(2009) 12 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 13542 of 2001

State of Tamil Nadu — APPELLANT

Vs

Sujani Textiles Private Limited and Another — RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(5)
Central Sales Tax (Tamil Nadu) Rules, 1957 — Rule 4(3A)
Central Sales Tax Act, 1956 — Section 9(2A)
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)

Citation : (2010) 33 VST 491

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

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader, for the Appellant; Inbarajan, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Department filed the present writ petition not satisfied with the order of the Sales Tax Appellate Tribunal, Additional Bench, Coimbatore made in CTA. No. 94 of 1996 dated February 1, 2000 granting the relief in favour of the assessee in respect of the turnover of Rs. 4,41,68,207 as consignment sale and deleting the penalty in a sum of Rs. 4,41,682 in respect of the assessment year 1992-93.

2. The facts leading to filing of the writ petition are as follows :

The assessee-M/s. Sujani Textiles is engaged in the manufacture of cotton yarn and is an assessee under Mettupalayam Road Assessment Circle, Coimbatore 18. The account of the assessee under the Central Sales Tax Act was checked and it was found that the claim of exemption of turnover for Rs. 4,41,68,207 as consignment sale to other States was inadmissible. The assessing officer, therefore, issued a pre-assessment notice dated September 30,1994 and after considering the objections filed by the assessee, passed a final order on March

31, 1995 disallowing the consignment sale to the tune of Rs. 4,41,68,207 and levying tax at two per cent by treating the same as direct inter-State sale and penalty of Rs. 13,25,046 at 150 per cent u/s 9(2A) of the Central Sales Tax Act, 1956 read with Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

3. On appeal, the Appellate Assistant Commissioner confirmed the assessment, but reduced the penalty from 150 per cent to 100 per cent. The assessee again filed a further appeal to the Sales Tax Appellate Tribunal, which, by reason of the order impugned in this writ petition dated February 1, 2000, allowed the appeal by setting aside the assessment and penalty in respect of the abovesaid turnover. The correctness of the said order is canvassed in this writ petition.

4. Mr. Haja Nazirudeen, learned Special Government Pleader for the Revenue, submitted that the order of the Tribunal is erroneous on two grounds : the first one is that the requirement of Rule 4(3A) of the Central Sales Tax (Tamil Nadu) Rules has not been complied with : and the other one is that in the agreement entered into with the agents, there is no clause for return of goods, i.e., sales returns. On the other hand, learned Counsel for the first respondent argued for sustaining the order impugned.

5. We have heard the learned Counsel on either side and perused the materials on record. It is on record that the assessee filed a register in form 16 showing the particulars of goods consigned on each occasion agent-wise. The original of the written contract has also been filed. The statutory requirement of details as provided under Rule 4 (3A) of the Central Sales Tax (Tamil Nadu) Rules has also been complied with and form F as required under Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules has also been filed. If the statutory requirements are complied with, the authority cannot stretch their jurisdiction beyond it and make enquiry, which is extraneous to the statutory provisions. Usual reference can be made to the decision rendered in A. Dhandapani v. State of Tamil Nadu reported in [1995] 96 STC 98 (Mad). In this case, all the details have been furnished. The documents so produced have not been doubted by any of the authorities below. The documents also covered transactions of the year claimed as consignment sale. The non-availability of clause pertaining to sales return in the agency agreement would not, ipso facto, be a reason for denying the benefit or make the transaction something other than the one of consignment sale. In A. Dhandapani''s case [1995] 96 STC 98 (Mad), the court has observed that the consignment sale can be proved by the assessee by any manner by producing all the other details from the agents and not necessarily by producing the documents, which have been stated under Rule 4(3A) of the Central Sales Tax (Tamil Nadu) Rules. So, the non-production of the authorisation letter, which is stated as one of the point to non-suit the assessee for claiming the benefit, also cannot be regarded as a conclusive one. The question as to whether the sale is to be regarded as a consignment sale would depend on the merit manner in which the sale is effected. If the sale is effected to the agent buyers by remaining outside the State and the property in the goods does not

pass on to the agent, but transferred by the agent acting on behalf of the consignor only to the ultimate buyer by whom the sale is effected, such a sale is normally described as sale on consignment basis. The sale is complete only when the sale is effected by the agent after the consignment is delivered. The fact that on the strength of the bills the consignor''s bankers are willing to trust the consignor and extend to him credit on the strength of the bills produced by him to the bank will have no bearing on the question as to whether the sale effected is a consignment sale or local sale. For the purpose of determining the character of the sale, the ability of the consignor to obtain credit from its bankers on the strength of the bills can have no impact. The documents produced before the appellate authority were examined and accepted as genuine and cover all the transactions for the year claimed as consignment sale. They cannot cease to be consignment sales merely because the authorisation letter has not been produced or merely because the agreement does not contain the clause with regard to sales return. Therefore, we are of the view that the two grounds taken by the Revenue to contend that the order of the Tribunal is erroneous cannot be accepted as valid grounds nor can be accepted as grounds based on the statutory requirements.

6. For the above stated reasons, the writ petition is dismissed as devoid of any merits. No costs.

