

**(2011) 06 MAD CK 0540**

**In the Madras High Court**

**Case No : Tax Case (Revision) No. 973 of 2006**

Punjab Concast Steels

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

---

**Date of Decision : 24-06-2011**

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 5(2), 5(3)  
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 38  
Tea Act, 1953 — Section 17

**Citation : (2011) 06 MAD CK 0540**

**Hon'ble Judges : P.P.S. Janarathana Raja, J;Chitra Venkataraman, J**

**Bench : Division Bench**

**Advocate : N. Inbarajan, for the Appellant; R. Sivaraman, Spl. G.P. (Tax), for the Respondent**

---

## **Judgement**

Chitra Venkataraman, J.—The Assessee is on appeal as against the order of the Sales Tax Appellate Tribunal (Additional Bench), Chennai-600 104, dated 30.12.2002 in T.A. No. 1195/2002 raising the following questions of law:

(1) Whether on the facts and in the circumstances of the case, the Tribunal committed an error of law in disallowing the exemption claimed by the Petitioner on High sea sales effected by the Petitioners by transfer of document of title to the goods?

(2) Whether on the facts and in the circumstances of the case, the Tribunal committed an error of law in confirming the levy of penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, when in fact, the turnover was available in the books of accounts of the Petitioners?

2. The assessment year herein relates to 1996-97. The Petitioner herein is a dealer in vegetable oil. It returned the turnover of Rs. 65,37,53,240.05. Evidently the Assessee did not return the turnover pertaining to the High Sea Sales. The Petitioner herein is a unit of Nahar International Ltd., Chennai having their office at Ludhiana. It imported Palmolein from foreign countries and stored

them in the storage tanks at Chennai Harbour Area. Those tanks were found to be under the custody of Nahar International Limited, Chennai. The Assessee treated the sales as sales in the course of import and hence claimed exemption u/s 5(2) of the Central Sales Tax Act. On 24.04.1997, there was an inspection by the Enforcement Wing Officers in the business premises of the Assessee, where it was found that Tvl. Gargi Trading Corporation had purchased Palmolein from the Assessee-Tvl. Nahar International Ltd., Chennai and transported the same to various places outside the State in Bihar. Apart from that, the documents also showed that the Assessee had effected High Sea Sales in favour of Tvl. Rasi Chem Private Ltd., Chennai. The High Sea sales invoices were found to have been raised at Ludhiyana, whereas Tvl. Rasi Chem Private Ltd., Chennai - the purchaser had taken delivery of the goods at Chennai from the storage tank under the custody of Tvl. Nahar International Ltd., at Chennai. The Revenue viewed that even though the Assessee claimed the sales to these two persons as sales in the course of import and hence exempt from tax of Central Sales Tax Act, the documents in support of the claim were fabricated as the delivery of palm oil itself was only from the storage tanks kept under the custody of Nahar International Ltd. The tanks are located within the Chennai Harbour area, after crossing customs frontier. Thus, the turnover of Rs. 4,17,23,473.00 and Rs. 14,12,73,467.00 were sought to be assessed at the hands of the Assessee herein.

3. In the light of the above, the turnover was thus proposed to be assessed under the provisions of Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as TNGST Act). Accordingly, a notice was issued to the Assessee in this regard. The Assessee filed its objections on 07.06.1999. The Assessee pointed out that the import of palm oil was only by Nahar International Ltd., Ludhiana and not from Nahar International Ltd., Chennai. Further, the Palmolein sold to two parties viz., Rasi Chem Private Ltd. and Tvl. Gargi Trading Corporation was stored in the storage tanks belonging to Tvl. Oswal Oils and Vanaspathi Industries, Chennai and leased out to Tvl. Nahar International Limited, Ludhiyana. The storage charges and other service charges were also paid for the same by Tvl. Gargi Trading Corporation and Rasi Chem Private Ltd., who had taken the storage tanks on lease. The goods were taken delivery from there only by the purchasers. The Assessee had not effected any local sale to attract provisions of TNGST Act. It was further pointed out that Nahar International Ltd. had effected the high sea sales by endorsing Bill of lading; that the above said two purchasers had cleared the consignment and had paid the customs duty and they themselves stored the same in the storage tanks available in the Madras Port. Thus, in respect of the High Sea sales, Nahar International Ltd. claimed 5(2) of the Central Sales Tax Act exemption in their assessment in the State of Punjab. In these circumstances, the Assessee prayed for dropping the proceedings.

4. The Assessing authority, pointed out that Nahar International Ltd., Chennai and Nahar International Ltd., Ludhiana are one and the same. He rejected the claim of the Assessee on the ground that the Assessee had not produced any

customs records for clearing the goods by their ultimate buyers. In the absence of any clear cut evidence to show that they effected High Sea sales, the assessment was completed. He also levied penalty u/s 12(3)(b) of the TNGST Act, 1959. Aggrieved by the same, the Assessee filed appeal before the Appellate Assistant Commissioner, who, confirmed the order of assessment. In the course of the proceedings before the Appellate Assistant Commissioner, the Assessee is stated to have produced the following copies of documents.

1. Sale confirmation of Tvl. Nahar International Ltd., Chennai to Tvl. Rochi Chem Pvt Ltd., 107., Cochrane Basin Road, Madras-21 dated 10.10.1996.
2. Sales Invoice No. 4 dated 27.09.1996 of Tvl. Nahar International Ltd., Chennai to Tvl. Rochi Chem (P) Ltd., 107, Cochrane Basin Road, Madras-21.
3. Copies of bill of entries of M/S. Nahar International Ltd., A/c. M/S. Rochi Chem Private Ltd., 107, Cochrane Basin Road, Chennai-21.
4. Letter of the clearing agent addressed to Tvl. Nahar International Ltd., Chennai
5. Bank statement of Tvl. Rochi Chem (P) Ltd.,
6. Bill of the clearing agent of Tvl. Rochi Chem Private Ltd.,
7. Letter of the shipping agent addressed to CTO, in respect of the clearing of the consignments.
8. Statement of account of the clearing agent etc.,
9. The assessment order relating to Tvl. Rochi Chem Private Ltd.,
10. The Certificate from Chartered Accountant etc.,

The Appellate Authority, however rejected the plea of the Assessee and held that the Assessee had not filed vital documents viz., (1) Copy of agreement entered by the importer namely the Assessee with the foreign seller. (2) Sales invoice of the foreign seller raised on the importer, namely, the Appellant. (3) Bill of lading with the endorsement of the High Sea sales made on the High Sea Sales purchasers. (4) Proof for payment of customs duty by High Sea sales purchaser issued by the Customs Department. In the light of the above said facts, the Appellate Assistant Commissioner confirmed the levy of penalty u/s 12(3)(b) of the TNGST Act, 1959.

5. Aggrieved by the said order, the Assessee went on appeal before the Sales Tax Appellate Tribunal, before whom, the Assessee is stated to have produced all the documents reiterating its contentions that even in the absence of production of endorsed Bill of lading, when the contemporaneous documents were available before the authority concerned, which evidenced clearance of the goods and proof of payment of customs duty by the High Sea purchaser therein, the failure to produce endorsed Bill of lading would not defeat the claim of the Assessee. The Tribunal, however, rejected the plea of the Assessee. Basing its conclusion on the unreported decision of this Court in TC. No. 235/89 dated 28.07.1998,

holding that "even though the Assessee has filed documents with regard to the transfer of title to the goods, it must be proved that the transfer of documents of title to the goods was effected before the goods had crossed the customs frontiers of India", the Tribunal, held, that the assessment was justified. The Tribunal, pointed out that since the goods were cleared from private warehouse and that private warehouse would not fall under the category of customs area under the customs Act, the clearance of the goods from the private warehouse did not amount to clearance of the goods before the goods had crossed the customs frontiers of India. The Tribunal further observed that keeping of the goods in the private warehouse and clearing of the goods from the said private warehouse established that there was No. sale in the course of import. In the circumstances, the assessment was confirmed. Aggrieved by the same, the present revision is filed by the Assessee.

6. Learned Counsel appearing for the Assessee placing reliance on the decision of this Court in the case of *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, , submitted that when the Assessee had placed documents evidencing the High Sea Sales before the Appellate Authorities and the genuineness of the same was not in question, the Tribunal should have allowed the Assessee's claim for exemption as High Sea Sales. Pointing out to the decision in *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, , learned Counsel submitted that the mere failure of the Assessee in producing the Bill of lading by itself ought not to have been held against the Assessee, particularly, when the Tribunal itself had found that the Assessee had produced contemporaneous materials substantiating the claim that the Assessee had effected High Sea Sales. Quite apart, pointing out that the purchasers in the course of High Sea Sales had already declared the turnover for the said assessment year and paid the tax thereon, there was No. escapement of any due to the State. Hence, the same could not be assessed again in the hands of the Assessee. In this regard, learned Counsel relied on the decision in the case of *Trichur Cotton Mills Limited Vs. State of Tamil Nadu*, , wherein, this Court referred to the decision of the Supreme Court in *State of Karnataka v. Ayyanahalli Bakappa and Sons* reported in (1988) 71 STC 202, holding that if on the same turnover, tax had already been collected, there was No. justification for second set of tax, to be levied on the self same turnover. In the light of the above decision, learned Counsel for the Assessee submitted that there being No. escapement, the assessment has to be set aside.

7. Per contra, learned Counsel for the Revenue submitted that the Assessee produced No. records before the Assessing Officer. For the first time, the documents were produced only before the Appellate Assistant Commissioner. No. reasons were placed explaining why the Assessee had not produced the documents indicating payment of customs duty by the purchaser and the enclosed Bill of lading in favour of the purchasers. In the circumstances, rightly, the assessment was made on the Assessee. He placed reliance on the decision in the case of *C.T. Ltd. and Anr. v. Commercial Tax Officer and Ors.* reported in

(1997) 104 STC 94 and submitted that in the absence of endorsement on the Bill of Lading, No. exemption could be allowed treating the transaction as high sea sales, consequently, he prayed for dismissal of the Revision Petition.

8. Heard learned Counsel appearing for the Petitioner and learned Special Government Pleader (Tax) appearing on behalf of the Respondent/Revenue and perused the materials available on record.

9. It is seen from the reading of the decision reported in *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, , that this Court held that Sales in the course of import by transfer of documents of title could be effected by handing over of the documents. This Court pointed out that an endorsement to that effect on the documents is only one mode of proof, but, it is not the only way of proving the fact. The facts therein were that the Assessee made a claim for the High Sea Sales. The Assessee had pledged goods with the Bank, which was subsequently sold by the Bank and the Bank paid the balance of the sale proceeds to the Assessee after adjusting the sale proceeds towards its duty. On the contention taken by the Revenue that documents were not produced by the Assessee to show that the title to the goods were transferred in the course of import by making an endorsement thereon, this Court repelled the said argument and pointed out as follows:

There may be cases where it may be legitimately stated that the production of documents of title will be essential to see whether the sales have been effected by transfer of documents in the course of import of goods. But we are not convinced that this is the case here, because there is other evidence to show that the sales were in the course of import and should have been effected by transfer of documents. Transfer of documents may be effected by handing them over and an endorsement to that effect on the documents is only one mode of proof, but not necessarily the only way of proving the fact. Actually, an endorsement is not a legal requisite for a valid transfer of documents, which, as we said, can take place by delivery of the documents themselves.

10. The decision reported in *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, has been consistently followed by this Court and No. contra decision is placed before this Court by the Revenue to take a view different from the one declared. We have No. hesitation in applying the law declared to the facts of the case herein.

11. As already pointed out, neither before the Appellate Assistant Commissioner nor before the Tribunal, the genuineness of the documents produced by the Assessee was questioned by the Revenue. However, the Appellate Assistant Commissioner and the Sales Tax Appellate Tribunal merely rejected the contemporaneous documents on the ground that endorsed Bill of Lading was not produced. Going by the decision reported in *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, , when sufficient materials are in favour of the Assessee evidencing High Sea Sales and those

documents are contemporaneous in nature, we feel the authorities should have bestowed their due attention to test the claim of the Assessee.

12. Supporting the order of the Tribunal, learned Special Government pointed out that the Assessee had produced only a photo copy of Bill of entry filed by the purchaser. Learned Special Government Pleader further pointed out that when the Assessee claimed that original documents are available with the Assessee, there was No. reason for producing photo copies of these documents.

13. Learned Counsel for the Assessee submitted that the Assessee is in possession of all the originals and they were also shown to the Appellate Authority. Learned Counsel also produced the same before us.

14. Given the fact that the Assessee has original documents, in respect of which, the copies are also produced before this Court in Voluminous typed set of papers along with the Revision Petition, we feel that the proper course herein would be to direct the Assessing Officer to look into these documents to find out whether the goods in fact were sold to Rasi Chem Pvt Ltd. and Gargee Trading Corporation in the course of High Sea Sales. If the contemporaneous documents produced substantiate that there was in fact High Sea Sales, on the mere score of the Assessee not filing the endorsed Bill of Lading, the Assessing Officer shall not disallow the claim but the Assessing Officer shall allow the claim of the Assessee in terms of the decision of this Court reported in The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm, .

15. To the specific objection taken by the Revenue that the purchaser had taken delivery from the tanks held by the Assessee, learned Counsel appearing for the Assessee pointed out that these tanks were taken on lease by the High Sea Sales Purchasers and they had also paid rental for that. He also pointed out that in respect of the turnover of Rs. 12,97,729/- representing the receipt received on storage tank embedded in earth, the Assessing Officer himself excluded this turnover from assessment. We must point out that it is not clear from the documents before us that turnover in dispute are from the leased out storage tank in favour of the High Sea Purchasers. Learned Counsel for the Assessee produced agreement for lease evidencing the lease of the storage tanks to the purchasers. We feel that in the absence of clear cut finding on this, it is necessary that the Assessee proves its claim before the Assessing Officer that the sale was not from tanks held under the control of the Assessee and that the High Sea sales purchasers after clearance of goods had kept them in storage tanks taken on lease from the Assessee.

16. In the circumstances above-stated, we hold, the proper course herein would be to set aside the order of the Tribunal and remand the case to the Assessing Officer to consider the contentions of the Assessee in the light of the law declared by this Court in the decision reported in The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm, and the contemporaneous materials to be produced in original before the Assessing

Officer on the question of high sea sales as well as to the storing of oil in the tanks said to have been leased out to the high sea purchases.

17. Learned Counsel for the Assessee made a submission that once the High Sea Sales purchasers had paid the tax, the question of assessing on the Assessee on the said turnover does not arise. We do not think that the said line of reasoning could be sustained. The Act contemplates tax to be assessed and levied on the right person at the right rate and at the point specified. The mere circumstance that the purchasers had made the payment, by itself, will not absolve the responsibility on the Assessee from substantiating its claim for exemption. Quite apart, the purchaser is admittedly not a dealer under the TNGST Act. In the background of the facts, the reliance placed on the decision of the Apex Court reported in *State of Karnataka Vs. Ayyanahalli Bakappa and Sons*, as well as *Trichur Cotton Mills Limited Vs. State of Tamil Nadu*, does not help the Assessee in any manner. The facts in the decision reported in *State of Karnataka Vs. Ayyanahalli Bakappa and Sons*, were that in the original assessment, the Commercial Tax Officer accepted the claim of the Assessee for exemption on the sale of safety matches assessable at the point of sale. The Apex Court held that as the same turnover was already assessed at the hands of the three depots registered as dealers, reassessment could not be made on the self same turnover. The Supreme Court did not find it necessary to decide the question of validity of reopening of the assessment on the ground that the State itself conceded that the tax had already been collected. Thus, when the tax had already been collected, the Apex Court held that there was No. necessity for the second set of tax.

18. As far as the decision reported in *Trichur Cotton Mills Limited Vs. State of Tamil Nadu*, is concerned, this Court pointed out that the Assessee, dealer in cotton yarn, was the last purchase of cotton. It was found that cotton was already subjected to tax. Although the same was remitted by the vendor, yet, it was the Petitioner-Assessee who paid the tax to the vendor while purchasing cotton. Having regard to the facts therein, it was held that the same turnover could not again be subjected to tax. We do not find that the Assessee could draw any support from this decision. The decisions referred to above have to be understood in the light of the facts prevailing therein.

19. As regards the reliance placed by the Special Government Pleader on the decision of the Apex Court reported in 104 STC 94 (*C.T. Ltd. and Anr. v. Commercial Tax Officer and Ors.*), it does not, in any manner, advance the case of the Revenue. The facts therein were that the State Trading Corporation entered into a contract with the Government Trading Corporation of Iran for supply of a particular quality of tea. The State Trading Corporation, in turn, entered into a contract with the Assessee, pursuant to which, the Assessee purchased tea in the auction. The Assessee had the tea export licence u/s 17 of the Tea Act. The Assessee claimed that the sales in their favour were exempt u/s 5(3) of the Central Sales Tax Act, since all documents for export would be

prepared by the Assessee marked "Account State Trading Corporation". The Bill of Lading showed the Assessee to be the shippers. The words "Account State Trading Corporation of India Ltd." was typed immediately after the Assessee's name and address in the column "shipper only". Hence, the Assessee claimed that the benefit of Section 5(3) would accrue to the Assessee. The State, however, contended that since the name of State Trading Corporation was there below the name of the Assessee, the property in tea had passed on to the State Trading Corporation. The Apex Court pointed out that the contract between the Assessee therein and State Trading Corporation did not contemplate a sale by the Assessee to the State Trading Corporation. The requirement for endorsement in the Bill of Lading and in the shipping documents was to enable the Iranian buyer with whom the State Trade Corporation had an agreement to identify tea as being sent in fulfilment of the obligation under the contract between the State Trading Corporation and the Iranian buyer. Only in that context, the Apex Court read the words "STC" i.e., below the name of the Assessee therein against the column "shipper" as constituting an endorsement. The Supreme Court observed that in the absence of an endorsement in the Bill of Lading in the form of State Trading Corporation, an inference as to a sale in favour of the State Trading Corporation could be drawn.

20. We do not think, the Revenue is justified in contending that the absence of an endorsement in the Bill of Lading would lead to rejection of the claim of the Assessee as sales in high seas. The Assessee's contention herein is that it had placed evidence as regards the high sea sales before the authorities concerned, the genuineness of which were never in question. The only ground on which the claim was rejected was the failure of the Assessee in producing the endorsed copy of the Bill of Lading. As already pointed out, this Court considered the question as to whether in the absence of evidence on the endorsement in the bill of lading, the claim for exemption as high seas sale could be granted. This Court pointed out that the endorsement in the bill of lading to evidence a sale in the high seas is only one mode of proof and not the only way of proving the fact. A transfer could take place by delivery of documents also. Thus, when there were other evidence to show that the sale was in the course of import and there was transfer of documents of title, the claim for exemption was sustainable in the eye of law. Thus, so long as there are sufficient evidence to prove that there is a sale in the course of import by transfer of documents of title, the Assessee would be entitled to claim exemption under the provisions of Central Sales Tax Act. The decision of this Court reported in *The Deputy Commissioner of Commercial Taxes Vs. A.R.S. Thirumeninatha Nadar Firm*, remains unchallenged till this date. The Revenue does not dispute the fact that the Assessee had produced other contemporaneous materials before the authorities herein. That being the case, the mere failure on the part of the Assessee to produce the endorsed bill of lading or that the buyer's name figured in the Bill of Entry along with the Assessee's name, would not, in any manner, go against the claim of the Assessee herein. Learned Counsel appearing for the Assessee submitted that the

originals of the documents are already available with the Assessee, which clearly prove the high sea sales effected. In the background of the decisions of this Court and that of the Apex Court and in the face of the documents produced before the authorities concerned, we feel, the proper course herein would be to set aside the order of the Tribunal and remand the matter back to the Assessing Authority for a fresh consideration of the materials produced by the Assessee in support of its claim for high sea sales. Consequently, the order of the Tribunal stands set aside. It is needless to state that the Assessee shall co-operate with the Assessing Officer in producing all the materials with the originals before the Assessing Officer to substantiate its contentions. The Tax Case Appeal stands disposed of. No. costs.