BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

T.C.(MD).No.86 of 2009

The State of Tamil Nadu
Represented by the
Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli – 627 002. .. Appellant

Vs.

P.Murugan .. Respondent

<u>PRAYER:</u> Tax Case (Revision) filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai dated 31.07.2003 passed in M.T.S.A.No.355 of 2002.

For Appellant : Mr.M.Prakash
Special Government Pleader

For Respondent : No appearance

ORDER

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Tax Case is filed to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai dated 31.07.2003 passed in M.T.S.A.No. 355 of 2002.

2. The respondent herein is a registered dealer in rubber products, doing business under the name and style of 'Vinodkumar Enterprises'. For the assessment year 1986-87, the Commercial Tax Officer/Assessing Officer, vide his proceedings dated 21.05.1992, found that the turnover disclosed by the assessee is less than the actual turnover. Since a sum of Rs.31,58,000/- received through bank transaction from the buyers at Delhi and Calcutta was not disclosed, and on finding of this fact through the bank statement, the Assessing Officer imposed an additional sales tax of Rs.35,886/- and a penalty of Rs.2,15,319/-.

3. The said order dated 21.05.1992 was challenged by the assessee before the appellate authority. The appellate authority relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Kerala Vs. M.M.Mathew and another reported in (1978) 42 STC 348 (SC)***, holding that a strong suspicion and grave doubt cannot be a substitute for legal proof and held that it is the duty of the prosecution to establish that the books of accounts relates to business transaction carried on by the respondent. Further, the appellate authority relied upon the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Sales Tax U.P. Lucknow Vs. Suresh Chand Jain reported in (1988) 70 STC 45 (SC)***, holding that a sale can be said to be in the course of inter-state trade only if the twin conditions, namely, sale of goods and transport of goods are satisfied. Applying the dictum of the aforesaid two judgments, the appellate authority allowed the appeal preferred by the assessee by order dated 24.09.2001.

4. Being aggrieved, the State has preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal, by virtue of a

common order dated 31.07.2003, dismissed the appeal. Hence, the present Tax Case is filed before this Court on the short point that while Section 10 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'TNGST Act') cast burden on the assessee to disprove the assessment based on the turnover of the dealer, the assessee did not discharge his burden and had not participated in the enquiry, but the appellate authority, applying the wrong dictum, had held in favour of the assessee.

5. The learned Special Government Pleader appearing for the State submitted that the judgment rendered in *M.M.Mathew*'s case is in respect of criminal prosecution, where, strict burden of proof is required and where there is no concept of reverse burden. The judgment in *Suresh Chand Jain's* case emphasizes about the compliance of twin conditions, namely, sale of goods and transport of goods. However, here the transfer of money by dealers in New Delhi and Calcutta to the bank account of the assessee is the proof for sale of goods and transfer of goods. Applying Section 10 of the TNGST Act, the burden is upon the assessee to prove the contra that the

amount, which he received during the said period, i.e., Rs.31,58,000/-, on various dates from various dealers from New Delhi and Calcutta is not an inter-state sale of goods. Having not proved the basic fact that this amount received through his bank account is not in connection with the sale of goods, Section 10 squarely applies and therefore, the finding of the appellate authority as well as the Tribunal is erroneous and contended that the same is liable to be set aside.

6. Though the name of the respondent is printed in the cause list, there is no representation for the respondent today.

7. It is a case where the revenue of the State is involved. The assessee had declared his turnover for the year 1986-87 as Rs.28,70,910/-, whereas, the Assessing Authority has found that the taxable turnover through inter-state sale to the tune of Rs.1,43,546/- was suppressed. To arrive at that conclusion, the Assessing Authority has relied upon the bank transaction of the assessee. This bank transaction, according to the

appellate authority, is not sufficient to infer to make the transaction as inter-state sale.

8. For such inference, there must be some explanation from the assessee, whereas, in this case, the conspicuous silence of the assessee to explain as to how he received a sum of Rs.31,58,000/- through bank transaction, such as TT/DDs into his account, squarely attracts Section 10 of the TNGST Act, which reads as follows:

> *"**10. Burden of proof:** – (1) For the purpose of assessment of tax under this Act the burden of proving that any transaction or any turnover of a dealer is not liable to tax shall lie on such dealer.*
>
> *(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, a dealer in any of the goods liable to tax in respect of the first sale or first purchase in the State shall 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 on his turnover of sale or purchase relating to such goods, unless he proves that the sale or purchase, as the case may be, of such goods had already been subjected to tax under this Act.*

(3) Where any dealer knowingly produces a false bill, vouchers, declaration certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him is not liable to be taxed or liable to be taxed at a lower rate, the assessing authority shall on detecting such production direct the dealer producing such document to pay as penalty a sum –

(i) Which shall be in the case of first such detection fifty per cent of the tax due in respect of such transaction; and

(ii) which shall be in the case of second or subsequent deductions one hundred per cent of the tax due in respect of such transaction :

Provided that no penalty shall be levied without giving the dealer an opportunity of being heard."

9. It is a case where opportunity was given to the assessee, which he has not availed. He has not explained how the sum of Rs.31,58,000/- came into his bank account from various dealers of Delhi and Calcutta and those dealers are also trading in rubber products. While so, the inference based on the foundational fact that such bank account directly reflects to the turnover

of the assessee and the dealer, if he is not liable to pay tax, he should explain when the opportunity was offered to him. In this case, the assessee has failed to explain to the questionable transaction. Hence, the findings of the Tribunal and the appellate authority based on the judgment, which is not applicable to the facts of the case, are liable to be set aside. Hence, the order of the appellate authority in A.P.No.45 of 1997 dated 24.09.2001 and the order of the Tamil Nadu Sales Tax Appellate Tribunal in M.T.S.A.No. 355 of 2002 dated 31.07.2003 are set aside. Accordingly, the order of the Assessing Authority dated 21.05.1992 is upheld and the Tax Case is allowed. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

Lm

T.C.(MD).No.86 of 2009

08.01.2024