IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2024

CORAM

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

Writ Petition No.26198 of 2004

The State of Tamil Nadu
represented by
The Deputy Commissioner (CT),
Chennai (North) Division,
Chennai – 600 006. .... Petitioner

Vs

1 Tvl. Forbes Gokak Limited,
No.64, Armenian Street,
Chennai-1.

2 The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
Chennai – 104. .... Respondents

PRAYER: PETITION under Article 226 of the Constitution of India praying for issuance of writ of certiorari calling for the records on the files of the second respondent pertaining to order dated 09.12.2002 made in S.T.A.No.966 of 2000 and quash the same as illegal.

For Petitioner : Mrs.K.Vasanthamala
Government Advocate
for Mr.C.Harsha Raj
Additional Government Pleader

For Respondents : Mr.P.Sathyanarayanan (for R1)
for Mr.J.Ibrahim Ahamed
Tribunal - R2

O R D E R

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

The Commercial Taxes Department has filed this Writ Petition challenging order dated 09.12.2002 passed by the Tamil Nadu Sales Tax Appellate Tribunal (in short 'STAT'/'Tribunal') confirming the orders of the first appellate authority passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') relating to the period 1993-94.

2. The respondent/assessee is a dealer on the file of the Commercial Tax Officer, Esplanade II assessment circle. An order of assessment was passed on 01.12.1995 pursuant to an inspection conducted by the officers of the Enforcement Wing on 16th and 17th of November, 1994. The order of assessment records categorically that *'D7'* records, meaning the enforcement records, have revealed no purchase or sales omissions. To that extent, the assessee has been given a clean chit by the enforcement authorities.

3. The sole addition laid in the order of assessment is on the ground that the assessee has camouflaged local first sales of the yarn as interstate sales in order to avoid tax at the rate of 3% under the TNGST Act and at 1% as Additional Sales Tax (AST).

4. The claim of the assessee at the time of assessment was that sales amounting to a sum of Rs.1,84,40,953/- (approx. Rs.1.84 crores) were to be assessed as interstate sales under the Central Sales Tax Act, 1956 (in short 'CST Act') . However the assessing authority did not accept that contention for the

following reasons:

> *"i) There were no prior contract or agreement by the above dealers for the supply of goods to Cannanore.*
> *ii) The goods were delivered at their godown itself, & their responsibility ceases at Coimbatore itself.*
> *iii) They have not handed the goods from their godowns to the respective booking offices of the TVS etc., & the transport charges of for in between movement not met by the dealers.*
> *iv) The so called interstate sale invoices did not bear the Lorry number or LR. & No. for the interstate movement.*
> *v) The delivery & the sales of the goods are thus concluded at Coimbatore itself."*

5. He thus brought to tax the entirety of the turnover of Rs.1.84 crores (approx.) as local sales, liable to tax under the TNGST Act.

6. In appeal before the Appellate Assistant Commissioner (AAC), the order of assessment was reversed. The appellate authority relies on the judgment of the Hon'ble Supreme Court in *Cooperative Sugar (Chittur) Limited V. State of Tamil Nadu*[1], *State of Madras V. Bramhappa Tavanappanavar (Mysore) Private Limited*[2] *and Thavakkal Agencies V. State of Tamil Nadu*[3]. The authority notes that the assessee was in possession of the relevant 'C' forms to support its stand of interstate sales.

7. He also relies on the material available in his possession to show that the dealers from outside this State have placed standing orders with the assessee to inform them about the availability of the materials, as and when available with

1 90 STC 1
2 33 STC 601
3 47 STC 179

them and it is only on receipt of that information that the representative of the buyer would inspect the materials to ensure quality of the same and place an order. Carting and forward charges from the godown were also be included in the transport charges from Tamil Nadu to the destination outside the State and the invoices were drawn on 'to pay' basis.

8. The documentation available with the AAC also revealed that any shortage or damage of material was to be informed within seven days from receipt of materials. He also notes that the consignment note prepared revealed that the assessee was the consignor and the purchaser (outside the State) was the consignee. In fine, the AAC arrives at the conclusion that the title to the goods has been transferred only at the destination outside the State and the transaction was thus an interstate sale.

9. On the material available before him and relying on the decisions in *Oil India Limited V. Superintendent of Taxes*[4] and *Larson and Toubro Limited V. Joint Commercial Tax Officer*[5] and other cases, he holds that the title to the goods sold have passed only upon conclusion of the interstate sale, outside the State.

10. He relies on decisions in *State of Bihar V. Tata Engineering and Locomotive Company Limited*[6], *Mod. Serajudail V. State of Orissa*[7], *English Electric Company of India V. Deputy Comml. Tax Officer*[8], *Delhi Cloth and*

4 35 STC 445
5 20 STC 150
6 (1971) 27 STC 127
7 (1975) 36 STC 136
8 (1976) 38 STC 475

General Mills Company Limited V. CST[9] in support of his conclusion that the transactions entered into by the assessee with the purchasers establish that the sales in question constituted interstate sales.

11. The assessments for the present year as well as two other years had originally been completed under the provisions of the CST Act. The CST assessments had been reversed, since that turnover had been brought to tax under the TNGST Act and with the reversal of the assessments under the TNGST Act, the appellate authority restored the assessments under the CST Act.

12. The State filed an appeal before the Tribunal, which, on the basis of the documents on record, confirmed the order of the AAC. Since both the orders of the first and second appellate authorities, the latter being the final fact finding authority, proceed on the basis of the material available on record, we see no ground to intervene.

13. To be noted, the revenue has not, averred, either in the writ affidavit or orally before us that the material relied upon by the appellate authorities was unreliable. However, the Bench, as a measure of abundant caution, had called for the records to ascertain the credibility of the documents relied upon by the appellate authorities. A specific opportunity had been extended to the revenue to produce the same. Learned Government Advocate however expresses her inability to do so, stating that the files are not traceable.

9 (1982) 48 STC 351

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

14. In light of the discussion as aforesaid, we decline interference in the impugned order of the Tribunal and confirm the same. This Writ Petition is dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
26.09.2024

Index:Yes/No
Speaking order
Neutral Citation: Yes
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To

The Secretary,
The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
Chennai – 104.

W.P.No.26198 of 2004