(2009) 11 MAD CK 0166

Madras High Court

Case No: Writ Petition No. 12507 of 2001

State of Tamil Nadu		APPELLANT
	Vs	
P.M.P. Iron and Steel India Limited and Another		RESPONDENT

Date of Decision: Nov. 17, 2009

Acts Referred:

- Central Sales Tax (Tamil Nadu) Rules, 1957 - Rule 4(3A)
- Central Sales Tax Act, 1956 - Section 3, 6A, 9(2)
- Constitution of India, 1950 - Article 226, 227
- Tamil Nadu General Sales Tax Act, 1959 - Section 12(3)

Citation: (2010) 28 VST 370

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: Haja Nazirudeen, Special Government Pleader Tax, for the Appellant; S. Raja Sekar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.
The writ petition has been filed by the Revenue being aggrieved against the order passed by the Appellate Tribunal rejecting the appeal filed by the Revenue filed against the order of the Appellate Assistant Commissioner.

2. The point in controversy is the disallowance of turnover in a sum of Rs. 3,57,41,932.63 as the consignment sale which claim was rejected by the assessing officer and treating the transaction as inter-State sale falling u/s 3(a) of the Central Sales Tax Act, 1956 is correct or not.

3. The brief facts leading to the case in a nutshell are hereunder:

The respondent is a manufacturer of C. T. D. bars, M. S. rounds, M.S. angles and M.S. casted blocks and an assessee on the file of the Commercial Tax Officer, Park Town II Assessment Circle. In respect of the assessment year 1996-97, the respondent was assessed on a total and taxable turnover of Rs. 3,57,41,933 in the CST order dated December 28, 1998 in which the claim of the assessee in respect of the said turnover as consignment sale through their agent in other State has been rejected on the ground that the goods were sold by the agent in the other State on the very same day holding that without there being any pre-existing order such a sale could not be effected on the same day or the next day. The assessing officer also levied penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act read with Section 9(2) of the Central Sales Tax Act at 150 per cent of the tax due on the turnover of the consignment sale.

4. As against the said order, the assessee preferred an appeal before the first appellate authority-Appellate Assistant Commissioner, Chennai, who granted the relief in favour of the assessee in respect of the entire turnover of Rs. 3,57,41,933, as he found that the goods of the above turnover were sent to the other State, where it was unloaded in the agent''s godown and reloaded and despatched to various places on various dates subsequent to the receipt of goods. The entire penalty imposed by the assessing officer has been deleted on the ground that the turnover was offered but tax exemption was claimed as consignment sale.

5. The Department filed a further appeal before the Sales Tax Appellate Tribunal (Additional Bench), Chennai in S.T. A. No. 506 of 1999, which has been dismissed in favour of the assessee. Hence, challenging the same the Revenue has filed the present writ petition.

6. The assessing officer has declined the exemption of the assessee for treating the transactions as consignment sales on the ground that the agents of the assessee have sold the goods on the date of the arrival from the State of Tamil Nadu and there was no evidence to show that the consignments received by the agents were taken to the stock and thereafter sold to various customers. Both the first appellate authority as well as the Tribunal have held that the copies of the sale pattials, invoices rendered by the agents and the excise gate pass-cum-consignment sale note would show that the transactions are consignment sales and not inter-State sales. The said authorities have also held that there is no evidence of any hundi drawn by the assessee or any cash paid by the agents and received by the assessee before the arrival of the goods at the hands of the assessee.

7. The mere fact that the goods despatched by the assessee and received by the agents have been sold on the very same day after their arrival or the next day itself cannot be a ground to hold that the transactions are inter-State sales. Further, the assessee has produced before the appellate authorities, the copies of sale pattials, invoices rendered by the agents as well as the excise gate pass. The abovesaid documents clearly prove that the transactions are consignment sales as held by the

appellate authorities.

8. Section 6A of the CST Act, 1956 mandates the assessee to substantiate his case that a particular transaction is a consignment sale and not an inter-State sale. Rule 4(3A) of the CST (Tamil Nadu) Rules, provides for the particulars to be furnished by the assessee when called for by the assessing officer. In the present case on hand, the assessee has proved that the declaration made in form F u/s 6A is true and in support of his declaration, he has also produced various materials. It is not the case of the Revenue that the intimation given in form F by the assessee is not true, genuine and based upon false representation. Therefore, in the absence of any incriminating material contrary to the particulars provided by the assessee, the assessing officer cannot hold the declaration given under form F is not correct. The findings to the contrary by the assessing officer must be borne out by records and evidence but not on mere speculation and surmises.

9. In the judgment of Sri Ganesan Traders v. Union of India reported in [1994] 95 STC 273 (Mad) the honourable High Court was pleased to hold that the burden of proof is on the assessee to prove to the satisfaction of the assessing officer that particulars furnished in form F are true and a genuine. The said issue was also confirmed by the subsequent judgment of the Division Bench A. Dhandapani v. State of Tamil Nadu reported in [1995] 96 STC 98 (Mad) wherein also the Division Bench was pleased to hold that it is for the dealer to prove that the particulars mentioned in form F are true. Therefore, a reading of the above judgments would indicate that in the present case on hand, the assessee has proved with documentary evidence before the authorities that the particulars furnished by him are true and genuine and there is no contra material to disprove the stand taken by the assessee.

10. In the judgment of Delhi Iron & Steel Co. Ltd. v. Commissioner of Sales Tax, U. P. reported in [1989] 11 STC 294, the High Court of Allahabad has held as follows (at page 295):

Factually, in the present case the authorities below, on the basis of material on record, have found that out of the turnover of Rs. 40 lacs the turnover to the extent of 50 per cent is exempt as branch transfer and the remaining 50 per cent, i.e., the turnover of Rs. 20 lacs, is liable to tax under the Central Sales Tax Act. From a perusal of the order passed by the Sales Tax Tribunal it is clear that it has only upheld the liability of the assessee under the Central Sales Tax Act to the extent of Rs. 20 lacs on the sole ground that the sales in question were made the same day at Delhi. For the purposes of levying Central sales tax the same can hardly be a ground available to the Department.

11. A similar view has also been taken by the Division Bench of Karnataka High Court in State of Karnataka v. Jindal Aluminium Limited reported in [2002] 126 STC 458 wherein the Division Bench was pleased to hold that a mere sale transaction effected by the agents on the very same day of arrival in itself cannot be the sole

basis to treat the same as an inter-State sale. Hence on a consideration of the abovesaid legal position, we are of the opinion that the transaction involved in the present case is merely a stock transfer from the assessee to its agents and therefore, the same is not an inter-State sale.

12. The issue can be looked at from another angle as well. As observed above, the Appellate Assistant Commissioner as well as the Appellate Tribunal have considered the entire records available and the documents have been verified by the Department representative as well. Hence orders have been passed by the appellate authorities on a consideration of the materials available on record. Therefore, when orders have been passed by the Appellate Tribunal confirming the order of the first appellate authority based upon the materials available on record, this Court exercising the power under Article 226 of the Constitution of India cannot go into the merits of the said decision unless the said findings are totally perverse or not supported by materials. In this connection, it is useful to refer the judgment rendered in Monga Rice Mill v. State of Haryana [2002] 125 STC 304 wherein the Division Bench of the Punjab and Haryana High Court has observed as follows (at page 316):

38. ... However, in matters involving facts and an investigation into transactions, the writ court has an apparent handicap. Normally, it cannot record evidence and give findings on questions of fact. These have to be invariably determined by the authorities under the statute. It is only when an order passed by a quasi-judicial authority suffers from an error apparent on the record or is in violation of a statutory provision that the court intervenes by the issue of a writ of certiorari.

13. The honourable apex court in Ranjeet Singh v. Ravi Prakash [2004] 3 SCC 682 has observed as follows:

Feeling aggrieved by the judgment of the appellate court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned single judge of the High Court. The High Court has set aside the judgment of the appellate court and restored that of the trial court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate court. Though not specifically stated, the phraseology employed by the High Court in its judgment goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the appellate court. In Surya Dev Rai Vs. Ram Chander Rai and Others, this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived

at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai Vs. Ram Chander Rai and Others, that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that-''considering the evidence on the record carefully'' it was inclined not to sustain the judgment of the appellate court. On its own showing, the High Court has acted like an appellate court which was not permissible for it to do under Article 226 or Article 227 of the Constitution.

14. Therefore on a consideration of the abovesaid position of law, we are of the opinion that the issues raised by the Revenue in the present writ petition being questions of fact which were thoroughly considered by the lower authorities they do not warrant any interference.

15. Accordingly, the writ petition is dismissed. No costs.