed by reduction of sale price in the accounts of an assessee. The suppression, in this case, is said to be the freight. An important factor in this matter is that the books of the petitioner have not been rejected and the assessments are based on the books. The admitted position is that the books reflect the component of freight charges and the cost of cement.

20. The impugned orders are set aside and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
08.11.2024

Index:Yes
Neutral Citation:Yes
ssm

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