



W.P.No.12843 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

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&

W.M.P.Nos.12953 & 13043 of 2019

M/s. Vinayaka Alloys (P) Limited
Rep. by its Managing Director
M.Ashok Kumar Jain
No.B-48E, SIPCOT, Gummidipoondi
Tamil Nadu and having its
regd. Office at 2A, Prince Apartments
18/59, Ormes Road, Kilpauk
Chennai 600 010.

.. Petitioner

Vs.

1. The Central Sales Appellate Authority
5th Floor, NDMC Building, Yashwanth Place
Satya Mark, Chanakyapuri
New Delhi 110 021.
2. The State of Tamil Nadu
Rep. by the Deputy Commissioner (CT)
Chennai (South)
Commercial Tax Buildings
Chennai 600 006.



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3. The Tamil Nadu Sales Tax Appellate Tribunal

(Additional Bench)

Rep. by its Secretary

Chennai.

4. The Appellate Assistant Commissioner (CT) V

Now upgraded as Appellate Deputy Commissioner (CT)V

Kanchipuram.

5. The Commercial Tax Officer

Ponneri Assessment Circle

Ponneri.

6. The State of Karnataka

Rep. by the Secretary to Government

Department of Revenue, Bangalore

Karnataka.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the impugned proceedings of the first respondent in F.No.CST/5 – 6/2014/145 dated 20.12.2018 relating to the assessment year CST 1996-97 and to quash the same as passed contrary to the provisions of the Central Sales Tax Act, 1956 and against the law laid down by the Supreme Court and High Courts in catena of decisions.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.TNC Kaushik
Additional Government Pleader
for Respondents 2, 4 & 5

R3 - Tribunal



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ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

Petitioner was a manufacturer of iron and steel products and was a registered dealer on the files of Commercial Tax Officer, Ponneri Assessment Circle, under the provisions of the Central Sales Tax Act, 1956 (“CST Act”) and also under the Tamil Nadu General Sales Tax Act, 1959 (“TNGST Act”). Petitioner had its factory at Ponneri and registered office at Chennai. During the years 1995-96 and 1996-97, petitioner had consignment agents in Bangalore. The matter at hand relates to assessment year 1996-97. During the said assessment year, petitioner's returns were assessed and an assessment order dated 26.11.1998 came to be passed, accepting petitioner's claim for exemption on a turnover of Rs.64,99,960.88 as relating to consignment sales effected through agents outside the State.

2. The relevant portion of the assessment order reads as under:

“Item No.(2):

The dealers have claimed exemption on a turnover of Rs.64,99,960.88 as relating to consignment sales effected through their agents in outside the State. They have filed the following



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records in support of their claim for exemption.

1. 'F' forms
2. Copy of Agreement
3. Copies of sale pattials
4. Copies of Lorry receipts

The above records have been verified. In all these cases the goods viz. M.S. Ingots were sent to their Agent at bangalore in a routine manner for sales on consignment basis at the other end. The agents have rendered sale pattials showing the details of sales and incidental expenses incurred by them including commission. Verified the connected records. There has been no despatch of any goods direct to the ultimate buyer against any specific prior order. These are routine despatches for sales on consignment basis. Exemption is therefore found admissible on the said turnover of Rs.64,99,960.88 as relating to consignment sales.”

3. Thereafter, petitioner received a notice dated 14.05.1999 from respondent No.5 under Section 16 of the TNGST Act, read with Section 9(2) of the CST Act, by which, it was proposed to refix the total and taxable turnover. It will be useful to reproduce the show cause notice as under:

“

NOTICE

Tvl. Vinayaga Alloys (P) Ltd., manufacturers of Iron and steel products at No.B 48-E, Sipcot Indl. Complex, G poondi, were finally assessed for the year 1996-97 under the CST Act'56 on a total and taxable turnover of Rs.99,20,097-88 and Rs.30,228-00 respectively in this office revised assmt. order dt.24.3.95.

It has since been brought to my notice that the place of business of the dealers was inspected by the Officers of the Enft. Wing on 22-12-97 and at the time of inspection, the following aspects were noticed by the Enft. Wing Officials.

Tvl. Vinayaga Metal Alloys Ltd., G Poondi, have since



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furnished the details of consignment sales effected to their agent, Tvl. Bhewkha Trade Links(P) Ltd., Bangalore. From the details of sales effected by their agent it is found that:

a) Tvl. Bhewkha Trade Links (P) Ltd., B'lore., have effected sales to Tvl. Bhulwarka Steel Industries, Bangalore their sister concern.

b) the date of the consignment invoices of the principal and the date of the sale invoices of the agent in Bangalore are in close proximity.

c) The quantity noted in the consignment invoices of the principal and the quantity noted in the corresponding sales invoices of the agent are one and the same and thereby the sales have been effected as lot to lot basis and the consignments have been taken delivery by the buyer himself in B'lore.

The consignments have not been moved in the ordinary course of business as stock transfer from the State of Tamil Nadu to the State of Karnataka. The consignments have been moved against specific orders for specific quantities under pre-existing contract of sale as decided in the case of Tvl. Haryana Iron and Steel Rollings Mills verses State of Haryana and in the case of Tvl. Mehta Corpn. Industries verses State of Haryana. The movements of the goods have been occasioned as an incidence of contract of sales already entered into with the buyer at the other end and thereby the Inter-state sale under section 3(a) of the CST Act has been camouflaged as consignment sale under section 6A of the CST Act.

In view of the above, it is proposed to revise the assessment of the dealers for the year 1996-97 under the CST Act'56 u/s 16 of the TNGST Act read with sec 9(2) of the CST Act by refixing the total and taxable turnover as follows:-

Taxable Turnover already determined	..	Rs. 30,228-00
ADD Consignment sales now disallowed	..	Rs.64,99,961-00

Taxable T.O. proposed to be refixed	..	Rs.65,30,189-00



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ADD To eligible for exemption on High sea sales	..	Rs.33,89,909-00

Total Turnover proposed	..	Rs.99,20,098-00

The taxable turnover of Rs.65,30,189-00 is proposed to be re-assessed at the following rates:

- 1. Rs. 30,228-00 at 4%*
- 2. Rs.64,99,961-00 at 8%*

65,30,189-00

It is also proposed to levy appropriate penalty of the difference of tax assessed on revision and that tax already paid, u/s 16 of the TNGST Act read with sec 9(2-A) of the CST Act'56 for the wilful non-disclosure of the taxable turnover.

Objections, if any, to the above proposal, may be filed before the undersigned within 15 days of receipt of this notice, failing which final orders will be passed as proposed."

4. Respondent No.5, therefore, has accepted that petitioner was finally assessed for AY 1996-97 under the CST Act and the basis for re-opening is only in view of what was noticed by the enforcement wing officials and nothing else. According to respondent No.5, the date of consignment invoices of the principal and the date of sale invoices of the agent are in close proximity; the agents effected sales to their sister concern; quantity noted in the consignment invoices of petitioner and quantity noted



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in the corresponding sales invoices of the agent are one and the same and thereby sales have been effected as lot to lot basis; the consignments have been taken delivery by the buyer himself in Bangalore; consignments have not been moved in the ordinary course of business, but have been moved against specific orders for specific quantities under pre-existing contract of sale; and the movements of goods being an inter-state sale under Section 3(a) of the CST Act has been camouflaged as consignment sale under Section 6A of the CST Act.

Strangely, it is not disclosed in the show cause notice what was the basis on which such conclusions have been drawn for issuing the show cause notice. It only says that at the time of inspection, enforcement wing officials noticed the said aspects.

5. Petitioner has replied vide its letter dated 19.05.1999 denying the allegations and seeking to drop the show cause notice. Petitioner submitted that the proposal to revise assessment was not based on any fresh facts, which were not available at the time of initial assessment, to initiate action



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under Section 16 of the TNGST Act. Petitioner even called upon respondent No.5 to produce all material evidence on which it relied upon to revise the assessment. But, no material was made available. Despite objection, respondent No.5 proceeded to pass an order dated 30.06.1999 where the findings were mere reproduction of the show cause notice. Though respondent No.5 has meticulously reproduced what was submitted by petitioner, he chose not to deal with the submissions of petitioner.

6. Petitioner challenged this order dated 30.6.1999 of respondent No.5 by filing an appeal before the Appellate Assistant Commissioner (CT), Kanchipuram (respondent No.4). By a detailed order dated 18.11.2002, petitioner's appeal was allowed. Respondent No.4 observed that during the assessment proceedings, petitioner had submitted all details and documentary evidence in connection with the consignment sales effected by them and relying on the documents filed during the assessment proceedings, the assessment order came to be passed. Respondent No.4 has made an observation that there was no evidence to prove the allegations made by respondent No.5 in the show cause notice to treat the transaction



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as one of inter-state sale. Respondent No.4 has observed that the conclusion of the Assessing Officer was based on mere surmises and guesses and the same was not supported by any materials on record. Respondent No.4 concluded that the entire transactions are only consignment transfer eligible for exemption under the provisions of the CST Act, 1956.

7. Revenue preferred an appeal against this order dated 18.11.2002 before the Tamil Nadu Sales Tax Appellate Tribunal, which is joined as respondent No.3 and in our view, it was not required to be joined as a respondent. The State Tribunal not only interfered with the order passed by the Appellate Authority, but, strangely directed that the matters be sent back to the Assessing Officer to decide the issue afresh, after considering relevant documents to be furnished by the assessee with respect to its transactions with one Bhuwalka Trade Links (P) Limited, the agent. In effect, the Assessing Officer was directed to effectively go on a fishing expedition, which investigation he ought to have done to ascertain whether the show cause notice under Section 16 had to be ever issued in the first place. Against this order dated 27.8.2013, petitioner preferred an appeal



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before the Central Sales Tax Appellate Authority (respondent No.1), which, by an order dated 20.12.2018, dismissed the appeal.

8. One of the submissions consistently taken by petitioner is that once an assessment is made, reopening cannot be based on change of opinion and as held by the Apex Court in the case of ***Ashok Leyland Limited v. State of Tamil Nadu and another¹***, it is not open to the Assessing Authority to re-open a concluded assessment without any new material and unless there has been a fraud played by petitioner. The Appellate Authority (respondent No.1) accepted these submissions by observing that there can be no debate over the proposition, but, at the same time, found that there was nothing wrong in the Tribunal directing the Assessing Officer to investigate. Against this order of the Appellate Authority (respondent No.1), this petition is filed.

9. At the outset, Shri. Kaushik for Revenue submitted that the petition should have been filed in the Apex Court under Article 32 of the Constitution of India, instead of filing this writ petition under Article 226 of

¹ (2004) 134 STC 473 (SC)



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the Constitution of India. Shri. Kaushik submitted that because the impugned order was passed by a Chairperson, who was a former Judge of the Apex Court, the challenge to that order should have been made only to the Apex Court.

10. We disagree with the submission because the order is passed by the Appellate Authority (respondent No.1), which, at the relevant point of time, was chaired by a person who was a former Judge of the Supreme Court of India. It is under Section 19 of the CST Act that the said Appellate Authority is constituted and hence, the Tribunal is a creature of statute. Section 19 of the CST Act only provides who all could be appointed as Members. That does not make a High Court inferior to the Appellate Authority. All decisions of the said Appellate Authority, which are creatures of statute, shall be subject to scrutiny under jurisdiction conferred upon the High Courts under Article 226/227 of Constitution of India.

11. The Supreme Court in ***Columbia Sportswear Company v. Director of Income Tax, Bangalore***², held that the order passed by the

² (2012) 346 ITR 161 (SC)



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Appellate Authority for Advance Rulings (Income-tax) can be challenged before the High Court under Article 226 and/or 227 of the Constitution of India.

12. Also in ***Union of India v. Parashotam Dass***³, the Apex Court held that the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.

13. In paragraph 101 of the judgment of the Apex Court in ***L.Chandrakumar v. Union of India***⁴, a Constitution Bench of the Apex Court has held that the power vested in the High Courts to exercise judicial superintendence over the decision of Courts and Tribunals within their respective jurisdiction is part of the basic structure of the Constitution. Therefore, to hold that a ruling of the Appellate Authority created under the statute, namely the CST Act in this case, cannot be challenged before this

³ (2023) 3 SCR 598

⁴ (1997) 105 STC 618 (SC)



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Court under Article 226/227 of the Constitution would be to negate the part of the basic structure of the Constitution.

14. Now going back to the merits of the case, the indisputable fact is that the show cause notice does not describe what was the new material based on which the assessment was proposed to be re-opened. Moreover, admittedly, assessment has already been carried out for the AY 1996-97 and an assessment order dated 26.11.1998 has been passed. Indisputably, during the course of assessment, cash book, ledger, purchase and sales bills were called for and checked. Indisputably, for the assessment, 'F' Forms, copy of agreement between petitioner and Bhuwalka Trade Links (P) Limited, copies of sale pattials, copies of lorry receipts have been verified. The other connected records have also been verified. After verification of records, the assessment order has been passed.

15. The Apex Court in *Ashok Leyland Limited* (supra) held that once a declaration has been accepted and acted upon by the Revenue, unless and until on further enquiry made thereto, the particulars furnished were found



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to be incorrect or untrue, the assessment once made based on Form 'F' cannot be re-opened. The Apex Court went on to hold that if such a declaration is filed and on an enquiry made pursuant to or in furtherance of the particulars furnished are found to be correct by the Assessing Authority, the result thereof, which is evidenced by the expression “thereupon”, shall, in view of the legal fiction created, would be a transaction otherwise than as a result of an inter-State sale. Furthermore, once such a legal fiction is drawn, the same would continue to have its effect not only while making an order of assessment in terms of the State Act, but also for the purpose of invoking power of re-opening assessment contained in Section 9(2) of the Central Act as well as Section 16 of the State Act.

16. The Apex Court went on to hold further that Section 6A of the CST Act provided for a conclusive proof except on a limited ground that unless the details are found to be writ with fraud, collusion or misrepresentation or suppression of material facts, on a mere change of opinion, the findings by themselves would not go for any disturbance under Section 16 of the Act. Importantly, the Apex Court also held that discovery



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of new materials although may form a ground, by itself, it would not be a ground for re-opening of proceedings unless such discovery indicates a jurisdictional error.

17. Paragraphs 61 and 94 in *Ashok Leyland Limited* (supra) read as under:

“61. ... If through the means of a legal fiction it is determined that this is not an inter-State sale, then it amounts to a transfer of stock. This finding is made by a statutory authority who has the jurisdiction to do so and there is no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there had been a mere error of judgment. It also cannot be reopened under another statute, for examples, the Sales Tax Act of the State concerned, when the order had been made under the Central Act. Section 9(2) of the Act is subject to the other provisions of the Act which would include sub-section (2) of section 6-A of the Act. “Subject to” is an expression whereby limitation is expressed. The order is conclusive for all purposes. It can only be reopened on a small set of grounds such as fraud, misrepresentation, collusion, etc.

...

94. An order of assessment is albeit passed under the State Act. But once it is held that the concerned State Act as also the Central Act is not applicable, as a consequence whereof sales tax would be payable under another State Act, it is doubtful as to whether the



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power to reopen the proceedings under the State Act or the Central Act would be attracted. There does not exist any power in the statute to rectify a mistake. In that view of the matter, mere change in the opinion of the assessing authority or to have a relook at the matter would not confer any jurisdiction upon him to get the proceedings reopened. Discovery of a new material although may be a ground but that itself may not be a ground for reopening the proceedings unless and until it is found that by reason of such discovery, a jurisdictional error has been committed. In other words, when an order passed in terms of sub-section (2) of section 6-A is found to be illegal or void ab inito or otherwise voidable, the assessing authority derives jurisdiction to direct reopening of the proceedings and not otherwise.”

[emphasis supplied]

18. In the show cause notice, there is not even an allegation as to what are the new materials discovered. In the show cause notice, there is not even an allegation that the details that were submitted or verified at the time of assessment were found to be writ with fraud, collusion or misrepresentation or suppression of material facts. There are bald statements made that because the date of consignment invoices of the principal and the date of sale invoices of the agent in Bangalore were in close proximity and the quantity noted in the consignment invoices of the



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principal and the quantity noted for the corresponding sale invoices of the agent are one and the same, the sales have been effected as lot to lot basis and not moved in the ordinary course of business. Therefore, the inter-State sale under Section 3(a) of the CST Act has been camouflaged as consignment sale under Section 6A of the CST Act.

19. In our view, these are nothing but bald allegations with no evidence to speak of. When, in the original assessment, the Assessing Authority had satisfied himself as to the claim of the assessee by way of verifying the details in Form 'F', apart from the agreement as well as accounts of the Assessee, in the absence of any other material to discredit the details in Form 'F', the claim could not be rejected under Section 16 proceedings. There is not even a whisper questioning the truthfulness of the contents in Form 'F'. According to us, the assessment order is conclusive for all purposes and therefore, in our view, re-opening cannot be permitted merely on change of opinion and revenue be given a second innings.

20. In the circumstances, petition is allowed. The impugned order



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dated 20.12.2018 is quashed and set aside. There shall be no order as to costs. Consequently, all the interim applications stand closed.

(K.R.SHRIRAM, CJ)

(MOHAMMED SHAFFIQ,J.)

25.03.2025

Index : Yes
Neutral Citation : Yes
kpl

To

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5th Floor, NDMC Building, Yashwanth Place
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2. The Deputy Commissioner (CT)
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THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ.J.

(kpl)

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