

(2013) 06 MAD CK 0016

In the Madras High Court

Case No : Tax Case (Revision) No"s. 23 to 28 of 2010

Laxmi Trading Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 66 VST 308

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Sundareswaran, for the Appellant; V. Haribdbu, Additional Government Pleader (T), for the Respondent

Judgement

Chitra Venkataraman, J.—The above tax case (revisions), filed by the assessee as against the order of the Tamil Nadu Sales Tax Appellate

Tribunal relating to the assessment years 1993-94, 1992-93, 1994-95, 1991-92 and 1992-93, respectively, were admitted by this court on the

following substantial question of law:

Whether the Appellate Tribunal was correct in the eye of law in erroneously construing the "bill of entry" as "document of title to the goods" for

clearing the goods from the customs bonded warehouse u/s 5(2) of the Central Sales Tax Act, 1956 for reversing the order passed by the first

appellate authority holding that the "bill of lading" is document of title to the goods and not the "bill of entry"?

The assessee is a dealer in plastic raw materials. In the returns filed for the assessment year 1993-94, the assessee claimed high sea sales u/s 5(3)

of the Central Sales Tax Act on the turnover of Rs. 21,13,400. Except for invoice No. 19, dated February 11, 1994 of a value of Rs. 5,31,400,

other invoices were found to be not correct. Hence, the claim was proposed to be rejected. The assessing officer viewed that in respect of Invoice

Nos. 1 and 2, it was seen that the assessee had imported 17.150 MT of plastic raw materials from Saudi Arabia and the same were sold to two

different dealers. Further, the assessee had interpolated the names of the ultimate buyers subsequently in the triplicate copy of bill of entry filed to

the Department. Thus, on the above ground as well as on the view that single bill of lading should not be endorsed to two different dealers, the

claim was rejected.

2. As regards Invoice No. 4, on a turnover of Rs. 3,10,000, the assessee raised sale bills for 17,000 MT of HDPE Marlex TR 144 from

Singapore in favour of Tvl. Sivasakthi Polymers, Karaikal. They had furnished a bill of entry for clearance of goods for 8,500 MT and there was

no bill of entry filed for the balance goods. On verification of two bills of entry gathered from Customs Department, each 8,500 MT, it was found

that the assessee had cleared the goods; however, the xerox copy of the triplicate copy of bill of entry filed to the Department revealed that they

had interpolated the name of the ultimate buyer and thus there was a false claim.

3. Invoice No. 8, on a turnover of Rs. 3,10,000, related to an import of 17,000 MT HDPE Marlex TR 144 from Singapore. The sales bill raised

was for 17,000 MT, but they had filed bill of entry for clearance of goods of 8,500 MT and had not filed bill of entry for the remaining quantity.

On verification of the two original bills of entry gathered from the Customs Department each 8,500 MT, it was found that the assessee had filed bill

of entry Nos. 0600630 and 0600629 and cleared the goods. But in the Xerox copy of the triplicate copy of the bills of entry filed with the

Department, it was noted that the assessee had interpolated the names of the ultimate buyers; consequently, the claim was rejected. The state of

affairs as regards other invoices, namely, 11, 33 and 20 were no different. In the circumstances, proposal was made to reject the claim of the

assessee as high sea sales and treated the same as direct inter-State sale. To that end, notice was issued to assess the said turnover. Apart from

that penalty of Rs. 1,99,349 was also proposed to be levied u/s 9(2) of the Central Sales Tax Act, 1956 read with section 12(3)(b)(v) of the

Tamil Nadu General Sales Tax Act, 1959.

4. The assessee objected to the proposal and submitted that although there was only one bill of lading and the same was endorsed to more than

one purchaser, such endorsement was legally valid and hence, the claim has to be allowed.

5. The assessing officer pointed out that though the assessee had raised issues on claim of exemption, yet, they have not explained how there could

be variation in the entries between the original bill of entry and the triplicate copy of bill of entry (Xerox copy) filed before the Department for

claiming exemption. Thus, holding that the assessee had not proved that the high sea sales were effected in the manner known to law, the claim was

rejected. While rejecting the claim, a penalty was also levied. For the other assessment years also, viz., 1993-94, 1992-93, 1994-95, 1991-92

and 1992-93, the assessing officer rejected the claim of the assessee.

6. Aggrieved by the orders of the assessing officer, the assessee preferred appeals before the first appellate authority, who, however, agreed with

the assessee and allowed the appeals. The first appellate authority pointed out that the bill of entry was not a document of title to the goods, the

claim of the parties were found rightly in the bill of entry and they alone had cleared the goods. When the sale had taken place when the goods

were on high seas, there was a practical impossibility of making endorsement on the document of title. There were sufficient materials otherwise

produced by the assessee before the final hearing that the assessee had effected sales when the goods were on high seas. Consequently, the first

appellate authority set aside the assessments and the penalty on the disputed turnover.

7. Aggrieved by the same, the Revenue preferred appeals before the Tamil Nadu Sales Tax Appellate Tribunal, who agreed with the Revenue's

contention and pointed out that the assessee had imported plastic raw materials and split the quantum imported and sold to different dealers. The

Xerox copies of the bills of entry filed to the Department showed the difference in the names contained in the original bills of entry and the Xerox

copy of the triplicate copy of the bills of entry filed before the Revenue and that there was interpolation of names in the Xerox copy of the triplicate

copy of the bills of entry. The Tribunal further found that in certain cases endorsements were found to be made after the arrival of the goods in

Madras Port and in certain cases, the stamp papers, in which agreements were entered into, were after the date of agreement and after the arrival of goods at Madras Port. The bills of entry filed before the Customs Department showed that the assessee had cleared the goods. Thus, on a scrutiny of the bills of entry filed before the Customs Department, it was found that there was no third party reference, who was stated to have purchased the goods on high seas; that interpolations were found in the third part of the bill of entry filed before the Revenue. The Tribunal held that the assessee had not substantiated that the goods were sold when they were on high seas. The Tribunal also pointed out that after the clearance of goods, the assessee had also got the bill of lading from the Bank of Bikaner and Jaipur. Thus, when the continuity of import was broken, there could be no claim as high sea sales. While rejecting the assessee's claim, the Tribunal held that since the turnover was available in the accounts, there was no estimation, hence, the penalty cancelled by the first appellate authority did not call for any interference. Aggrieved by this, the assessee has filed the present tax case (revisions). We do not agree with the submission made by the learned counsel appearing for the assessee, particularly for the reason that the question raised in this revision is purely a question of fact. The question whether the bill of entry is a document of title or not was considered by this court in the decision reported in [2012] 52 VST 221 (Mad) (State of Tamil Nadu v. Kawarlal and Co). Even assuming for a moment for argument's sake that the bill of entry is a document of title, yet, on the facts found by the Tribunal, we are not inclined to accept the case of the assessee. It may be of relevance to note that the assessee had not objected to the finding of fact by the Tribunal that there were interpolations in the photocopy of the triplicate copy of the bills of entry and there were differences in the names found in the original bills of entry filed before the Customs Department and the photocopy of the bill of entry filed before the Sales Tax Department. Thus with the finding of fact remaining intact the question of law raised is a superfluous one. In any event, as already pointed out, the question has to be answered against the assessee by reason of the decision reported in [2012] 52 VST 221 (Mad) (State of Tamil Nadu v. Kawarlal and Co.). Quiet apart from this, it may also be noted that the assessee had imported goods in bulk. When the assessee claims that high sea sales were effected in

favour of three parties, with no appropriation definitely made on the bulk quantity imported, we do not find any justifiable ground to accept the plea of the assessee. Accordingly, the above tax case (revisions) stand dismissed. No costs.