

**(2012) 11 MAD CK 0334**

**In the Madras High Court**

**Case No :** Writ Petition No. 28302 of 2012 and M.P. No's. 1 and 2 of 2012

Teccon Services (P) Limited

APPELLANT

Vs

The Assistant Commissioner (CT), Alandur Assessment Circle,  
Vedagiri Street, Alandur, Chennai-16

RESPONDENT

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**Date of Decision :** 07-11-2012

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 5(3), 9(2)  
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b)  
Tamil Nadu Value Added Tax Act, 2006 — Section 84

**Citation :** (2012) 11 MAD CK 0334

**Hon'ble Judges :** R. Sudhakar, J

**Bench :** Single Bench

**Advocate :** R. Kumar, for the Appellant; Aditya Reddy, Government Advocate (Tax), for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Honourable Mr. Justice R. Sudhakar

1. This Writ Petition is filed praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in CST/584566/2005-06 dated 30.11.2011 insofar as it relates to the disallowance of sales to exporters for Rs. 12,67,000-00 and further direct the respondent to consider the petition dated 11.9.2012 filed by the petitioner. Heard Mr. Aditya Reddy, learned Government Advocate (Tax) appearing for the respondent.

2. The petitioner is a manufacturer of Heat Exchanger, Radiator and Oil Coolers and registered dealer under the Tamil Nadu General Sales Tax Act and Central Sales Tax Act, 1959. In respect of the assessment year 2005-06, petitioner filed monthly returns reporting a total taxable turnover of Rs. 86,22,312/- under Central Sales Tax Act, 1956. The Assistant Commissioner (CT), by his proceedings dated 29.7.2010 considered the entire return and while passing the order two issues were considered. One is exemption on the turnover towards

sales to exporters and the other one is exemption on the turnover towards direct export sales. Insofar as Rs. 12,67,000/- is concerned it relates to sales to exporters, namely, M/s. Gem Forgings Private Limited, Calcutta and M/s. Sparex India, Chennai. In support of the sale to the exporters, they filed Form H together with Bill of Lading and other connected records which were considered and exemption was allowed.

3. Insofar as the own export for a value of Rs. 4,23,340/- is concerned, the exemption was declined and tax was imposed at the full rate. This order was not accepted to the Department and therefore, notice was issued on 27.6.2011 in exercise of power u/s 9(2) of the CST Act, 1956 read with Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 stating that exemption granted in respect of sales to exporters under Form "H", there is some discrepancy and therefore, the assessment order requires revision. A reply was submitted on 4.7.2011 and the impugned order came to be passed on 30.11.2011 and that is under challenge.

4. The Crux of the issue was considered by the Department and the exemption was denied and the tax and penalty was imposed. Petitioner filed an application u/s 84 of the Tamil Nadu Value Added Tax Act, 2006 read with Section 9(2) of the Central Sales Tax Act, 1956 for revision of the order which came to be rejected by reiterating the revised order dated 30.11.2011 in CST/584566/2005-06.

5. The plea taken by the petitioner is that the reasoning given by the authority for revising the assessment is on a misconception of the documents submitted, namely, the invoice, bill of lading/shipping bill and Central Excise document showing proof of export of the goods.

6. The document Form H No. 063846 is covered by Invoice No. 102 dated 21.6.2005. The description of goods is stated as 32 numbers of radiators (Tea Machinery and Spares). This is covered by Invoice No. 102 dated 21.6.2005. The supporting Bill of Lading Number is AM-CCU/0705-0020 dated 4.7.2005 issued by consignor M/s. Gem Forgings Private Limited, Calcutta and the description of the goods in BIL is 12 numbers tea dryer radiator. Another Bill of Lading No. AM-CCU/0705-0022 dated 4.7.2005 is also issued by consignor M/s. Gem Forgings Private Limited, Calcutta and the description of the goods is 20 numbers withering trough radiators. These are inconsonance with the invoice No. 102 dated 21.6.2005.

7. Insofar as the export by M/s. Sparex India, Chennai is concerned it is covered by invoice No. 395 dated 6.3.2006 and the total number of articles are 14 Heat Exchangers and that is covered by Form H No. L964737. The description of goods is 14 number of Heat Exchangers and it is covered by Bill of Lading No. CLA/MAA/01567. It is covered by packing list by description of goods as Heat Exchangers quantity 14 in numbers. It is also covered by Central Excise document of M/s. Sparex India which are also part of the typeset of documents

and admittedly were given to the assessing authority at the time of passing of the first assessment order on 29.7.2010. The same was verified and found to be correct.

8. In the light of those documents, the court is unable to accept the order of the assessing authority who holds that the goods sold by the assessee were not exported as such by their exporter. The petitioner has not proved with documentary evidence that the goods sold by them were exported as such. Petitioner has not filed copies of the foreign buyer's order together with copies of relevant packing list. Therefore, the contention is not acceptable.

9. The admitted fact is that the shipping bills in both the case and the packing list insofar as M/s. Sparex India, Chennai is concerned clearly described the nature of goods and the quantity as per the assessee's invoice and tallies with the Bill of Lading. The Bill of Lading refers to the Shipping Bill No. 5241756 dated 29.6.2005 and Shipping Bill No. 5241759 dated 29.6.2005 insofar as M/s. Gem Forging Private Limited, Calcutta is concerned and Shipping Bill No. 2285772 dated 6.3.2006 insofar as M/s. Sparex India, Chennai is concerned. It, therefore, follows that the goods sold by the petitioner is relatable to the shipping documents enclosed. It, therefore, cannot be said that there was no documentary evidence at all produced to show proof of export. This statement by the authority is arbitrary and capricious. If the authority is not convinced with the documents already furnished, it is open to him to ask for a foreign buyer's orders or copies of the relevant packing list. On the face of it, it is apparent that the authority has not applied his mind to the documents filed in support of the Form "H". The mere statement that no document has been produced only goes to show that there is no application of mind that the previous order was passed by the very same authority stating that he verified the documents filed by the petitioner and found to be correct. The relevant portion of the order dated 29.7.2010 reads as follows:-

The dealers have claimed exemption on the turnover of Rs. 12,67,000/- towards sales to exporters. They have filed Form-H, Bill of Lading and other connected records which were verified and found to be in order. Hence the claim of exemption is allowed.

Therefore, the very same authority cannot take different stand from time to time to discredit the claim of the petitioner.

10. Insofar as the order of foreign buyer's order is concerned, it will be relevant to note that if the authority has a doubt as to the actual export of the goods in question, it is open to him to inform the assessee to produce such documents and satisfy the bonafides of the claim. This assumes importance in view of the earlier assessment order passed by the very same authority accepting the documents. In exercise of the power u/s 9(2) of the CST Act, an authority cannot act in an arbitrary and capricious manner and come to hold by a mere statement that no documentary evidence were filed in spite of the earlier order of the very

same authority accepting the documents in proof of export.

11. On the plea of foreign buyer's order or any doubt as regards to export is concerned, the answer lies in a decision of the Division Bench of this Court in Tiruppur Exporters Association vs. - State of Tamilnadu & others reported in 2003-04 (9) TNCTJ 213 in para 12 and it reads as follows:-

12. After anxious consideration of the matter, we hold that if the dealer is not required to produce any evidence in proof of the export, it may lead to large scale evasion of tax as it is open to the exporter to give a certificate in Form H enabling the dealers, who have not even sold the goods, to claim u/s 5(3) of the Central Sales Tax Act, 1956. Though the exporter may be liable to be proceeded with for filing the bogus Form H the large scale avoidance of tax by adopting such a dubious device cannot be ruled out. We are of the opinion that the Government has realised the difficulties of the dealers and the Taxation Rationalisation Committee has also realised the difficulties of the dealers and the Government of Tamil Nadu has issued a Government order stating that if the dealer is not able to produce the foreign export agreement or the foreign export order, the dealer should produce the proof of actual export and the actual shipment of goods i.e., Invoice number and date of the export, name of ship and Port from which exported, the date of departure of ship and copy of Bill of lading. Apart from the production of those documents if the assessing officer still feels that the dealers should produce the export agreement or order to fully satisfy himself whether the statutory pre-conditions for claiming exemption are complied with, he must so inform the dealer, to enable him to file an application to summon the documents from the Export House concerned or from the assessing officer who has jurisdiction over the Export House and obtain a copy of the foreign order or the agreement either from the Export House or from the assessing officer having jurisdiction over the Export House. We make it clear that the assessing officer has the full power to go into the question and enquire into the exemption claimed in Form H, as filing of Form H is not sacrosanct, but if the dealer is able to produce any other documents in proof of the conditions prescribed u/s 5(3) of the Central Sales Tax Act, 1956, it will be open to the assessing officer to accept the same. If the assessing officer still is not satisfied, it will be open to him to insist on the dealer to file necessary application for summoning the documents as it is not expected that the assessing officer should call for the documents on his own when the dealer claims exemption under sec. 5(3) of the Central Sales Tax Act, 1956 and it is for the dealer to produce necessary documents by filing necessary application with the requisite fee for summoning the documents from the Export House or the assessing officer having jurisdiction over the Export House. We are of the view that the learned Single Judge was perfectly right in holding that it is not open to this court to interfere with the assessment proceedings and it is open to the parties to rely on any statutory Rule, Regulation or order and proceed with the assessment in accordance with law. However, where the assessing officer has clearly indicated his mind that the dealer must produce the foreign agreement or the foreign

order to claim exemption in Section 5(3) of Central Sales Tax Act, 1956 and if the dealer is not able to produce the same, the dealer may not get the exemption u/s 5(3) of the Central Sales Tax Act, 1956, as the production of the foreign agreement or order seems to be, in the opinion of the assessing officer, the only mode of proof to claim exemption u/s 5(3) of the Act.

12. On going through the said decision, it is clear that if some documents have already been produced and accepted by the authority and if there is a doubt on the mind of the authority, it is open to the assessing officer to call upon the assessee to file necessary application for summoning the documents that may be required. No opportunity has been given in this case and the order has been passed unmindful of the earlier order of assessment accepting the documents. Therefore, the authority shall grant an opportunity to the assessee to produce the documents or file necessary petition for summoning the documents that may be required in addition to what has already been furnished and accepted in the earlier round of assessment.

13. The reasoning in the impugned proceedings on the face of it appears to be arbitrary and has been passed in violation of principles of natural justice and accordingly, the same is liable to be interfered with. In view of the above, the impugned order is set aside and the matter is remitted to the respondent for reconsideration in the light of the Division Bench decision in Tiruppur Exporters Association vs. - State of Tamilnadu & others reported in 2003-04(9) TNCTJ 213 referred to above. The Writ Petition is allowed by way of remand as above. The authority is at liberty to fix a time limit for early disposal of the matter. No costs. Consequently, connected miscellaneous petitions are closed.