(2010) 06 MAD CK 0284

In the Madras High Court

Case No : Writ Petition No''s. 5924 to 5926 of 2002

M.S. Mani — APPELLANT

Vs

State of Tamil Nadu and Others — RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2011) 36 VST 494

Hon'ble Judges : M.M. Sundresh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : S. Sivanandam, for the Appellant; Haja Naziruddin, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla J.

1. The Petitioner seeks to challenge the order of the second Respondent-Tribunal in T. C. R. Nos. 797 to 799 of 1997 dated December 1, 1999 against the common order passed in M. T. A. Nos. 15 and 16 of 1987 and M. T. M. P. No. 75, of 1987 in M. T. A. No. 16 of 1987, which related to the assessment years TNGST 1983-84 and 1984-85. As the point involved in all the writ petitions is one and the same, these writ petitions are being disposed of by this common order.

2. The short facts are that the Petitioner was a dealer in groundnut. The assessment years relate to 1983-84 and 1984-85. There was exemption for groundnut purchases, which had suffered tax already in the relevant assessment years. According to the Petitioner, he purchased groundnut from one Thiru S. Abdul Khader of Saleem Traders for the year 1983-84 and from Mohamed Meera Sha for the year 1984-85, who claimed to be the registered dealers and were doing business in groundnut in Dindigul. The Petitioner, based on such purchases made from those dealers as well as based on the permits issued by the Marketing Committee of Dindigul, claimed exemption on the ground of second

sales, which was initially accepted by the assessing officer. However, the assessment was subsequently reopened and a tax of Rs. 1,881 on a turnover of Rs. 62,689 and a penalty of Rs. 2,821 were made u/s 16(2) of the Tamil Nadu General Sales Tax Act, by an order dated September 30, 1985 for the year 1983-84. Similarly, by an order dated February 14, 1986, levy of tax on a turnover of Rs. 7,67,062 with a penalty of Rs. 34,517 was made for the year 1984-85. The Petitioner preferred appeals before the Appellate Assistant Commissioner, who by his order dated October 17, 1986, dismissed the appeals preferred by the Petitioner. Further appeals were preferred by the Petitioner before the Sales Tax Appellate Tribunal (hereinafter referred to as "the STAT") in M. T. A. Nos. 15 and 16 of 1987 and M. T. M. P. No. 75 of 1987 in M. T. A. No. 16 of 1987. The STAT however took a view that when once the purchases were made by the Petitioner from a registered dealer, it should be presumed that such purchases were bona fide unless the said presumption was rebutted by substantial legal evidence. The STAT therefore allowed the appeals preferred by the Petitioner. The State preferred tax case revisions in T. C. R. Nos. 797 to 799 of 1997 before the second Respondent-Tribunal herein and by the impugned common order, the second Respondent-Tribunal held that the so-called purchases and the bills relied upon by the Petitioner were bogus one and therefore, the claim of the second sales cannot be accepted. The second Respondent-Tribunal therefore, by its order dated December 1, 1999 allowed the revisions, set aside the order of the STAT and restored the orders of the Appellate Assistant Commissioner as well as the assessing authority.

3. Assailing the order of the second Respondent-Tribunal, Mr. Sivanandam, learned Counsel appearing for the Petitioner, would contend that the second Respondent-Tribunal relied upon its own conclusion in an earlier order, wherein it took the view in regard to the very same dealer, viz., one Mr. Mohamed Meera Sha, whose registration certificate was cancelled retrospectively with effect from January 11, 1984 and that the reliance placed upon such an earlier order by the second Respondent cannot be accepted. The learned Counsel would contend that when the Petitioner produced valid bills accompanied by the permits of the Market Committee, there was no reason to question the authentication of the purchases made by the Petitioner from those dealers and therefore, the second Respondent-Tribunal ought not to have interfered with the order of the STAT. The learned Counsel by relying upon the decision of this Court in State of Tamil Nadu v. Sri Alaggar Traders reported in [2010] 28 VST 228 would contend that when the registration certificate of the selling dealer was valid at the relevant time, merely because the selling dealer was not found subsequently, it cannot be a ground to deny the purchasing dealer the benefit of exemption.

4. We heard the learned Special Government Pleader. We also perused the orders of the lower authorities, the STAT as well as the second Respondent-Tribunal.

5. Having heard the respective counsel and having perused the orders, we find that the order of the second Respondent-Tribunal in having restored the order of

the assessing authority is well justified in the facts and circumstances of the case. In order to appreciate the conclusion of the second Respondent-Tribunal, it will be appropriate to refer to the nature of the analysis made with regard to the existence of the selling dealer during the relevant assessment years as recorded by the STAT in its order dated June 30, 1987 in M. T. A. Nos. 15 and 16 of 1987. In paragraph 10, the STAT has recorded its conclusion as under:

10. ...On the side of the Revenue, it is submitted that the enquiry conducted at the business premises has revealed that the seller has not done any business during the assessment year. Admittedly, the seller of the Appellant is a registered dealer. It is not the case of the Revenue that the alleged seller, namely, Saleem Traders is a non-existent person. It is the plea of the Revenue that the seller has closed the business on January 1, 1983 and he has not done any business for the assessment year 1983-84. The allegation of the Revenue that the bills produced by the Appellant for the purchases from Saleem Traders are bogus bills has not been proved by them. Admittedly, no enquiry was conducted in the residential address of Saleem Traders.

It is submitted that the goods have moved with the permits issued by the Marketing Committee from Dindigul to Karur to a tune of Rs. 7,22,000. It is admitted by the Revenue that before the Deputy Commercial Tax Officer on February 20, 1984, the seller, Mohammed Meera Sha, has appeared and stated that he was unwell and hence he could not produce accounts for assessment. Again, that the dealer has become non-available. The mill owner was again enquired on May 15, 1985. He has again confirmed that Tvl. Mohammed Meera Sha has not done any business at their mills in 1984-85, The registering authority has cancelled the registration with effect from January 1, 1985. The learned Appellate, Assistant Commissioner (CT) has also stated this point in his order. From this, it is clear that the seller is an existing dealer.

6. As against the above analysis made by the STAT, the second Respondent-Tribunal has made an examination of the material evidence available on record and has noted the factual matrix to the following effect:

We have considered the contentions carefully and perused the records. Insofar as the assessment year 1983-84 is concerned, it is seen that the officers of the Department enquired the proprietor of the oil mills where Thiru S. Abdul Khader of Saleem Traders was reported to be doing business. It was ascertained that Thiru S. Abdul Khader of Saleem Traders closed down his business on January 1, 1983 and thereafter, he left the place. In the revision notice also, apart from indicating this position, the deposition statement given by the owner of the oil mills was also enclosed. Therefore, if has been clearly indicated that the claim of exemption with reference to the alleged sale bill issued on October 31, 1983 by Thiru S. Abdul Khader was from a non-existing person. In such circumstances, even if the registration certificate was not cancelled,: the fact remains that no business was done by Thiru S. Abdul Khader of Saleem Traders during the assessment year 1983-84. The Marketing Committee permit merely shows that the goods sold in the Marketing Committee to the Petitioner was allowed to be taken from the place of sale. . . .

Similarly, as regards Mr. Mohamed Meera Sha, it Was found during enquiry on December 31, 1983, at the place of business, where he was doing business, that the seller was not carrying on any business in the mill and that he left the place and that he was no longer doing any business. Another enquiry was made on May 15, 1985 and the mill owner confirmed the position and categorically stated that Tvl. Mohamed Meera Sha did not do any business at their mills in 1984-85. On that basis, the assessing authority concluded that the claim of exemption was from a person who was not doing any business during the assessment year 1984-85 and therefore for the suppression practised in the business, tax and penalty were levied.

7. Therefore, it is a question of accepting either the view of the STAT or that of the second Respondent-Tribunal. When we examine the conclusions of the STAT, we are unable to subscribe to the conclusion based on the facts stated in its order, which had been extracted above. As far as the dealer S. Abdul Khader of Saleem Traders was concerned, the second Respondent-Tribunal has noted that there was a direct evidence, viz., the owner of the premises, where the dealer was said to have carrying on his business. The said person had deposed before the assessing authority that the concerned dealer, viz., S. Abdul Khader was not doing any business on and after January 1, 1983 in his premises. When such an unassailable evidence, which was not contradicted before the assessing authority, was available with the assessing officer, which was relied upon to hold that the bills said to have been issued by him bearing the said address in the years 1983-84, cannot be accepted as valid bills, we have no reason to take a different view than what has been taken by the second Respondent-Tribunal.

8. Similarly, in the case of the dealer Mohamed Meera Sha, here again, we find that the owner of the premises had given a categoric evidence before the assessing authority about the non-existence of the dealer in the relevant assessment years, who claimed to have carried on business in the premises of the said owner. In the case of Mohamed Meera Sha, it related to the assessment year 1984-85 and the statement of the owner was that he was not doing any business in his premises during the assessment year 1984-85. Therefore, the conclusion arrived at by the second Respondent-Tribunal by relying on the material evidence, which was available on record and which persuaded the assessing authority to hold that the alleged bills said to have been issued by the dealers were bogus, was perfectly justified, inasmuch as such an analysis and ultimate conclusion even in our considered opinion would have been the only conclusion which can be reached based on such an evidence placed before the assessing authority. On the other hand, when we analyse the conclusion of the STAT, we find that though the dealer Mohamed Meera Sha appeared before the assessing authority, what all he has stated was: that he was unwell and therefore, he could not do any business for the assessment year 1984-85.

Thereafter, the said person did not make himself available before the assessing authority for giving any further evidence. The mill owner, however, came before the assessing authority and made a statement to the effect that the so called dealer Mohamed Meera Sha did not do any business in his premises in the year 1984-85, but yet, the STAT would reach a conclusion to the effect that the said dealer was an existing dealer, merely because there was a registered certificate existing during that relevant assessment year. We are not in a position to subscribe to such a conclusion made by the STAT in contrast to the analysis made by the second Respondent-Tribunal. We, therefore, do not find any flaw in the order of the second Respondent-Tribunal in order to interfere with the same in these writ petitions.

9. As far as the reliance placed upon the decision State of Tamil Nadu Vs. Sri Alaggar Traders, is concerned, that was a case, where the facts were entirely different and had no comparison to the facts involved herein. The facts noted therein disclosed that the dealer had a valid registration in the relevant assessment year, viz., 1995-96 and such registration was existing from 1994-95 onwards and got it renewed till 1996-97. The further fact noted therein was that the assessing authority did not take any steps to trace out the dealer, but simply treated it as a bill trader and made the assessment on the footing that the selling dealer was not found during the subsequent period. Since, the facts in that case differ in a vast extent to the facts involved in this case, we do not find any scope to apply the decision rendered therein to the effect that the issuance of delivery note in form XX was sufficient to state that the selling dealer carried on business and its identity was known to the Department.

10. Having regard to our above conclusions, these writ petitions fail and the same are dismissed. No costs. Consequently, W. P. M.P. Nos. 8208 to 8210 of 2002 are also dismissed.

