(2006) 08 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 19854 of 2003

Kothari Vegetable Products Ltd. APPELLANT

Vs

The State of Tamilnadu RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 12(3), 16(2), 9(2A)
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 39B(2)

Citation : (2006) 08 MAD CK 0035

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : D. Trilokchand Chopda, for the Appellant; Haja Nazuruddin, Special Govt. Pleader (Tax), for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—The prayer in this Writ Petition is for a Writ of Certiorari calling for the records on the files of the third respondent in

S.T.A. No. 738 of 2000 dated 29.01.2003 partly confirming the order of the second respondent in Rc. No. 1209/ 95/A4 dated 31.10.1995 and

quash the said order dated 29.01.2005 in S.T.A. No. 738 of 2000 as illegal in so far as it is against the petitioner.

2. The petitioner is a company, which is assessed under Tamil Nadu General Sales Tax Act as well as Central Sales Tax Act. In the year 1989,

the petitioner imported yellow split lentils in the Port of Madras. The petitioner appointed M/s. Bhawarlal & Sons, a registered dealer under the

Tamil Nadu General Sales Tax Act as selling Agent in the State of Tamil Nadu. The petitioner states that the said agent sold a major portion of

imported yellow split lentils and paid necessary tax thereon. The Agent was unable to sell a small portion of the said imported goods of 2160 bags, which were returned to the petitioner, who taken delivery of the same and despatched it in its own account to Pondicherry through Railways and

obtained Railway Receipt, which disclose the fact that the petitioner was the consignor as well as consignee. After the said goods reached

Pondicherry, it was sold to M/s. Ashwini Trader, Pondicherry. Based on two letters dated 11.02.1995 and 28.02.1995 of the petitioner

addressed to his agent M/s. Bhawarlal & Sons, Madras, the Assessing Officer/ second respondent issued show cause notice to the petitioner. The

petitioner did not submit their explanation, with the result, the assessing officer assessed exparte the total turn over and taxable turn over of Rs.

9,69,840 at the rate of 8% under CST Act, being the double amount of local tax due on the declared goods since no ''C'' forms have been filed

and levied tax of Rs. 77,587/-. In addition to the above sum, the assessing officer also levied penalty of 150% of the tax due for alleged wilful and

deliberate non-disclosure of assessable turnover u/s 9(2-A) of the CST Act read with Section 12(3)(b) to the tune of Rs. 1,16,381/- by its order

dated 31.10.1995.

3. Aggrieved by the said order dated 31.10.1995 passed by the second respondent, the petitioner has preferred two appeals namely A.P. No.

179 of 1996 and C.S.T. No. 10 of 1996 before the Appellate Assistant Commissioner (CT) I, Chennai and the said authority passed a common

order dated 03.01.2000 setting aside the assessment made by the assessing officer in both the cases on the ground that the goods were taken to

Pondicherry in the name of the petitioner and sale took place at Pondicherry, which is evident from the railway receipts produced by the petitioner.

4. Aggrieved by the said Order dated 03.01.2000, the State has preferred appeals namely S.T.A. Nos. 738 of 2000 and 799 of 2000 before the

Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Chennai - 600 104 and by Order dated 29.01.2003, the said two appeals were

disposed of. Para Nos. 10 and 11 of the said Order dated 29.01.2003 runs as follows:

10. On perusal of Central Sales Tax assessment file it reveals that they have sold the goods to Tvl. Ashwini Traders, Pondicherry on endorsement

in the Railway receipts in their favour as per the respondents certificate dated 28.02.1995 which is available at page 3 of the Central Sales Tax assessment file as stated by the appellate State and there is a proof for interstate movement of goods as a result of sale. The goods were cleared

from Madras Harbour and taken to Egmore from where they have booked to Pondicherry. From the above particulars given by the respondents

themselves it is clear that the respondents effected interstate sales and assessed under Central Sales Tax Act 1956. Hence, in the above facts and

circumstances of the case we are of the view that the order of the learned Appellate Assistant Commissioner is not acceptable and we allow the

turnover in the State appeal accordingly. With regard to the levy of penalty in as much as the turnover is sustained and since it reveals wilful non-

disclosure of the turnover, penalty u/s 16(2) is warranted. However, the levy of 150% seems higher and hence we reduce it to 50%.

11. In fine, the State appeal in STA 738 of 2000 stands modified and STA 799 of 2000 stands dismissed.

5. The petitioner has filed the above writ petition challenging the Order dated 29.01.2003 passed in S.T.A. No. 738 of 2000 partly confirming the

order of the second respondent dated 31.10.1995 thereby modifying the levy of penalty from 150% to 50%.

6. The learned Counsel appearing for the petitioner submitted that after importing yellow split lentils, the petitioner appointed M/s. Bhawarlal &

Sons as their agent and major portion of the goods were sold, but a small portion of 2160 bags, which was not sold were returned to the petitioner

and the same was transported by the petitioner to Pondicherry, where the sale took place, which is evident from the railway receipt produced by

the petitioner, which disclose that the petitioner is the consignor as well as consignee; that the Appellate Assistant Commissioner (CT) Chennai,

after appreciation of the said documents rightly allowed the appeal, but the Sales Tax Appellate Tribunal (Additional Bench) Chennai, without

considering the same has passed the impugned order and prayed for setting aside the same. In support of this contention, the learned Counsel for

the petitioner relied on the decision of the Honourable Supreme Court reported in (Commissioner of Sales Tax, U.P., Lucknow v. Suresh Chand

Jain 70 STC 45 wherein it was held thus:

The principles of inter-State sales were well-settled. In Bengal Immunity Co v. State of Bihar (1955) 6 STC 446 Justice Venkatarama Ayyar had held that sale could be said to be in the course of inter-State trade only if two conditions occur, namely (1) a sale of goods and (2) a transport of

those goods from one State to another. Unless both these conditions were satisfied, there could be no sale in the course of inter-State trade. There

must be an evidence that the transportation was occasioned by the contract and as a result goods moved out of the bargain between the parties

from one State to another.

7. The learned Special Government Pleader (Tax) appearing for the respondents submitted that after receipt of the letters written by the petitioner

on 11.02.1995 and 28.02.1995, the Assessing Officer has given a notice to the petitioner calling upon him to file his objection, if any, within a

stipulated period, but the petitioner has not filed any objections, hence, the assessing officer has rightly assessed the taxable turnover and levied tax

and penalty; that the Appellate Assistant Commissioner has entertained the documents namely railway receipts, which was filed by the petitioner

only before him surprisingly and the same was also received contrary to Section 39-B(2) of the Tamil Nadu General Sales Tax Act and considered

without assigning any valid reasons; that the transaction involved in this case is certainly a sale and considering the same, the Tamil Nadu Sales Tax

Appellate Tribunal (Additional Bench) Chennai has rightly allowed the appeal preferred by the State in S.T.A. No. 738 of 2000 confirming the

penalty u/s 16(2) however modified it from 150% to 50% and prayed for dismissal of the writ petition.

8. On the above said contention, this Court perused the records. The petitioner has imported yellow split lentils in the year 1989 and appointed

M/s. Bhawarlal & Sons as their agent, who sold major portion of the imported goods and the remaining 2160 bags returned by them to the

petitioner, thereafter, the petitioner transported the same through railways to Pondicherry. The Railway Receipt produced by the petitioner

discloses the fact that the consignor and consignee is the petitioner. After transporting the said goods to Pondicherry, it were sold to Aswini

Traders, Pondicherry.

9. The petitioner was not carrying on any business within the State of Tamil Nadu. They imported the goods at Port of Chennai and transported a

small portion of the said imported goods to Pondicherry on its own account, hence, it cannot be termed as person carrying on business as defined

in Section 2(g) of TNGST Act. In view of the same, the petitioner is neither a dealer nor a casual trader as defined in the TNGST Act, not liable to

be assessed under the TNGST Act as well as CST Act in the State of Tamil Nadu.

10. The agent of the Petitioner is a registered Dealer in the State of Tamil Nadu, who sold major portion of the imported goods, disclosed the

same and paid tax but the second respondent, without considering the said fact passed an order of assessment in respect of the goods which were

not sold in Tamil Nadu. The Tribunal before reversing the order of Appellate Assistant Commissioner dated 03.01.2000 failed to give any specific

finding and set aside the same. The Tribunal also erred in relying on the letter dated 28.02.1995 which was addressed to the petitioner''s agent

M/s. Bhawarlal & Sons wherein the petitioner has confirmed the fact that it has taken back the goods and transported to Pondicherry on self-

railway receipt and sold the same to the dealer at Pondicherry but without properly reading the contents of the said letter, the Tribunal held that the

sale effected in Pondicherry is an inter-state sale and confirmed the levy of penalty thereon. As rightly submitted by the learned Counsel for the

petitioner, the movement of goods from Tamil Nadu to Pondicherry was otherwise than by way of sale and the sale effected in Pondicherry is a

sale outside the State of Tamil Nadu, hence, the second respondent has no authority or jurisdiction to levy tax and in view of the fact that there is

no wilful suppression or omission of the turnover or wilful non-disclosure of assessable turnover by the petitioner, Section 16(2) of the Central

Sales Tax is not attracted.

11. The argument of the learned Special Government Pleader is that for the first time the petitioner produced the railway receipts before the

Appellate Assistant Commissioner, which ought not to have been received and entertained. The above said Section 39-B(2) of Tamil Nadu

General Sales Tax Act contemplates that in case any document is produced by the assessee, it can be considered by the authority, for which

reasons must be assigned. It is also not in dispute that the railway receipts relating to the period 1989 wherein the name of the petitioner was found

mentioned as consignor as well as consignee, which means, it only transported the goods to Pondicherry without sale.

12. Considering the above said facts, the Appellate Assistant Commissioner (CT) has rightly entertained the railway receipts produced by the

petitioner and held that the authorities of Tamil Nadu have no jurisdiction to assess the transaction, which had taken place at Pondicherry. The

Sales Tax Appellate Tribunal failed to consider the above said facts, hence, the order dated 29.01.2003 made in S.T.A. No. 738 of 2000 partly

confirming the order of the second respondent dated 31.10.1995 is set aside. The order dated 03.01.2000 passed by the Appellate Assistant

Commissioner is restored.

13. Accordingly, the writ petition is allowed. No costs.