



W.P.No.3039 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2022

PRONOUNCED ON : 29.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.3039 of 2006

The state of Tamil Nadu,

Represented by,

The Deputy Commissioner(CT),

Coimbatore Division,

Coimbatore.

... Petitioner

.vs.

1. Tvl.Sharp Industries,

Kalappatti,

Coimbatore.

2. The Secretary,

The Tamil Nadu Sales Tax Appellate

Tribunal (Additional Bench),

Coimbatore.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the second respondent pertaining to the order dated 29.05.2003 made in C.T.No.192 of 1999 and quash the same as illegal.

For Petitioner : Mr.V.Prasanth Kiran
Government Advocate
For Respondents :
For R1 : Mr.Vasumithiran
for M/s.N.Inbarajan
For R2 : Tribunal

ORDER

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

This Writ Petition was listed along with W.P.No.13029 of 2006. There was a request on behalf of the appellant to de-link W.P.No.13029 of 2006. Thus, W.P.No.13029 of 2006 was de-linked. In this order, we are disposing only W.P.No.3039 of 2006, insofar as the challenge to the impugned order dated 29.05.2003 passed by the second respondent Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore [hereinafter referred to as “*Tribunal*”].



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2. The Tribunal vide impugned order dated 29.05.2003, allowed the appeals in C.T.A.No.192/99, C.T.A.No.191/99 in respect of the Assessment Years 1992-93 & 1993-94 respectively and modified C.T.A.No.157/98 in respect of the Assessment Year 1995-1996.

3. By the impugned common order dated 29.05.2003, the Tribunal allowed three appeals filed by the first respondent against three orders of the Additional Appellate Assistant Commissioner (CT), Coimbatore [hereinafter referred to as "*Appellate Commissioner*"]. Details of the appeals are as under:-

<i>W.P.No.</i>	<i>A. Y.</i>	<i>Appeal No. & Date before Tri.</i>	<i>Appeal No. & Date before Appte. Com.</i>	<i>Asst. Order No. & Date before the Assessing Officer</i>
3039/06	92-93	C.T.A.No.192/99 (29.05.2003)	C.S.T.No.117/97 (27.01.1999)	C.S.T. Rev. Asst. Order No.576386/92-93 (21.04.1997)
13029/06	95-96	C.T.A.No.157/99 (29.05.2003)	C.S.T.No.169/97 (08.12.1997)	C.S.T. Asst. Order No.679075/95-96 (16.06.1997)



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W.P.No.	A.Y.	Appeal No. & Date before Tri.	Appeal No. & Date before Appte. Com.	Asst. Order No. & Date before the Assessing Officer
12886/06	93-94	C.T.A.No.191/99 (29.05.2003)	C.S.T.No.118/97 (27.01.1999)	C.S.T. Rev. Asst. Order No.576386/93-94 (21.04.1997)

Note: (i) W.P.No.13029 of 2006 was de-linked when this Case was reserved on 02.12.2022.

(ii) W.P.No.12886 of 2006 was disposed of on 28.04.2006.

4. The dispute in this Writ Petition relates to (i) disallowance of branch transfer, and (ii) penalty under Section 9(2) of the Central Sales Tax Act, 1956.

5. The brief facts of the case are that the assessment for the Assessment Year 1992-1993 was completed vide Assessment Order dated 31.12.1993 in TNGST/CST/315879/92-93, whereby, the total and taxable turnover was determined as follows:-

Headings	Reported by the first respondent	Determined by the Assessing Officer
Total Turnover	Rs.77,76,811.00	Rs.86,35,621.00
Taxable Turnover	Rs.40,80,251.00	Rs.48,21,061.00



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6. For the above taxable turnover, a sum of Rs.3,84,300/- was levied as tax and a sum of Rs.57,823/- was levied as surcharge. While the assessment was passed, the Assessing Officer had agreed the turnover reported by the first respondent in respect of Branch Transfer and Consignment Transfer. The operative portion of the assessment order dated 31.12.1993 reads as under:-

The turnover reported agrees;

(1)

(2) The dealer had effected Branch Transfers and consignment transfers to the extent of Rs.21,94,442.00 between 12.3.93 to 31.3.93 for the year under assessment and purchases of XVII for the above period of Rs.12,413/- which attracts liability under Sec.3(4) of the Act reintroduced with effect from 12.3.93 (Act 25 of 1997) an extra tax of 2% on the purchase value of Form XVII i.e. on Rs.108810.00 which works out to Rs.4135.00 this will be levied and collected. This amount paid by including turnover in March 93 return pay in April 93 penalty under Section 24(3) will also levied.

7. Thereafter, on 19.09.1995, an inspection was conducted at the place of the first respondent by the Enforcement Wing Officers. The following defects were noticed by the Enforcement Wing Officers:-

- i. Computerised purchase and sales registers were found maintained only upto 31.08.1995.



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- ii. Cash book in computerised form was found maintained only upto 31.05.1995.
- iii. A comparison of the actual physical stock of certain selected item of parts and accessories of motors with the computerised stock statement of the day of inspection revealed discrepancies in 14 items to the value of Rs.36,418/-.

8. Apart from the above defects, certain records were recovered under the D7 receipt for verification on the claim of the first respondent for exemption as Branch Transfer to other States. Thereafter, the first respondent was called on for explanation in respect of recovered records on 17.10.1995, 03.01.1996, 12.07.1996, 30.07.1996 & 12.08.1996. It appears that the aurtherized representative of the first respondent appeared before the Assessing Officer on 20.08.1996 and furnished explanations.

9. Thereafter, a pre-assessment notice dated 13.02.1997 was issued to the first respondent, wherein, a sum of Rs.9,00,048/- and Rs.13,50,072/- were proposed towards tax and penalty respectively. It



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appears that though objections were called for from the first respondent in respect of the above proposals, the first respondent was only requesting time by sending letters, but, not file any objection. Therefore, the Assessing Officer passed a revision assessment order dated 21.04.1997 and confirmed the proposals in the pre-assessment notice dated 13.02.1997. Operative portion of the revision assessment order dated 21.04.1997 reads as under:-

To a Notice issued calling for objection if any to the above proposals, the dealers have requested time for 15 days in their letter dated 26.02.97 and the time allowed for filling objections. Further they have requested the copy of documents relied upon for filling their objection, in their letter dated 06.03.97. Accordingly copies of documents were taken on their own cost and issued to them on 17.03.97. Again the dealers have requested time for 3 weeks in their letter dated 26.03.97 for filling their objections. Even after issue of sufficient time, the dealers have not filed any objections to the above proposals till date.

I therefore confirm the proposals and passed orders accordingly as detailed below:
For the year 1992-93

Disallowed the branch to
Rs.80,36,147.00
Bangalore

at 11.2%



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Tax Due	Rs.9,00,048/-
Tax Paid	Rs. NIL /-

	Rs.9,00,048/-

A notice in Form 3 is issued.

Penalty under section 9(2) of the CST Act read with section 12(3)(b) of the TNGST Act'59 levied at 150% of the tax due.

Penalty levied at Rs.13,50,048/-.

10. On the very same day, separate revision assessment order was also passed for the Assessment Year 1993-94. Against the above revision assessment orders dated 21.04.1997, the first respondent filed appeals before the Appellate Commissioner in CST:117/1997(92-93) and in CST:118/1997(93-94). Both appeals were partly dismissed and partly remanded back to the Assessing Officer for fresh approach under the relevant provisions vide common order dated 27.01.1999. Operative portion of the common order dated 27.01.1999 reads as under:-

(VII) Regarding the appellants contention that their branches have paid tax on the transaction in the respective State, it is to be pointed out that the Apex Court of India have held in 11 STC 655 (Tata Iron and Steel)



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that where the head office of assessee is situated in one State and factory in another, and goods were manufactured in the factory according to the production programme directed by the head office, the goods there off supplied by the factory to head office is an inter-state sale taxable in the state in which the factory is situated. In these cases on hand also, the appellants factory situated in the state of Tamil Nadu wherein the goods were manufactured and despatched as finished goods to the other state and on the event of finding and concluding that the nature of transactions fell within the ambit of section 3(a) of the CST Act. The appropriate State to levy tax under CST is the State of Tamil Nadu. Further the Apex Court of India in 102 STC 373 (SC) in the case of Bharath Heavy Electricals Ltd have held where the question arises in which State is the tax leviable, one must look to and apply the text of section 9(1) of CST Act. No other provision is relevant on this question. Section 9(1) of the CST Act stipulates that tax should be levied by the State, in which State the movement of goods commenced. Therefore, according to section 9(1) of CST Act the movement of goods commenced only in the State of Tamil Nadu. I therefore, find that the Assessing Authority has properly fixed the liability to tax under section 3(a) of CST Act in both these cases. The applicants plea in this record is dismissed.

VIII) Regarding levy of penalty under section 9(2) of CST Act, read with section 12(3)(b) of TNGST Act, I find that these are the cases relating to revision of assessment



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under section 16(1). The Assessing Authority ought to have examined levy of penalty under section 16(2) instead of section 12(3)(b). The statutory ingredients to impose penalty under section 16(2) are in different plan and requirements than that of the amended provisions of section 12(3)(b) of TNGST Act. Therefore the initiation of action and imposition of penalty by the Assessing Authority under section 9(2) read with section 12(3)(b) of TNGST Act is found to be erroneous application as per as these cases on hand are concerned. The learned Counsel for the appellants has argued that the transactions are very much available in the books of accounts, and the bonafide claim of exemption on account of branch transfer would not amount to wilful suppression warranting penalty under section 16(2) of TNGST Act. The learned Counsel has also relied upon 45 STC 197 and 98 STC 408. The various contention of the appellants as well as learned Counsel for the appellants have to be examined by the Assessing Authority with reference to the relevant transactions in the books of accounts during these assessment years and claim of stock transfer. In both these cases, I find that the Assessing Authority has imposed penalty under section 12(3)(b) of the TNGST Act at 150% which is found to be improper application of the law. The Assessing Authority ought to have examined the imposition of penalty under section 9(2) read with section 16(2) of the TNGST Act. Under these circumstances I set aside the levy of penalty in both these cases and remit the whole issue back to the Assessing Authority



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has to apply his mind with reference to factual position of said transaction and redo the imposition of penalty or otherwise by taking into consideration of the various arguments and contentions of the appellants and the case laws relied upon by the learned Counsel for the appellants.

In fine, both the appeals are PARTLY
DISMISSED AND PARTLY REMANDED.

11. Meanwhile, it appears that assessment order dated 16.06.1997 for the Assessment Year 1995-96 was also passed based on the previous revision assessment orders, i.e. revision assessment orders dated 21.04.1997 for the Assessment Years 1992-1993 & 1993-1994 and the appeal against the assessment order dated 16.06.1997 for the Assessment Year 1995-96 in CST:169/1997(95-96) was modified vide order dated 08.12.1997.

12. Against the three orders dated 27.01.1999 in CST:117/1997(92-93), dated 27.01.1999 in CST:118/1997(93-94) and dated 08.12.1997 in CST:169/1997(95-96), the first respondent filed three appeals in C.T.A.No.192/99, C.T.A.No.191/99 & C.T.A.No.157/98 respectively before the Tribunal. The operative portion of the impugned order in



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respect of C.T.A.No.192/99 for the Assessment Year 1992-1993 which is subject matter of the present Writ Petition reads as under:-

60. From the foregoing discussion and on the basis of the documents evidences, it would clearly establish that the sale was effected through the depots in other State and could not be held as inter-state sales as there was no conceivable link in the movement of the goods from the Principal to the depot and therefore the sales effected through the depots outside the State cannot be treated as inter-state sales u/s.3(a) of the CST Act. The inter-state sale has to be proved not by way of general observation and surmises but with reference to specific movement as to whether they were sent in pursuant to a specific contract of sale or not. Therefore, on the basis of the verification of the documents and on the basis of the invariable principles of law wetted by the higher judicial forums cited above, we are of the view that the authorities below have not come to the correct conclusion in deciding the issue and in fact erred in treating the branch transfer as inter-state sale. Following these principles, we have no hesitation in holding that the revision of assessments has been wrongly made in respect of the sale effected through the depots in other state and hence the orders passed by the first appellate authority is set aside.

61. In as much as, we have set aside the entire disputed taxes in full, the penalty is also ordered to be set aside in consequence of the orders issued above.



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13. Aggrieved by the above order of the Tribunal, the revenue has filed this Writ Petition.

14. The learned Government Advocate for the appellant submits that the challenge to the impugned order of the Tribunal in so far as the Assessment Year 1992-93 is concerned, is primarily on the ground that the Tribunal erred in allowing the appeal of the first respondent.

15. It is submitted that the first respondent's so called branch at Bangalore was looked after by one S.Balasubramanian, who was stated to be employed as the Manager of the first respondent who had signed all the documents and Form 'F' Declarations. The said S.Balasubramanian was admittedly one of the partners of M/s.Karthik Engineering, Bangalore who had prepared proforma invoice, delivery challan as the Manager of the first respondent and transferred the entire stocks to the said M/s.Karthik Engineering, Bangalore as and when the goods were depatched by the head office at Coimbatore.



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16. It is submitted that it was found that from the Head Office at Coimbatore, all the goods were directly delivered at the place of M/s.Karthik Engineering and not to the so called Branch Office of the first respondent. It is submitted that the contention of the respondent that there was no earmarking of the goods to any particular customer cannot be accepted as entire goods were transferred to M/s.Karthik Engineering only and no other customer was involved.

17. The impugned order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore is defended by the learned counsel for the respondent.

18. It is submitted that the impugned order is well reasoned and requires no interference and therefore submits that the writ petition is liable to be dismissed.

19. It is submitted that the first respondent is a manufacturer of Motor Pumps and has branch office in Indore, Trichur, Secunderabad and Bangalore. It is submitted that the assessment were completed after ac-



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cepting Form F declarations on the stock transfers effected to the branch-
es on 31.12.1993.

20. It is submitted that the inspection carried out during the Assessment Year 1995-1996 on 19.09.1995 is not relevant for the Assessment completed during 1992-1993.

21. It is submitted that the first appeal before the Appellate Assistant Commissioner (CT), in A.P.No.CST/117/1997, was wrongly dismissed by order dated 27.10.1999, uploading the revision made on 21.04.1997. It is therefore submitted the order dated 27.10.1999, of the Appellate Commissioner has been rightly interfered by the Appellate Tribunal vide impugned order dated 29.05.2003.

22. It is submitted that there were no records for recovery of any documents infer any irregularity during 1992-1993 and during 1993-1994.



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23. In this connection, a reference is made to the following decisions:

- i. **The State of Tamil Nadu vs. Kalpana Lamp Components (Pvt) Ltd.**, TC.No.548 & 549 of 1985;
- ii. **The State of Tamil Nadu vs. M.P.Iron and Steel India Limited**, W.P.No.12507 of 2001;
- iii. **SGS Petro Organic (P) Ltd. vs. The CTO, Ayyanavaram Assessment Circle, Chennai**, W.P.No.9461 & 11040 of 2004;
- iv. **Vijay Spinners vs. Joint Commissioner (CT-III(SMR)), Chennai**, [2021] 92 GSTR407(Mad);

24. We have considered the arguments advanced by the learned counsel for the State(Writ Petitioner) and the learned counsel for the first respondent.

25. The Tribunal is the ultimate fact finding authority and therefore, ordinarily a Writ Court as also an Appellate Court is bound by the finding of facts rendered by the Tribunal.

26. The facts on record indicate that the Assessment was completed earlier on 31.03.1993. Thereafter, an inspection was carried out on



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19.05.1995, which led to issue of a notice on 13.07.1997, which culminated in a Re-Assessment Order dated 21.04.1997 of the Assessing Officer.

27. Based on the aforesaid order, an Assessment Order came to be passed on 19.06.1997, for the Assessment Year 1995-1996, which is a subject matter of W.P.No.13029 of 2006, which has been delinked.

28. The facts on record indicate that despite, notice being issued prior to passing of order dated 21.04.1997, the first respondent assessee failed to reply to the same. Therefore, the Additional Appellate Assistant Commissioner vide order dated 27.01.1999, confirmed the revision order of the Assistant Commissioner dated 21.04.1997, vide order dated 27.01.1999, dismissed the appeal. Only in so far as levy of penalty, the matter was remanded back to the Assessing Officer to ascertain whether, penalty was to be levied under Section 12(3)(b) of the TNGST Act or under Section 16(2) of the TNGST Act.



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29. The Tribunal has however reversed the order of the Appellate Tribunal vide impugned order. Reading of the order of the Tribunal indicates that it is a common order passed for three Assessment Years. There is no discussion in so far as alleged branch transfer in Bangalore. The employee of the first respondent assessee was not only a Branch Manager of the first respondent assessee but also partner of M/s.Karthik Engineering to whom the invoices were raised from the Branch in Bangalore.

30. The movement of goods were directly to the M/s.Karthik Engineering, which had effected a first sale from Bangalore. Thus, there is a clear indication that the movement of goods from Coimbatore, Tamil Nadu to Karnataka was an interstate sale but was disguised as a Branch transfer.

31. Reference to various case laws without the discussion on the fact is to be construed is an erroneous conclusion on facts by the Tribunal. Merely because, the first sale was made by the dealer from Karnataka, *ipso facto*, would not mean that there was no interstate sale



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between the appellant and the said dealer from Karnataka, namely M/s.Karthik Engineering.

32. Mere location of the dealer in Karnataka at Door.No.36, J.C.Bose Road, Bangalore and appellants at 16-B, G.N.Lalbagh Road, Bangalore, *ipso facto*, would not justify a conclusion that there was a stock transfer first and thereafter a sale to the said dealer. Even then, a first sale would have taken place from a depot to the dealer in Karnataka, thereafter, a second sale from the dealer i.e., M/s.Karthik Engineering to its customer.

33. Under these circumstances, we are of the view that the order of the Appellate Tribunal allowing the appeal of first respondent assessee is un-sustainable. Therefore, we are inclined to interfere in this writ petition and accordingly allow the order dated 27.01.1999 of the Appellate Commissioner remitting the case back to the Assessing Officer to determine the penalty is correct and was wrongly interfered by the Appellate Tribunal.



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34. Since the dispute pertains to the Assessment Year 1992-1993, we direct the Assessing Officer to complete the exercise regarding the imposition of penalty within a period of three months from the date of receipt of a copy of this order, as was ordered by the Appellate Commissioner. Needless to state such order shall be passed after following Principles of Natural Justice.

35. In the result, the writ petition stands dismissed with the above observations. No costs.

[S.V.N., J.]

C.S.N., J.]

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Index : Yes/No

Internet : Yes/No

jen/rgm

To

The Secretary,

The Tamil Nadu Sales Tax Appellate

Tribunal (Additional Bench),

Coimbatore.



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Pre-delivery Order
in
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29.12.2022