
(2009) 12 MAD CK 0122

In the Madras High Court

Case No : Writ Petition No. 14027 of 1999

Lakshmi Trading Co.

APPELLANT

Vs

Joint Commissioner (Commercial Taxes)

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (2010) 28 VST 259

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

Bench : Division Bench

Advocate : R. Venkataraman for Aparna Nandakumar and Lakshmi Sriram, for the Appellant; Haja Naziruddin, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The assessee has filed the writ petition challenging the order of the Joint Commissioner passed in Ref. No. 2/125123/94 in SMR 97-96 dated May 5, 1998 for the assessment year 1991-92.

2. The brief facts of the case are as follows:

The assessee is a dealer in coriander seeds. For the assessment year 1991-92, the assessee claimed exemption for a sum of Rs. 35,77,232.77 on account of the consignment sale effected through its agent. The said claim was rejected by the assessing officer by his order dated February 28, 1994. The assessing officer rejected form F declaration filed by the assessee as well as the other relevant materials. Challenging the same, the assessee has filed an appeal before the Appellate Assistant Commissioner. The first appellate authority in and by his order dated September 22, 1994 after considering the entire materials available on record, has allowed the appeal. However, by exercising his power u/s 34 of the Tamil Nadu General Sales Tax Act, the Joint Commissioner in and by his order dated May 5, 1998 has set aside the order of the Appellate Assistant Commissioner and restored that of the assessing officer. Being aggrieved by the

same, the assessee has preferred the present writ petition.

3. The assessing officer has disallowed the exemption sought for by the assessee by merely rejecting the form F declaration. A perusal of the order passed by the assessing officer would show that the declaration in form F was rejected without assigning any reasons. The assessing officer proceeded on mere surmises. He appears to have passed the order rejecting the exemption based upon the D3 proposal made by the Enforcement Wing. The assessee has produced all the relevant records including form F declaration, stock register, pattials, copies of the agreement entered into between the assessee and agents and the delivery notes. The appellate authority has passed a detailed order allowing the appeal in favour of the assessee by holding that the goods have been sent by the assessee to the agent in Kerala. It was further held by the appellate authority that there were number of transactions between the assessee and the agents and in fact the unsold goods have been sent back by the agents to the assessee. The purchases have been effected by the Kerala State Transport Corporation from the agents and not from the assessee. The bills have been raised by the agents in Kerala in favour of the Kerala State Transport Corporation. Moreover, the assessee has produced pattials and form Fs sent by the agents before the assessing officer which prove that the transactions have been between the agents and Kerala State Transport Corporation. The goods have been sent by the assessee in the normal transaction and there were no specific orders based upon which they have been sent. The appellate authority also considered the fact that the in subsequent assessment year 1992-93, which is based upon similar facts, proceedings have been initiated by treating the transactions as inter-State sale. The Joint Commissioner also initiated suo motu proceedings for the assessment year 1992-93, and after considering the reply given by the assessee, has chosen to drop the proposal to revise the order of the appellate authority. Hence, the appellate authority held that the facts involved in the year 1990-91 being identical to the facts of the year 1992-93, there is no reason to hold that the transaction involved inter-State sale transaction. Accordingly, the appeal was allowed. However, the Joint Commissioner, while reversing the order of the first appellate authority, again proceeded on the very surmises by holding that the fact that there were godown available at the place of the Kerala State Transport Corporation, would create presumption that the transactions are direct sale between the assessee and the Corporation. On a reading of the order of the Joint Commissioner, it is seen that there is absolutely no material available on record to hold that there is any transaction of direct sale between the assessee and the Kerala State Transport Corporation. As observed earlier, the assessing officer has, without assigning any reason, simply rejected the form F declaration. There is nothing on record to show that the particulars given in form F declaration are not true and genuine. Further, that was also not the reason stated by the assessing officer for disallowing the exemption sought for by the assessee. The mere fact that the agents participated in the tender proceedings of the Kerala State Transport Corporation by itself cannot be a ground to assume that there were

direct sale between the assessee and the Kerala State Transport Corporation.

4. In the case on hand, the assessee has produced all the relevant documents sought for by the authorities. Therefore, the finding given by the Joint Commissioner that there was an implied agreement between the assessee and the ultimate purchaser, which is the Kerala State Transport Corporation, is not supported by any material evidence available on record.

5. Moreover, it is not in dispute that for the assessment years 1989-90 and 1992-93, the Joint Commissioner has accepted the reply filed by the assessee and dropped the proposal to revise the order of the first appellate authority.

6. For the reasons stated, we are of the view that the order passed by the Joint Commissioner dated May 5, 1998 is liable to be set aside and it is accordingly set aside. The order of the first appellate authority is restored. The writ petition is allowed. No costs.