**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 22.08.2024**

**CORAM :**

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

**W.P.Nos.50391, 50392, 50393, 50394 & 50395 of 2006**

Neyveli Lignite Corporation,
represented by its Senior Manager (Finance)
E.Sivaji,
Neyveli-607 807. .. Petitioner in all WPs

vs

1.The Deputy Commercial Tax
Officer (B.Y),
Cuddalore Taluk, Cuddalore.

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

3.The Sales Tax Appellate Tribunal
(Main Bench),
represented by its Secretary,
City Civil Court Building,
High Court Complex,
Chennai-600 104. .. Respondents in all WPs

Prayer in WP.No.50391 of 2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in T.A.No.240/01

(1995-96) dated 3.10.2005 and quashing the same, in so far as it relates to confirmation of tax demand on a turnover of Rs.15,29,000/- at 5% relating to disposal by way of auction of cashewnut with shell.

Prayer in WP.No.50392 of 2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in T.A.No.243/01 (1992-93) dated 3.10.2005 and quashing the same, in so far as it relates to confirmation of tax demand on a turnover of Rs.10,64,398/- at 5% relating to disposal by way of auction of cashewnut with shell.

Prayer in WP.No.50393 of 2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in T.A.No.241/01 (1994-95) dated 3.10.2005 and quashing the same, in so far as it relates to confirmation of tax demand on a turnover of Rs.14,13,878/- at 5% relating to disposal by way of auction of cashewnut with shell.

Prayer in WP.No.50394 of 2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in T.A.No.244/01 (1993-94) dated 3.10.2005 and quashing the same, in so far as it relates to confirmation of tax demand on a turnover of Rs.14,38,375/- at 5% relating to disposal by way of auction of cashewnut with shell.

Prayer in WP.No.50395 of 2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in T.A.No.242/01 (1991-92) dated 3.10.2005 and quashing the same, in so far as it relates to confirmation of tax demand on a turnover of Rs.6,85,075/- at 5% and penalty of Rs.84,799/- relating to disposal by way of auction of cashewnut with shell.

(In all WPs)

For Petitioner : Mr.N.Prasad

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

R3 – Tribunal

**COMMON ORDER**

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

This order disposes five writ petitions challenging a common order of the Sales Tax Appellate Tribunal (in short 'STAT'/'Tribunal') dated 03.10.2005 for the periods 1991-92 to 1995-96 passed under the provisions of the Tamil Nadu General Sales Act, 1959 (in short 'Act').

2.A single issue arises for resolution in all the writ petitions. Heard Mr.N.Prasad, learned counsel for the petitioner/Neyveli Lignite Corporation and Mr.V.Prashanth Kiran, learned Government Advocate for the Commercial Taxes Department.

3.The brief facts are as follows. The petitioner owns cashew plantations. The yield from the plantations were auctioned and the sale turnover from the said auction has been brought to tax under the Act. Cashew is a commercial commodity which is taxable at the point of first purchase at the rate of 5%.

4.The petitioner, in line with the statutory stipulation, thus argues that there is no legal justification in bring the sale consideration of cashews to tax in its hands in so far as Section 3(2) fastens liability to tax (i) at the stipulated rate, and (ii) only at the point specified therein in relation to each year.

5.Pre-assessment notices had been issued proposing to bring the sales turnover to tax and despite objections put forth by the petitioner, assessments came to be made on various dates where the assessing authority confirms the assessment proposals, shifting the basis of the statutory charge.

6.The rationale of the officer is that the purchases had been made by entities that could not be unidentified and hence the liability ought to be fastened on the only *'available'* entity which is the petitioner herein. The assessing authority states as much in his conclusion.

7. Thus, and in effect, a reverse charge of tax has been fastened upon the petitioner and the entirety of the turnover from sale of cashew has been brought to tax at the point of first sale which is diametrically opposed to the stipulation under the Act, which states that the point of taxation is the point of first purchase.

8.The assessment orders are silent as to whether any steps were taken by the assessing authority to call for the particulars of the purchasers or whether at all a query was put to the assessee/writ petitioner to furnish such particulars. In appeal before the Appellate Assistant Commissioner (AAC) the reverse charge was confirmed.

9.In support of the reversal of charge, the Appellate Assistant Commissioner refers to the contract between the petitioner and the purchasers which contains a clause to the effect that sales tax liability on the auction sales, if any, would be met by the petitioner. The clause reads as follows:

> *'மேற்படி முந்திரி மகசூல் டெண்டருக்கு அரசு வரி விதிப்பு ஏதேனும் நிர்ணயித்தால் அதற்கான தொகையை டெண்டர் தொகையுடன் சேர்த்து செலுத்த வேண்டும்.'*

10. As against the order of the Appellate Assistant Commissioner, a second appeal was filed before the Tribunal which also, vide impugned

order dated 03.10.2005, confirmed the addition. Before the Tribunal, the petitioner had relied upon the decisions in the case of V.S*ubramanian v. State of Tamil Nadu* [(1990) 78 STC 167] and *Sree Narayan Timbers v. Joint Commissioner-II (Commercial Taxes), Madras-5* [(1990) 78 STC 195], both on the proposition that statutory charge must be strictly applied.

11.Reliance on the aforesaid decisions came to be rejected by the Tribunal on the ground that statutory charge was not mandatory and there was always discretion vested in the authority to deviate from such charge. The appeals of the assessee came to be dismissed assailing which order the present writ petitions have been filed.

12.The primary submission of the petitioner before us is that the ingredients of Section 3(2) are mandatory. Thus, when the provision makes it clear that the levy of tax on cashew is on the point of first purchase, the assessing authority cannot shift the charge to the point of sale. Reliance on the decisions in *V.Subramanian* (supra) and *Sree Narayan Timbers* (supra) is reiterated.

13.The petitioner further adds that the since there is no liability to tax under the Act, the petitioner has not passed on such burden and this has compounded the prejudice caused. The learned counsel for the petitioner relies on the judgment of the Supreme Court in the case of *Rafeeq Ahmed and Co. v. State of Andhra Pradesh and Another* [(1969) 24 STC 430] to argue that an assessment should be based on the statutory stipulation for the same, and not on the contractual terms inter se the parties.

14. Per contra, learned Government Pleader would first argue that the petitioner has engaged in tax evasion. There is, according to him, a conscious attempt on the part of the petitioner to suppress the details of the purchasers of cashew nuts and thus the action of the assessing authority to tax the petitioner at the point of first sale is correct and inevitable.

15.The Department would then rely on a decision in *Srinivasa Traders and Others v. Commercial Tax Officer, Chintamani Circle and Others* [(1985) 58 STC 343]. In that decision, a learned Judge of the Karnataka High Court considered a challenge to Section 6(A) of the Karnataka Sales Tax Act, ultimately, holding that Section 6(A) is a machinery provision.

16.They point out that Section 6(A) of the Karnataka Act is in parimeteria with Section 10 of the Act, both dealing with burden of proof. The provisions of Section 10 deal with burden of proof and state that the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer.

17.Section 10(2) which has been inserted with effect from 06.11.1997 provides for a fiction whereby the burden would fall on an assessee claiming to be a subsequent seller or a purchaser to prove its role in a particular transaction. Being a machinery provision, the Department states that Section 10(2) will be applicable retrospectively to come to its aid in the facts and circumstances of this case. In all they submit that the orders of the lower authorities are in accordance with law and must be confirmed.

18. At the outset we deal with the allegation that the petitioner has engaged in suppression of material details and has consciously not divulged the details of the auction purchasers. We find absolutely no basis for this assumption. The records also do not support such a stand, as we find that no attempt or effort on the part of the authorities to collate the particulars of the purchasers.

19.Likewise, no attempt has been made to call for the particulars of the purchasers from the writ petitioner as well. We are hence not impressed with this argument. We have specifically sought from the learned Government Pleader reference of a show cause notice or any other communication to the petitioner calling for such particulars and are informed, fairly, that no such notice has been issued. We hence reject this argument.

20.We now address the argument relating to burden of proof. Section 10 of the Act provides for 'Burden of proof' and places the burden of proving a transaction upon the party who asserts a claim in respect thereof. 10(2) was inserted w.e.f 06.11.1997 to provide for a situation where a dealer in goods liable to tax at first sale or first purchase, would be deemed to be the first seller or first purchaser as the case may be, of such goods and shall be liable to pay tax accordingly, unless proof is produced by the dealer that the sale or purchase of those goods has already been subjected to tax under the Act.

21.The amendment enables the Revenue to take appropriate action in circumstances of bill trading or carousal transactions where exemption is claimed by parties without appropriate documentation. We however fail to understand the relevance of Section 10 to the present case. We are not concerned with the aspect of burden of proof as it has never been the case of the assessee that it is entitled to any exemption.

22.Section 3 of the Act provides for charge of tax and states that notwithstanding anything contained in Sub-Section (1), in the case of goods mentioned in the first schedule, the tax under this Act shall be payable by a dealer at the rate and at the point specified therein on the turnover in each case relating to such goods, whatever be the quantum of its turnover in the year.

23.The reference to the point of charge is very specific and emphasised by use of the word 'only' till its omission, with effect from 01.07.2004. Hence, the statutory charge u/s 3(2) would require that the sale of cashew be taxed only at the point of first purchase. Seen in this light, the fiction under Section 10(2) cannot be pressed into service in this case. As a corollary, reliance on the decision in the case of *Srinivasa Traders* (supra) is also irrelevant.

24.The Department has placed reliance on the contractual terms inter se the parties. In the case of *Govind Saran Ganga Saran v. Commissioner of Sales Tax and Others* [(1985) 60 STC 1] the Hon’ble Supreme Court has adumbrated the three components that delineate a tax, the first being the character of imposition, the second being the stipulation as to the person on whom the levy is imposed and who is obliged to pay the tax, and the third being the rate at which the tax is imposed.

25.The following observation of the Bench are relevant in the facts and circumstances of this case:-

> *In the instant case, we are concerned with the taxation of goods which under s. 14 of the Central Sales Tax Act have been declared to be of special importance in inter-State trade or commerce. Where the turnover of such goods is subjected to tax under the sales tax law of a State, s. 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multi-point taxation. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invalid. Now, in order that tax should not be levied at more than one stage, it is imperative that the sales tax law of the State should specify either expressly or by necessary implication the single point at which the tax may be levied. Alternatively, it may empower a statutory authority to prescribe such single point for the purpose. Where such point is not prescribed, either by the statute or by the statutory delegate, no compliance is possible with s. 15. The single point at which the tax may be imposed must be a definite ascertainable point so that both the dealer and the sales tax authorities may know clearly*

*the point at which the tax is to be levied.*

26.The Statute thus makes it clear that the charge shall fall only on the purchaser and hence we find that the attempt of the respondent to shift the charge, based merely on the contractual terms qua the parties, is wholly misplaced, apart from being contrary to law.

27.We may, in addition to the above discussion, also make useful reference to the observations of the Andhra Pradesh High Court in the case of *Rafeeq Ahmed and Co.* (supra) at paragraph 31, extracted below:

> *'31. Sri Ramachandra Reddi relies upon a decision reported in Khader & Co. v. State of Madras, [1966] 17 S.T.C. 396 of the Madras High Court. But the said case was merely concerned with the question of refund of the tax levied under the Central Act and the question arising in the cases before us did not arise for consideration in the said decision. Sri Ramachandra Reddi then contends that the petitioners had entered into agreement not to claim a refund under Section 15(b) of the Central Act and that therefore the petitioners are precluded from challenging the levy of tax under the State Act. But it is well established that there can be no taxation by agreement when there is no legal basis for imposing such a tax and such an agreement would be void and would not estop either party from invoking the statutory provisions relevant thereto and requiring compliance with the said provisions (vide Allahabad Milling Company v. Commissioner of Income-tax (1932) 6 I.T.C. 286 and Muthiah Chettiar v. Commissioner of Income-tax [1959] 35 I.T.R. 339. Under the provisions of Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. But where an agreement*

*entered into by the taxing authorities and the assessee, or the undertaking given by the assessee is not covered by the statutory provisions, that would not clothe the taxing authority with any power to tax. We, therefore, hold that the petitioners are not estopped or precluded from claiming refund of tax under the State Act in accordance with the provisions of Section 15(b) of the Central Act and the proviso to Section 6 of the State Act.'*

28.In light of the discussion as aforesaid, the impugned order of the Tribunal is set aside and these writ petitions are allowed. No costs.

**[A.S.M., J] [G.A.M., J]**
**22.08.2024**

Index:Yes/No
Neutral Citation:Yes
Speaking Order
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