

**(2009) 08 MAD CK 0312**

**Madras High Court**

**Case No:** Tax Case (Revision) No. 2283 of 2008

The State of Tamil Nadu

APPELLANT

Vs

Tvl. Hindustan Dorr Oliver Ltd.

RESPONDENT

**Date of Decision:** Aug. 6, 2009

**Acts Referred:**

- Tamil Nadu General Sales Tax Act, 1959 - Section 36, 36(3), 36(6), 36(9), 38

**Citation:** (2010) 27 VST 397

**Hon'ble Judges:** F.M. Ibbrahim Kalifulla, J; B. Rajendran, J

**Bench:** Division Bench

**Advocate:** Haja Naziruddin, Spl.G.P. T, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

F.M. Ibbrahim Kalifulla, J.

The State has come forward with this revision raising the substantial question of law, viz., whether the Tribunal was justified in holding that the goods moved from other State at the instance of the assessee were earmarked for a specific works contract undertaken by the dealers and hence, deduction was allowable u/s 3-B(2)(a) of the TNGST Act.

2. Mr. Haja Naziruddin, learned Special Government Pleader (Taxes) contended that before the assessing officer, the assessee failed to produce any documents to show that the inter-state sale was for the execution of the works contract between the assessee and M/s. Madras Refineries Ltd. and in the circumstances, the said conclusion of the assessing authority, as affirmed by the Appellate Assistant Commissioner, ought not to have been interfered with by the Tribunal.

3. The jurisdiction exercised by the Appellate Tribunal is provided u/s 36 of the TNGST Act. u/s 36(3)(a) of the Act, the Tribunal has been given ample powers in the case of an order of assessment to either confirm or reduce or enhance or restore fully or partially, as the case may be or annul the assessment or the penalty or both.

It can also set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed or pass such other orders as it may think fit. Thus, under the said provision, the Appellate Tribunal has been vested with enormous powers by which it can examine the facts involved in a case as could be examined by the assessing authority or by the immediate appellate authority, viz., the Appellate Assistant Commissioner. u/s 36(9) of the Act, every order passed by the Appellate Tribunal u/s Sub-section (3) would become final, however, subject to the power of review under Sub-section (6) and a revision by a Special Tribunal as provided u/s 38 of the Act. It will have to be stated that the said Special Tribunal, which was set up by Act 42 of 1992 came to be subsequently abolished by Act No. 34 of 2004, which came into force from 13.7.2005. In such circumstances, when the Appellate Tribunal is the final forum of question of fact and law, it will have to be stated that the Tribunal was fully empowered to examine the correctness of the assessment orders made by the original authority, as affirmed by the immediate appellate authority in every respect before rendering its decision u/s 36(3) of the Act.

4. Keeping in mind the above wide powers of the Tribunal, when we examine the order impugned in this revision, according to the assessee, the inter-state sale effected by it for the assessment year 1990-91 to the value of Rs. 83,70,360/- was specifically meant for the execution of works contract entered with M/s. Madras Refineries Ltd. Therefore, it was entitled for the said sum to be deducted from its total turnover as provided u/s 3-B(2)(a) of the Act. The said provision reads as under:

The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall on and from the 26th of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer:

a) all amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce.

Therefore, what was required to be examined was whether the amounts involved in the purchase of goods from other States by the assessee was so involved in the execution of works contract in the course of inter-State trade or commerce. In order to establish the said fact, the assessee produced before the Tribunal along with its return, Annexures I to IV. The Tribunal, on a detailed analysis of those documents, has rendered a finding that the import of the various goods by the assessee were in respect of work order No. 88948, that the movement of goods originated from outside the State of Tamil Nadu were specifically meant for the works done by the assessee for M/s. Madras Refineries Limited at Manali. In paragraph 9 of the Tribunal's order, the Tribunal has made a detailed recording of each one of the annexures and has rendered a specific finding to the above effect.

5. That apart, the Tribunal has also made a specific statement as regards the stand of the assessing authority in the following words in paragraphs 13 and 14:

13. ...The Assessing Officer has never said that the purchases are local. He has accepted the interstate movement of the goods from other State. Now the learned State Representative wants to verify all the documents to find out whether they are inter-state movement or not. After verification of records only the Assessing Officer has come to a conclusion that the goods are moved from other state in the nature of inter-state movement. The Assessing Officer's contention is delivery has been taken in Tamil Nadu, then, it is used in the execution of works contract. It is not the case of the Assessing Officer that the inter-state movement itself is not genuine. The plea of the learned State Representative to verify all the purchase orders and other things to find out the inter-state movement is not entertainable at this stage. It is a fact that in appeal entire assessment was set at large. .... It is only a doubt in the minds of the learned State Representative that if all the documents including purchases are verified, he can prove that there is no inter-state movement in few cases. But the Assessing Officer has given a finding that they are 11 inter-state movement goods. At this stage, unless the State Representative is able to show that the Assessing Officer has not properly verified the documents. We cannot again take up the role of the Assessing Officer. This Tribunal cannot be converted into an assessment circle where once again all the records, registers, etc., have to be verified by the State Representative and then advance his arguments. If the State Representative is very clear that the Assessing Officer has not properly verified the records, then he must bring specific instances to our notices. ....

Thus, we find that the Tribunal has analysed the documents placed before it threadbare before rendering a finding to the effect that the inter-state sale at the instance of the assessee was occasioned specifically to fulfil the works contract entered into with M/s. Madras Refineries Limited and the goods were really supplied in the site of Madras Refineries Limited at Manali and thus, the assessee fulfilled the legal requirements as provided u/s 3-B(2)(a) of the Act. The Tribunal has also made a specific reference to the effect that no specific instance was brought to the notice to the effect that there was any misfeasance by the assessee in the records placed before the Tribunal.

6. In such circumstances, when the Tribunal has rendered a factual finding based on which it had reached the conclusion that the assessee was entitled for the deduction as provided u/s 3-B(2)(a) of the Act, there is no scope for this Court to interfere with the said factual finding, in the absence of any serious illegality committed by the Tribunal in analysing the material evidence placed before it by the assessee; may be for the first time; while dealing with the appeal before the Tribunal. We, therefore, do not find any merit in this revision. The tax case revision fails and the same is dismissed.