

In the High Court of Judicature at Madras

Dated: 28.09.2012

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The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN  
and  
The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Tax Case (Revision) No.1757 of 2008

Roshan Trading Corporation  
No. 7, Jaffar Sarang Street  
Chennai

..... Petitioner

Vs.

The State of Tamil Nadu  
rep. by the Deputy Commissioner (CT)  
Chennai (North) Division

..... Respondent

PETITION filed before the Tamil Nadu Taxation Special Tribunal to revise the order dated 29.1.2002 made in S.T.A.No. 220/99 on the file of the Sales Tax Appellate Tribunal (Addl. Bench) Chennai for the assessment year 1989-90. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered. Against the order of the Appellate Assistant Commissioner(CT) VII, IV Floor, Kuralagam Annexe, Chennai - 108 dated 29.10.1998 and made in Appeal No. and year 55/98 and against the order of the Commercial Tax Officer, Harbour I Assessment Circle - Kuralagam Annexe, Madras - 108 dated 6.2.92 and made in TNGST.No.000264189-90.

For Petitioner : Mr.N.Inbarajan  
For Respondent: Mr.J.Aaditya Reddy,  
Government Advocate (Taxes)

O R D E R

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

The assessee is on revision as against the orders of the Sales Tax Appellate Tribunal for the assessment year 1989-90 by raising the following questions of law:-

"1. Whether the Appellate Tribunal is right in allowing the Enhancement Petition filed by the State, when the first appellate authority has allowed the respective portion after giving a detailed discussion?

2. Whether the Appellate Tribunal is right in confirming the levy of tax on second sales exemption on

sale of declared goods on a mere ground that the registration certificate of the seller is cancelled with retrospective effect?

3. Whether the Appellate Tribunal is correct in denying second sales exemption by negating the law laid down by the Apex Court in 109 STC 439, where it has been held that "whatever might be the effect of a retrospective cancellation upon the selling dealer, it could have no effect upon the person who had act upon the strength of a registration certificate when the registration was current?

4. Whether the Appellate Tribunal is right in confirming the levy of tax on second sales of declared goods at the hands of the petitioner on the ground that though the sellers are registered dealers and their statement has been obtained by the department but still the tax liability is rightly fastened on the petitioner?

5. Whether the Appellate Tribunal is correct in denying the opportunity of cross-examination of the sellers whose statement has been relied on against the petitioner by holding that it is the responsibility of the petitioner to bring their seller for cross-examination?

6. Whether the Appellate Tribunal is correct in confirming the levy of tax on second sales of declared goods, when the commodity is taxable at single point tax and duly confirmed by the Apex Court in 114 STC 1, wherein it has been categorically held that the point of levy cannot be shifted in so far as declared goods are concerned?

2. The assessee is a dealer in iron and steel. At the time inspection conducted on 30.8.90, the Enforcement Wing Officials found that no inventory details were maintained and produced for the stock held on 1.4.90 and no day today stock account was maintained for interstate purchases. At the time of inspection, the Officials also obtained regular accounts for the year 1989-90 and 1990-91 for verification. It was found that the assessee had effected local purchases from Sri Sakthi Steel Corporation and Southern Steel Enterprises. Holding that these sellers were bill traders, the claim of exemption was rejected by the Assessing Officer. It was pointed out that bill traders had opened the accounts in the same bank where the assessee had its operation and the cheque issued were encashed on the same day. In the circumstances, the claim for exemption originally granted was sought to be withdrawn by taking recourse to reassessment proceedings. The assessee objected to the assessment on

the ground that the purchases were from the registered dealers who were granted registration by the Commercial Tax Officer, Park Town II after observing the due procedure laid down under the Act. In the circumstances, the assessee pleaded that the second sale exemption originally granted be accepted. The Assessing Officer pointed out that one of the dealers, who signed in the registration application viz., Kamakshi Steel House, No. 38, Venkata Chetty Street, Madras admitted in the statement on 27.12.1990 before the Enforcement Wing Officials that proprietor of Sri Sakthi Steel Corporation was only a broker in iron and steel and had not done any business though registered under the Act. Thus, the Officer viewed that the said Sri Sakthi Steel Corporation had not handled any goods and being a purchase from the bill trader, the assessee was liable to tax and thus, the assessment was confirmed. Aggrieved by the assessment, the assessee went on appeal before the Appellate Assistant Commissioner, who pointed out that the registration of Sri Sakthi Steel Corporation was cancelled by the Commercial Tax Officer, Park Town - II assessment circle with effect from 1.4.90. The assessment of the assessee was also completed by the Assessing Officer on 30.5.1990 after checking the accounts and affixing the seal of the Assessing Authority. It was further pointed out that the said Sri Sakthi Steel Corporation had renewed the registration certificate for assessment year 1990-91 on 9.4.1990. Thus, the registration granted to the said dealer on 25.8.1999 continued with renewal made on 9.4.1990. In the background of above said facts, the first Appellate Authority applied the decision reported in 57 STC 137- STATE OF TAMIL NADU v. C.K.GAJAPATHY & CO., wherein it was held that retrospective cancellation cannot be ground to disallow the exemption. The first Appellate Authority also applied the law laid down in 52 STC 124 - STATE OF TAMILNADU v. CHAMUNDESWARI ENTERPRISES and finally held that the assessee being a subsequent seller, it was not for him to show that the anterior sale was in fact taxed. The fact is that the dealer who sold the goods to the assessee was in existence at the time when the sale was effected. The Appellate Assistant Commissioner allowed the assessee's appeal, thereby cancelled the assessment. Aggrieved by the same, the Revenue went on appeal before the Sales Tax Appellate Tribunal, who allowed the Revenue's appeal thereby, restored the assessment. The Tribunal pointed out that in cancelling the second sale exemption, the Assessing Officer had not relied entirely on the retrospective cancellation of the Registration certificate and that all measures taken by the Department to identify the dealer proved futile. All summons issued to the above dealers were returned by the postal authorities with the endorsement as 'not found' 'always door locked' and 'left'. Pointing out to the statement made by one of the dealers, who had signed the application, the Tribunal held that the vendors were only brokers in iron and steel business. Further it pointed out that the assessee had not produced any materials regarding the payment of lorry charges or freight handling charges towards taking delivery of the goods. In the circumstances, the Tribunal confirmed the order of assessment.



Aggrieved by the same, the assessee is on revision before this Court.

3. As already seen, the assessment year under consideration is 1989-90. The Revenue had issued the registration certificate to Sri Sakthi Steel Corporation and Southern Steel Enterprises with effect from 25.5.89 and 21.6.90 respectively. The said companies were proprietary concerns belonging to son and father. It is a matter of record that the business premises of these dealers were found locked. The Revenue wanted to identify their existence. Basing on the statement made by one of the dealers stating that these dealers had not done any business of purchasing and selling any goods at any time and that they were only brokers in iron and steel business, the Revenue held that purchases effected from the bill traders would not be recognised as a taxable sale for the purpose of granting exemption to the assessee. However, the fact is that the Revenue itself had accepted that the said dealers were assessed and the registration also was renewed even subsequent to the assessment on 9.4.1990. Thus, the fact is that during the material assessment year now under consideration viz., 1989-90, the assessee's vendors were already assessed by the Revenue. The orders of assessment were passed only after scrutiny of accounts. The mere fact that the department had cancelled the registration certificate of the vendors retrospectively per se would not be of any assistance to the Revenue to deny the second sale exemption. The cancellation of registration took effect from 1.4.90 and not prior to that period, which is relevant to the assessment under consideration viz., 1989-90. There is hardly any material to show when the vendors started doing business as bill traders. On the mere fact that the third party, who happened to be a dealer had stated that the assessee's vendor had not doing bill trader business per se would not be a ground for cancellation of exemption originally granted. In the circumstances, when such statement recorded was not subjected to any further examination, and in the absence of any material to substantiate that during the relevant assessment year, the vendors were doing just bill trading alone, we do not find any justifiable reason to deny the assessee's exemption granted originally.

4. As far as the observation of the Appellate Authority on the production of documents were concerned, after verifying the details, the Appellate Assistant Commissioner had allowed the assessee's appeal. The assessment order merely pointed out to the assessee not maintaining separate stock account regarding interstate purchase and sales as a ground for denying the second sale exemption. In the absence of any specific case made out to doubt the claim of the assessee as regards the details on freight charges for taking delivery, we find no justification in upholding the order of the Tribunal.

5. Consequently, the order of the Tribunal is set aside, thereby, the above Tax Case (Revision) is allowed. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Deputy Commissioner (CT)  
Chennai (North) Division
  2. The Sales Tax Appellate Tribunal (Addl. Bench) Chennai
  3. The Commercial Tax Officer,  
Harbour I Assessment circle,  
Kuralagam Annexe, Madra s- 108.
  4. The Appellate Assistant Commissioner (CT) VII,  
IV Floor, Kuralagam Annexe, Chennai - 108.
- 1 CC to the Special Government Pleader(Taxes) SR NO 61603  
1 cc To Mr.N.Inbarajan, Advocate, SR.60914

UG (CO)  
SRA(09/11/2012)

T.C.(R) No.1757 of 2008

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