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(2009) 04 MAD CK 0511

Madras High Court

Case No: Tax Case (R) . No. 1898 of 2006

Madras Traders APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision: April 2, 2009

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 12(3)

Citation: (2009) 26 VST 381

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

Bench: Division Bench

Advocate: A.R. Jayaprathap, for S.N. Kirubanandam, for the Appellant; Haja Nasiruddin, Special Government Pleader (Tax), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Raviraja Pandian, J.
The revision is filed at the instance of the assessee against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai 104, dated March 28, 2002 made in S.T.A. No. 277 of 2001.

2. The assessee, a dealer in pulses and grams, was finally assessed on a total and taxable turnover of Rs. 1,52,71,011 and Rs. 1,48,76,056, respectively for the assessment year 1993-94. During this period, the assessee showed the sales through the agents to other States and claimed exemption of Rs. 33,95,980 as consignment sales. The Enforcement Wing Officials inspected the place of business of the dealers on March 18, 1994 and subsequently they have also verified the documents, with the transport company on August 17, 1994 so as to find out the genuineness of the transport of the goods alleged to have been made by transfer to other States through lorry. The inspection of the Enforcement Wing Officials revealed that there was no movement of the goods from Madras. On that basis, a proposal in form D3 has been sent to the assessing

officer. The assessing officer after following the due procedure contemplated under the Act treated the transactions as intra-State sales and assessed the same under the Tamil Nadu General Sales Tax Act, 1959, and also levied penalty for incomplete and incorrect filing of the returns. Aggrieved against that order, the assessee filed an appeal before the Appellate Assistant Commissioner who allowed the appeal. But, the Revenue carried on the matter for further appeal before the Tamil Nadu Sales Tax Appellate Tribunal, which has set aside the order of the Appellate Assistant Commissioner and restored the order of the assessing officer. The correctness of the order of the Tamil Nadu Sales Tax Appellate Tribunal is canvassed before this Court by filing revision and formulating the following question of law.

Whether the Tribunal is justified in allowing the sales tax appeal without giving any reasons?

3. We heard the arguments of the learned Counsel on either side and perused the materials on record.

4. It is not in dispute in respect of the turnover of Rs. 33,95,980 exemption was claimed by the assessee on the ground that this turnover represents the consignment sales. The assessing officer, on the basis of the statement given by the lorry transport operators Sri Venkateswara Lorry Transport and Sri Bagyalakshmi Roadways that the assessee did not transport the goods from Chennai through their lorries, found that the alleged transfer by consignment is not true. On appeal the Appellate Assistant Commissioner just like that accepted the contentions of the assessee by stating that the assessee has produced consignment sale agreement entered into between the assessee and the agents outside the State ; that the goods have been despatched through lorries accompanied by despatch advice and delivery note in form XX as prescribed under the Tamil Nadu General Sales Tax Act. On that basis he came to the conclusion that the goods were definitely moved to other States through lorries and for that purpose the lorry receipt produced by the assessee has been accepted. The statement made by the lorry transport operator Sri Venkateswara Lorry Transport to the effect that they had not issued the lorry receipts in Nos. 901 to 906 claimed to have been issued by them to the assessee and the statement of Sri Bagyalakshmi Roadways denying the issuance of the lorry receipt with which reliance has been made by the assessee to prove the movement of the goods has been totally lost sight of by the Appellate Assistant Commissioner and he had granted relief as if the assessee has discharged his burden of proof for the movement of the goods from Tamil Nadu to other States on consignment sales. However, on the appeal filed before the Tamil Nadu Sales Tax Appellate Tribunal, the Tribunal has categorically stated that the lorry transport owners, namely, Sri Venkateswara Lorry Transport and Sri Bagyalakshmi Roadways, have denied the issuance of the lorry receipts. Those lorry receipts from these two transport owners were relied on by the assessee to establish that the goods were moved from Tamil Nadu to other States. The lorry transport owners disowned the receipts produced by the assessee. The necessary consequence is that the movement of the goods from Tamil Nadu to other States is yet to be established by the

assessee. The other documents relied on by the assessee and accepted by the Appellate Assistant Commissioner are all documents of the agents maintained by them in other States. Even the assessment order of the other State assessing these goods for taxation has not been produced. Thus, it is manifestly clear that the movement of the goods as alleged by the assessee, from Tamil Nadu to other States has not been established. In the absence of any materials to establish the movement of goods from Tamil Nadu to other States, the one and only recourse available to the assessing officer is to treat those quantity of the goods as sales within the State of Tamil Nadu but being failed to bring it on account by the assessee bring the same on account. Hence, the turnover for Rs. 33,95,980 was brought to tax with other components of tax and for filing an incomplete and incorrect return, penalty provision has been invoked u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act and penalty has been levied by the assessing officer which has been restored by the Tribunal. Hence, we find no merit in the revision.

5. Consequently, the revision is dismissed. No costs.