IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM :

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

T.C.No.49 of 2022

M/s.Tarajyot Polymers Limited,
Shyam Arihant, No.1-10-304 to 307/10 & 11,
Patigadda Road, Secunderabad-500003. .. Petitioner

Vs

The State of Tamil Nadu,
Rep. by The Deputy Commercial Tax Officer,
Manali Assessment Circle, Chennai. .. Respondent

Prayer: Tax Case filed under Section 38 of the TNGST Act 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 15.09.2022 passed in T.A.No.121/2017.

For the Petitioner : Mr.V.Srikanth

For the Respondents : Mr.C.Harsharaj
Addl. Govt. Pleader

JUDGMENT

(Judgment of the Court was made by R.Suresh Kumar, J.)

This Tax Case has been filed against the order passed by the Sales Tax Appellate Tribunal, Additional Bench, in T.A.No.121/17 dated 15.09.2022. It relates to the Assessment year 2002-2003.

2. The appellant's case is that it has imported plastic granules of 1980 bags from a foreign country and they do not have any business in the State of Tamil Nadu and therefore, they intended to import the said goods only to transport the same to their destination which is located at Secunderabad, Andhra Pradesh.

3. However, the goods were detained on 11.02.2003 at the Custom Bonded Warehouse and thereafter, the goods were released, of course, after a legal battle by filing a writ petition before this Court where an order was passed on 10.04.2003 in W.P.No.10872 of 2003. Thereafter, the tax had been paid on 17.06.2003 by the appellant and the order of releasing the goods was passed on 04.09.2003 and the goods were released on 17.09.2003.

4. After the goods were released, according to the appellant, the goods were transported to Secunderabad, that is, their destination. However, in the year 2006, that is, on 24.03.2006, the respondents have issued show cause notice on the alleged reason that they checked up with the check posts where they did not find any documents as if that the appellant has moved the goods to Secunderabad as claimed by them. Therefore, presuming that the goods could have been utilised only in the State of Tamil Nadu, they intended to impose tax for which, of course, the appellant has not given a proper reply. Therefore, on 27.04.2006, the respondent Revenue has confirmed the said proposal in the show cause notice dated 24.03.2006, thereby, the order of tax and penalty has been passed on 27.04.2006.

5. As against the said order, the appellant preferred an appeal before the Appellate Deputy Commissioner (ST), Chennai North, who confirmed the order passed by the Assessing Authority by order dated 15.09.2017, as against which the appellant preferred appeal before the Sales Tax Tribunal, which also decided the same in favour of the

Revenue by order dated 15.09.2022, which is impugned in this Tax Case.

6. Heard Mr.V.Srikanth, learned counsel appearing for the appellant, who would submit that along with the bill of entry, which is the basic document based on which the goods were transported from Chennai to Secunderabad, Form XXA also had been produced along with the seal of check post where the destination, namely, the address of the appellant has been clearly mentioned and signed by the appellant's representative. These are all the only available documents along with the transport bills to prove that the goods have been transported from Chennai to Secunderabad and those documents, even prior to the issuance of show cause notice dated 24.03.2006, on the asking of the Revenue officials, have been produced by the appellant. Despite these documents having been produced, the same were not accepted and ultimately, the order of assessment dated 27.04.2006 has been passed imposing tax and penalty, which has been concurrently upheld both by the Appellate Deputy Commissioner (ST) as well as the Tribunal. All these orders are infirm and hence, the learned counsel seeks indulgence of this Court.

7. Heard Mr.Harsharaj, learned Additional Government Pleader, appearing for the respondent, who would rely upon the findings given by the Assessing Authority stating that in the entire en route of the transport from Chennai to Secunderabad, especially, the check posts which were available in the State of Tamil Nadu border, the Assessing Authority has checked up with the investigation department where they found no such documents were available to establish that the goods were transported to Secunderabad as claimed by the appellant. Therefore, there was no other option except to presume that the goods have been utilised only in Tamil Nadu and hence, there was every justification on the part of the Assessing Authority to impose tax and penalty. The learned Additional Government Pleader, therefore, seeks indulgence of this Court to reject this tax case.

8. We have considered the rival submissions of both sides and perused the materials placed before this Court.

9. In fact, during the course of arguments, the learned counsel for the appellant has produced the original documents, that is, Form

XX A as well as the transport bill, where, on our perusal, we find that there was a seal affixed on the documents. Whether the seal belongs to the concerned check post or not also though doubted by the learned Additional Government Pleader appearing for the Revenue, we do not want to stretch up to the issue to that extent as these documents were originated 22 years back where the appellant is able to produce the original bill of transport as well as Form XX A, which carries the seal. That apart, in the assessment order dated 27.04.2006, the Assessing Authority has categorically given a finding that the appellant had produced xerox copies of Form XX A and transport bill, but not regular accounts were produced. If there was a doubt on those documents, it was open for the Assessing Authority to call upon the appellant to produce the original documents. When that being so, there can be no justification in doubting the claim that is being made by the appellant.

10. In that view of the matter, the discussion made as well as the conclusion arrived at both by the Appellate Authority as well as the Tribunal in confirming the order of the Assessing Authority is liable to be interfered with.

11. With the result, this Tax Case is allowed and the order impugned is set aside. However, there shall be no order as to costs.

(R.S.K., J.) (C.S.N., J.)
22.08.2024

Index : Yes/No
NC : Yes/No

sra

To

1. The Manager,
Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Chennai-104.

2. The Appellate Deputy Commissioner (ST)
Chennai (North), III Floor PAPJM Building
Annexe, No.1, Greams Road, Chennai-6.

3. The Deputy Commercial Tax Officer,
Manali Assessment Circle, Chennai.

R.SURESH KUMAR, J.
AND
C.SARAVANAN,J.

(sra)

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