(2011) 02 MAD CK 0479

In the Madras High Court

Case No : Writ Petition No''s. 11008 and 11009 of 2004

Sri Vishnu Cement Ltd. APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 3(a), 3(b), 8(1), 8(2)

Citation : (2011) 46 VST 556

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

Bench : Division Bench

Advocate : R.L. Ramani, for Chandra Karuppiah and Ramani, for the Appellant; Haja Naziruddin, Special Government Pleader and A.R. Jayapratap for N. Inbarajan, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The assessee is the petitioner. The assessment years are 1991-92 and 1992-93. The challenge in the writ petitions is to the orders of the Sales Tax Appellate Tribunal dated December 27, 1999 and April 12, 1999 in S.T.A. Nos. 735 of 1998 and 941 of 1996, in and by which, the orders of the assessing authority as confirmed by the Appellate Assistant Commissioner were affirmed. The facts involved are that, the petitioner has got its cement factory at Andhra Pradesh. It received a consignment of cement through railway wagon from its factory at Andhra Pradesh to its branch at Madras. Even as per the revised order of the assessing authority, when the consignment was booked by way of stock transfer to the petitioner, the manager of the petitioner branch endorsed certain railway receipts in favour of certain Tamil Nadu parties, who claimed them as "inter-State sale" from Andhra Pradesh. It was also noted that the entire goods sent from their factory in Andhra Pradesh were only on self-basis to Salt Cotaurs at Madras. It was further noted that the gate pass used for transport of goods in lorries from factory to the railway yard for the purpose of booking in the wagons also bore the name of the petitioner in both the columns of "name of intendor and name of the consignee". One other factor noted by the railway authority was that the date of selling of goods was prior to the date of the purchase order. The assessing authority, therefore, while making the revision, concluded that the sale was not an "inter-State sale" but was an "intra-State sale" and consequently, liable to payment of tax under the Tamil Nadu General Sales Tax Act.

2. We heard Mr. R.L. Ramani, learned senior counsel for the petitioner. The learned senior counsel while drawing our attention to section 3(a) and (b) of the Central Sales Tax Act contended that, while sale or purchase is the common factor for clauses (a) and (b), to attract clause 3(a), a sale or purchase should be occasioned for the movement of goods from one State to another, while for clause 3(b) such sale or purchase can be effected by transfer of documents of title to the goods, in the course of its movement from one State to another. According to the learned senior counsel, in the case on hand, the sale occasioned by way of transfer of documents of title to the goods, in the course of its movement, inasmuch as, even before taking delivery of the consignment, the petitioner effected the sale by making an endorsement on the railway receipts and thereby such purchasers were able to take delivery of the cement bags from the railways themselves. The learned senior counsel, therefore, contended that forwarding of the goods earlier to the subsequent date of purchase order was immaterial so long as the sale on hand was effected by way of transfer of documents of title to the goods, in the course of its movement from Andhra Pradesh to Madras. In support of the above submission, the learned senior counsel also contended that in pursuance of the said "inter-State sale", it had also suffered tax under the Central Sales Tax Act and therefore, the orders of revised assessment are hit by section 3(b) of the Central Sales Tax Act.

3. As against the above submissions, Mr. Haja Naziruddin, learned Special Government Pleader for respondents 1 to 3, would contend that when once the transfer of goods was by way of consignment sale and when the sale was effected after the goods reached the destination, even by making an endorsement on the lorry receipts, it can be only construed as a sale within the State, attracting the provisions of the Tamil Nadu General Sales Tax Act. The learned Special Government Pleader also contended that there was no proof to show that the sales effected suffered tax under the Central Sales Tax Act or that the sales effected prior to the termination of the transshipment suffered such tax under the Central Sales Tax Act.

4. The fourth respondent is the Commercial Tax Officer of Andhra Pradesh. A counter-affidavit has been filed on behalf of the fourth respondent. In paragraph 3 of the counter-affidavit it has been stated as under:

3. I state that the petitioners have filed their returns in form CST VI as per rule 14A of the Central Sales Tax (Andhra Pradesh) Rules, 1957 for the assessment years CST/1991-92 and 1992-93. The said returns were verified with their books of accounts and the net turnover was also determined by the assessing officer

and orders of assessment were issued both for the assessment years CST/91-92 and 92-93. I state that they have disclosed inter-State sales on cement manufactured in their factory in the State of Andhra Pradesh apart from effecting stock transfer of cement to branches outside the State, consignment sales of cement outside the State through C and F agent and high sea sales to out of India. I state that the inter-State sales effected by them were assessed at the appropriate rate u/s 8(1) and 8(2) of the Central Sales Tax Act, 1956. The taxes as per the order of assessment were also paid by them as per the assessment order in Assmt. No. 14326/92-93 (CST) dated March 29, 1996 and Assmt. No. 14326/1991-92 (CST) dated March 27, 1996. I confirm the above facts which has been averred by the petitioners in their affidavit in support of the writ petition.

5. Though the learned senior counsel for the petitioner wanted to rely upon the said statement made on behalf of the fourth respondent and contend that the transaction covered by the orders impugned suffered tax under the Central Sales Tax Act, at the very outset it will have to be stated that the above extracted part of the counter-affidavit or any other statement found in the counter-affidavit does not state that the particular transaction concerned herein clearly suffered tax under the Central Sales Tax Act. The counter-affidavit of the fourth respondent only states that the "inter-State sales" effected by the petitioner in the factory at Andhra Pradesh were assessed at the appropriate rate of tax u/s 8(1) and 8(2) of the Central Sales Tax Act and were also paid on such assessment.

6. While examining the contention of the petitioner, insofar as the application of section 3 of the Central Sales Tax Act is concerned, as rightly contended by the learned senior counsel, such sale can also be deemed to be an "inter-State sale" falling either u/s 3(a) or 3(b) of the Central Sales Tax Act. If the sale or purchase triggered the movement of goods from one State to another, it should be deemed to be an "inter-State sale" falling u/s 3(a). On the other hand, if the sale or purchase was effected by way of transfer of documents of goods, in the course of the movement of such goods from one State to another, then such sale can also be deemed to be an "inter-State sale" falling u/s 3(b) of the Central Sales Tax Act.

7. In the case on hand, according to the petitioner, since the endorsement was made by the petitioner''s manager in favour of certain parties in this State before the goods were taken delivery by the petitioner, the same would amount to sale effected by way of transfer of documents of title to the goods in favour of such parties, while the goods were in transit. One cannot dispute that only when the goods are taken delivery by the consignee at the delivery point of the railway yard, the goods should be construed to be, in the course of transit. Therefore, if there were transfer of documents of title to the goods by way of endorsement in the railway receipts in favour of third parties and thereby such parties were allowed to take delivery of the goods from the Salt Cotaurs of the railways,

certainly it can be held to be a sale effected in the course of transit falling u/s 3(b) of the Central Sales Tax Act.

8. However, from the orders impugned in these writ petitions, we are not able to ascertain whether or not the transactions suffered tax under the Central Sales Tax Act or what is the date of bill raised pursuant to such transfer claimed to have been made by the petitioner in favour of such purchases in the State of Tamil Nadu. In order to ascertain the said fact, it has become imperative to remit the matter back to the assessing authority, so that, the petitioner as well as the respondent-Department can place necessary materials to enable the assessing authority to conclude whether the sales effected fall strictly u/s 3(b) of the Central Sales Tax Act for the petitioner to claim relief under the said provision. The writ petitions stand allowed. The impugned orders are set aside. The matters are remitted back to the third respondent to examine the above factors, namely, whether the sales effected suffered tax under the Central Sales Tax Act as well as the date of the bill raised by the petitioner with reference to such sales effected toy the petitioner. Based on the ascertainment of the above facts, it is open to the third respondent to pass fresh orders in accordance with law. No costs.

