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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM :

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

W.P.No.12631 of 2013
and MP.No.1 of 2013

Poly Pipes India Pvt. Ltd.,
Represented by its Director,
Mr.Vinay Hirawat,
No.21, EVK Sampath Street,
Lakshmi Nivas, Vepery, Chennai-600 007. .. Petitioner

vs

1.The Assistant Commissioner (CT) MAIN
Vepery Assessment Circle
No.3, Ritherdon 2nd Lane,
Vepery, Chennai-600 007.

2.The State of Tamil Nadu
Represented by its Secretary to Government
Commercial Taxes and Registration (B2) Department,
Fort St. George, Chennai-9. .. Respondents

Prayer : 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 First Respondent herein in TIN/33200524703/2011-12, dated 28.03.2013, quashing the same or pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

For Petitioner	:	Mr.K.A.Parthasarathy for Mr.N.Inbarajan
For Respondents	:	Mrs.K.Vasanthamala Government Advocate

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ORDER

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

The petitioner is engaged in trading of PVC resin. The subject-matter of the present writ petition is a challenge to assessment order dated 28.03.2013 for the period 2012-13 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (Act).

2. The petitioner had admittedly failed to surrender transit passes in respect of four consignments during the period 01.11.2011 and 31.1.12 at the Puzhal out check-post. The details of the transactions are as follows:-

SNO	MVRNO	TIN	Dealer Name	Address	Circle	Movement Date	No of Bills	NO OF DC	Amount	To ST
1	TNETP2011 0599550 153140	33200524703	POLY PIPES INDIA PRIVATE LIMITED	LAKSHMI NIVAS, 21, 1 FLOOR, EVK SAMPATH STREET ,VEPERY, CHENNAI 600 007	VEPERY	03-01-2012	1	0	1147030	Andhra Pradesh
2	TNETP2011 0140010 153100	33200524703				03-01-2012	1	0	1147030	Andhra Pradesh
3	TNETP2011 0862090 153020	33200524703				03-01-2012	1	0	1147030	Andhra Pradesh
4	TNETP2011 1049266 0174830	33200524703				11-01-2012	2	0	1126800	Andhra Pradesh
		Total					5	0	4567890	

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3. The authority hence proposed to assess the value of the transactions at the rate of 5% along with penalty. To a proposal along the aforesaid lines, detailed objections were filed, wherein, petitioner confirmed that the transactions represented stock transfers to their depot in Andhra Pradesh.

4. Relevant Forms had been filed in support of the transfer. That apart, the goods covered by the aforesaid consignments had been sold in Andhra Pradesh and were subject to local tax there. While admitting to the non-surrender of transit pass, the petitioner had pointed out that contemporaneous evidences could also be furnished to establish the factum of depot transfer relying on various decisions in that regard.

5. The explanation of the assessee was overruled and the proposals for assessment were confirmed by the officer. Inter alia, the officer holds that the stock transfer is liable to be rejected as goods had been sold the very next day in Andhra Pradesh. This timing, he felt, militated against the argument of stock transfer as it indicates that the buyers had already been identified.

6. Hence he concludes that the alleged stock process were nothing but camouflaged, inter-state transactions, unsupported by C Forms. In fine, the assessing authority has brought to tax the turnover from the subject consignments as local sales adding gross profit and levying penalty.

7. Petitioner has relied on the judgment of the Supreme Court in

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the case of *Sodhi Transport Co and Another v State of U.P* [62 STC 38] and of the Tamil Nadu Taxation Special Tribunal in the case of *Godrej – GE Appliances Ltd v Assistant Commercial Tax Officer and Others* [114 STC 570] for the proposition that even if transit passes were not surrendered, the adverse presumption that arose could well be discharged by the assessee by producing other evidences in its possession in support of the transactions. It has also cited Circular bearing No.26/14 dated 16.06.2014, particularly clauses (d),(e) and (f) at paragraph 7 thereof.

8. Learned Government Advocate would stress the position that there has been an admitted violation of the requirement under Section 70 and it was incumbent upon the consigner to deliver the transit pass to the officer in-charge of the last check-post point. The very purpose of a transit pass was to prevent illegal movement of goods crossing the state border and leakage of revenue and hence the implementation of the provision must be strict.

9. She would point out that the argument of stock transfer and furnishing of declarations in support thereof would not obviate the necessity for compliance with the provisions of Section 70 of the Act. The purpose of a transit pass, she argues, is entirely different from the purpose that the Declarations serve, in the context of stock transfer.

10. We have heard both learned counsel and have perused the material records.

11. The admitted position in this case is that the petitioner has

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not surrendered the transit passes at the Puzhal outpost. Section 70 of the Act makes it amply clear that the consigner is to produce the transit pass at the point of last check-post. The submissions of the State in regard to object of Section 70 is thus well founded.

12. However, the Supreme Court in the case of *Sodhi Transport (supra)* and the Tamil Nadu Taxation Special Tribunal in the case of *Godrej – GJ Appliances Ltd (supra)* have gone into the scope and ambit of Section 70. The Supreme Court notes that if a transit pass is not produced as required in terms of Section 70 a presumption adverse to the assessee would arise. However, such presumption is rebuttable as it is well open to an assessee to produce other material in support of the position that the transfer was merely a stock transfer.

13. The Supreme Court upholds the provision concluding that legislative competence is unassailable. However, they reiterate that, being a fiction imposed, it is open to an assessee to produce material in support of its contention that the goods being transferred have been disposed legitimately. The operative portion of the judgment is as follows:-

> *"We are of the view that the words contained in section 28-B of the Act only require the authorities concerned to raise a rebuttable presumption, that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check post or the barrier near the place of exit from the State. The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods had been disposed of in a different way. He may establish that the*

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goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been re-despatched outside the State without effecting a sale within the State, etc. It is only where the presumption is not successfully rebutted the authorities concerned are required to rely upon the rule of presumption in section 28-B of the Act. It is, therefore, not correct to say that a transaction which is proved to be not a sale is being subjected to sales tax. The authority concerned before levying sales tax arrives at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in section 28-B of the Act which may be rebutted by the person against whom action is taken under section 28-B of the Act. When once a finding is recorded that a person has sold the goods which he had brought inside the State, then he would be a dealer even according to the definition of the word "dealer" as it stood from the very commencement of the Act subject to the other conditions prescribed in this behalf being fulfilled. A person who sells goods inside the State of Uttar Pradesh and fulfills the other conditions prescribed in that behalf is a dealer even as per amendments made in 1959, 1961, 1964, 1973 and 1978 to the said definition. There is, therefore, no substance in the contention that a transporter was being made liable for the first time after 1979 with retrospective effect to pay sales tax on a transaction which is not a sale. Tax becomes payable by him only after a finding is recorded that he has sold the goods inside the State though with the help of the presumption which is a rebuttable one."

14. The ratio of this judgment has been followed in the case of *Godrej – GJ Appliances Ltd (supra)* and has also been accepted by the State where, in Circular dated 16.06.2014, instructions have been issued to following effect:-

"7. In view of the above facts, the following instructions are issued.

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....

(d) While holding the legal validity of the statutory provisions relating to issue of transit pass under Section 44-A of TNGST Act, 1959, the Tamil Nadu Taxation Special Tribunal has held in the case of Godrej-Ge Appliances Ltd. Vs. Assistant Commercial Tax Officer and others (114 STC 570 (TNTST)) that the assumption made to treat the transaction for which transit pass is not surrendered in the exit check post as local sales is a rebuttable presumption. The above view has been upheld by the Karnataka High Court in the case of Smt. Geetha Bhat Vs. Additional Commissioner of Commercial Taxes, Zone-I, Gandhinagar, Bangalore (52 VST 292).

(e) Regarding acceptance of other documentary evidences in lieu of surrendering transit pass, the Honourable Supreme Court, in the case of Tvl.Sodhi Transport Co. and Another Vs. State of U.P. and Another reported in (1986) 62 STC 381, ha? held as under:-

"The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods have been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been re-despatched outside the State without effecting a sale within the State, etc."

(f) Therefore, in case of non-surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved with the transit pass in question had actually crossed the borders of the State, such evidences may be accepted by the assessing authority as an evidence of inter-State movement of goods."

15. Thus, it was incumbent upon the assessing authority, in light of the binding Circular issued by the Principal Secretary / Commissioner of

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Commercial Taxes to have examined the veracity or otherwise of the material that was produced by the assessee. We are of the view that in the impugned assessment order, the assessing authority does not undertake this exercise as wholistically as he ought to have.

16. We now thus proceed to test the material produced by the assessee. Orders of assessment dated 14.06.2012 and 26.09.2012 passed under the provisions of the Central Sales Tax Act (CST Act) have been produced to show that Form C and F Declarations have been filed by the petitioner and the turnover claimed to be eligible for exemption as stock transfer has been accepted.

17. According to petitioner, the four consignments which are the subject-matter of this writ petition, stand fully accounted for, by virtue of the Declarations furnished and there is admittedly nothing adverse to this position that is available on record.

18. We do not agree with the contention of the assessing officer that merely because sales were effected on the very next date of the transfer, the stock transfers amount to camouflaged inter-state transactions. In our view, there is nothing to lead to such a conclusion, which does not appeal to us. Moreover, this argument militates against the orders of assessment passed under the CST Act on 14.06.2012, revised on 26.09.2012.

19. In our considered view, sufficient evidence has been produced by the assessee in support of the movement of goods as a stock

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transfer. The impugned order of assessment dated 28.03.2013 is hence set aside and this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
21.10.2024

Index:Yes
Neutral Citation:Yes
ssm

To

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Vepery Assessment Circle
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2.The Secretary to Government
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Registration (B2) Department,
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