(2003) 11 MAD CK 0112

In the Madras High Court

Case No : Writ Petition No. 8183 of 2001

Tata Iron and Steel Co. Ltd. APPELLANT

Vs

Assistant Commissioner (CT) and Others RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(5)
Constitution of India, 1950 — Article 226

Citation : (2004) 134 STC 125

Hon'ble Judges : S.R. Singharavelu, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : C. Natarajan, for N. Inbarajan, for the Appellant; T. Ayyasamy, Special Government Pleader (Taxes), for the Respondent

Judgement

R. Jayasimha Babu, J.—The assessee receives stocks of iron and steel from its head office which is at Jamshedpur. In respect of the goods so moved, the assessee as the transferee is required to furnish to the transferor form F prescribed under rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957. It was unable to furnish copies of 13 of the 200 forms it had obtained from the authorities in the State of Tamil Nadu. According to the assessee those forms had not been used and had been misplaced. 7 of the forms produced by it contained some corrections.

2. The Tribunal has held that in respect of those 7+13 forms, it was open to the assessing officer to assume that those forms had been used in respect of goods which had been moved and that the turnover relating to such movement of goods had been deliberately suppressed. The assessing officer had before him no material other than the report that the assessee was unable to produce the 13 forms.

3. It could not have, only on that score, concluded that those forms had been used by the head office of the assessee in respect of the goods moved by it to the assessee here, that such goods had been moved without disclosing that

factum to the authorities and further that those goods had been sold here without accounting for the same. The commodity in question is iron and steel which cannot possibly be moved without inviting the attention of the authorities. The company here is a reputed manufacturer of iron and steel. In the absence of any other material that the goods had in fact been moved from Jamshedpur to here and such goods had been sold by the assessee without accounting for the same, it was not open to the assessing officer to draw the conclusion that he did, merely by reason of the assessee''s inability to produce those forms.

4. Even the amendment effected to Section 6-A of the Central Sales Tax Act, 1956 with effect from May 13, 2002, does not enable the authority to reach the kind of conclusion that the assessing officer has done, solely on the basis that the forms had not been produced. Even after the amendment, it is necessary that there must be some proof of the movement of the goods. It is only when there is movement of goods and the assessee is unable to produce the form F, it would be open to the assessing officer to deem that the movement of goods that has taken place has been occasioned as a result of sale and is not a mere consignment effected from one place to another not amounting to sale.

5. Form F can only be utilised for the benefit of the consignor. Movement under those forms can be held to have taken place if such forms had been furnished and relied on by the consignor in its assessment for the purpose of showing that it had not effected inter-State sale of the quantities covered by those forms and that the quantities mentioned in those forms had been moved out of the State as the consignor''s own goods and transferred to its branch or agent as mere consignments.

6. In this case there is no material to show that the 13 forms which the assessee was unable to produce had been furnished by the assessee to its head office and that those forms had been furnished to the assessing authority in its assessment.

7. So far as the 7 forms which contained some corrections, it is the case of the assessee that those forms are required to be furnished only at or prior to the assessment and since assessment takes place long after the closure of the year, forms obtained subsequent to the closure of the year can be used in respect of transaction of a date prior to the date on which the form had been obtained. We do not find anything in the Act or Rule which indicate that the submission so made is contrary to law. Counsel for the Revenue fairly stated that the assessee may produce the account books for the years to which the entries in those 7 forms relate and the assessing officer would examine the same.

8. We set aside the orders of the Tribunal and other appellate authorities and direct the assessing officer to do the assessment afresh in so far as the turnover that has been assumed by him in relation to those 7+13 forms. We leave the other parts of the assessment undisturbed.

The assessment to be so done will be done keeping in view what has been stated in this order. This writ petition is accordingly disposed of.

