IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM :

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

W.P.No.4556 of 2008
and
M.P.No.1 of 2008

National Industrial Trading Co.,
Represented By Its Proprietor,
S.Ashokan,
No 1/66, Mount Poonamallee Road,
Ayyappanthangal,
Chennai 600 056. .. Petitioner

vs

1.The Deputy Commercial Tax Officer,
Sriperumpudur Assessment Circle
Poonamallee, Chennai 56.

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

3.State Of Tamil Nadu
Rep By The Deputy Commissioner(CT),
Chennai (South) Division, Chennai.

4.The Sales Tax Appellate Tribunal (Main Bench),
Rep By its Chairman,
City Civil Court Building,
High Court Complex.
Chennai 104. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to call for the records on the files of the fourth respondent herein in S.T.A.No.559/2003 date 18.10.2007 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the same.

For Petitioner	:	Mr.K.Chandrasekar for Mr.N.Inbarajan
For Respondents	:	Mr.TNC.Kaushik, Additional Government Pleader for R1 to R3 R4 - Tribunal

ORDER

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

The issue arising for consideration in this matter is whether expenditure incurred on re-sale would be part of the turnover for taxability in terms of the Tamil Nadu General Sales Tax Act, 1959.

2. Both, Mr.K.Chandrasekar, learned counsel appearing for the petitioner and Mr.Kaushik, learned Additional Government Pleader appearing for the official respondents would accede to the position that this issue has been decided by this Court in *India Meters Ltd v State of Tamil Nadu*[1] adverse to the assessee and in favour of Revenue, which has been affirmed by the Apex Court in *India Meters Ltd v State of Tamil Nadu*[2]. The operative portion reads as follows:-

> *"14. In the instant case, the obligation to pay the freight was clearly on the appellant as there was no sale at all, unless the goods were delivered at the premises of the buyer and in order*

1 136 STC 284

2 34 VST 273

to so deliver, the assessee necessarily had to incur freight charges.

15. The transfer of title to the goods as provided in clause 10 read with clause 6 of the agreement was to be at the place of delivery in the premises of the buyer. Though the contract mentioned the price of the electric meters as ex-factory price, the delivery was not at the factory gate. The specification of what the price would be at the factory gate, therefore, does not in the context of the term subject to which the sale was agreed to be effected, render it the point or the location at which the sale can be said to have been completed. Had the sale been completed at the factory gate, the expenses incurred thereafter by way of freight charges would then be capable of being regarded as expenditure which was in the nature of a post-sale expenditure and, if paid by the seller, regarded as an amount paid by such seller on behalf of the buyer.

16. Both the aforementioned cases emphasise the fact that expenses incurred by a seller on freight would be part of the sale price, as until the transfer of title to the goods takes place that being the only way made in which sale could have taken place prior to the introduction of clause 29A of Article 366 of the Constitution.

...

18. It is no doubt true that Rule 6(c) of the Rules permits deduction of the cost on freight while determining the taxable turnover. However, that provision must be read in the context of definition of "turnover" as also the definition of "sale" in Sections 2(r) and 2(n) respectively of the Act. "Turnover" is defined in the Act, inter alia, to mean "the aggregate amount for which goods are bought or sold or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n)".

19. "Sale" is defined in Section 2(n), inter alia, as meaning "every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration". The definition goes on to include a number of other transactions also within that definition of

> *"sale". The turnover of an assessee/dealer would include the aggregate amount for which goods are bought or sold. It is, therefore, the amount for which the goods are bought or sold, which form part of the turnover, and a thing can be said to be sold only when the transaction falls within the scope of the definition of "sale".*
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> *20. When the transfer of the property or the goods is to be at the place of the buyer to which the seller is under an obligation to transport the goods, the expenditure incurred by the seller on freight in order to carry the goods from his place of manufacture to the place at which he is required under the contract to deliver, would thus become part of the amount for which the goods are sold by the seller to the buyer and would fall within the scope of "turnover".*

3. The decision in *India Meters Ltd (supra)* case has been followed in various decisions of this Court, including in the case of *G.Sankaran and another v Deputy Commercial Tax Officer, Ariyalur and others* [W.P.No.12503 to 12507 of 2002 dated 04.12.2019].

4. In light of the same, this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
25.09.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

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DR. ANITA SUMANTH,J.
and
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