

Before the Central Sales Tax Appellate Authority  
New Delhi

20<sup>th</sup> December, 2018

PRESENT

Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson

Appeal No(s)- CST / 5 – 6 / 2014

Name & address of the Parties : M/s Vinayaka Alloys Ltd.  
(Appellant(s) / Respondent (s) : versus  
State of Tamil Nadu & Ors.

Present for the appellant(s) : Mr. P. Rajkumar

Present for the respondent(s) : Mr. K.V. Vijayakumar, Advocate for  
State of Tamil Nadu  
Mr. K.V. Ram Kumar

ORDER

These two appeals can be disposed of by a common order because they relate to the same parties and facts and issues involved in them are similar. Appeal No. CST/ 5 /2014 arises out of STA No. 243 / 2003 and Appeal No. CST/ 6 / 2014 arises out of STA No. 56/ 2004. STA No. 243/2003 and STA No. 56/2004 were disposed of by the Tamil Nadu Sales Tax Tribunal ("Tribunal" for short), who is respondent no. 2 herein, by common order dated 27.08.2013. The said order is impugned in these appeals.

Brief facts of the case need to be stated. The appellant is a manufacturer of Iron and Steel products. The appellant's factory is situated at Ponneri. The appellant's registered

office is at Chennai. In the year 1995-96, the appellant returned total and taxable turnover of Rs. 2,94,04,692/- and Rs. 20,66,389/- respectively under the Central Sales Tax Act, 1956 ("the CST Act" for short). In the year 1996-97, the appellant returned total and taxable turnover of Rs. 99,20,097/- and Rs. 30,228/- respectively under the CST Act. In both the years, the appellant claimed deduction towards consignment sales. On 23.06.1995, the appellant's place of business was inspected. After perusing the records pertaining to consignment transfer to agents in other States, it was found that exemption on consignment sales was wrongly claimed. The Assessing Officer proposed to reject the exemption claimed on consignment sales for Rs.2,64,14,976/- and to treat those transactions as direct inter-state sales liable to be taxed @ 8% along with penalty under Section 9(2A) of the CST Act read with Section 12(3) of Tamil Nadu General Sales Tax Act, 1959 ("TNGST Act" for short). After calling for the objections and after considering the same, the Assessing Officer rejected the exemption claimed on consignment sales and levied tax and penalty as per the proposal vide the order dated 25.05.2001.

So far as the Assessment Year 1996-97 is concerned, the Assessing Officer vide his order dated 24.03.1999 had allowed deduction on consignment sales for Rs. 64,99,961/- based on the connected documents filed by the appellant at the time of checking of accounts. However, on the basis of inspection conducted on 22.12.1997, the Assessing Officer vide his order dated 30.06.1999 revised the assessment by rejecting the exemption on consignment sales for Rs. 64,99,961/-. The reason for revision, inter alia, was that the inspection conducted on 22.12.1997 disclosed that the goods were consigned to other States against pre-existing

orders from ultimate buyers and the agents sold the goods received from the assessee / principal immediately after landing, thereby acting as conduits. By the revision order dated 30.06.1999, the Assessing Officer has assessed the turnover of Rs. 64,99,961/- with tax @ 8% and penalty under Section 9(2A) of the CST Act read with Section 16(2) of the TNGST Act.

Against the original order dated 25.05.2001 for the year 1995-96 and revision order dated 30.06.1999 for the year 1996-97 the appellant preferred appeals before the Appellate Assistant Commissioner (CT), respondent no. 3 herein. Respondent no. 3 allowed the appeals in favour of the appellant holding that there was no clinching evidence to prove that the goods were moved to other States only on prior contract so as to treat the transactions as inter-state sales. Respondent no. 3 held that the conclusion of the Assessing Authority was based on mere surmises and guess and is not supported by any material on record. Respondent No. 3 set aside the tax and penalty levied on consignment sales and allowed the exemption on the same for both the years.

Aggrieved by these orders, the State of Tamil Nadu preferred appeals before the Tribunal. STA No. 243/2003 related to Assessment Year 1995-96 and STA No. 56/2004 related to the Assessment Year 1996-97. As stated above, the Tribunal, by common order dated 27.08.2013 disposed of those appeals. The said order is challenged in these appeals.

It is necessary to have a look at the impugned order passed by the Tribunal. The Tribunal has observed that in the year 1995-96, the appellant has effected consignment sales

through several agents in other States. One of them was Bhuwalka Trade Links (P) Limited. In the year 1996-97, the appellant has effected consignment sales only through a single agent Bhuwalka Trade Links (P) Limited, Bangalore. The Tribunal has further noted that from the consignment notes available in assessment files for both years, it is seen that the goods were consigned not only to the agent Bhuwalka Trade Links (P) Limited, Bangalore but also to Bhuwalka Steel Industries, Bangalore with the mention that freight to be billed at Madras. The record makes it evident that Bhuwalka Steel Industries is the sister concern of the agent Bhuwalka Trade Links (P) Limited and that the goods were moved from the appellant straight to Bhuwalka Steel Industries, but claim of consignment sales through Bhuwalka Trade Links (P) Limited was made. The Tribunal has in the circumstances held that the Assessing Officer's view is correct as regards agent Bhuwalka Trade Links (P) Limited for both years. However, with regard to other agents, there is no clinching evidence to corroborate the findings of inspection that the transactions were inter-state sales. The Tribunal, therefore, confirmed the findings of the Appellate Assistant Commissioner (CT) i.e. respondent no. 3 in allowing deductions on consignment sales to other agents in the year 1995-96. The Tribunal, however, set aside the order of respondent no. 3 in allowing deductions on consignment sales pertaining to agent Bhuwalka Trade Links (P) Limited in both years. The Tribunal remanded both the appeals to the Assessing Officer with a direction to peruse each transaction involving Bhuwalka Trade Links (P) Limited and its sister concern as goods were sent directly to both. This exercise is directed to be done after considering the relevant documents to be furnished by the appellant with respect to Bhuwalka Trade Links (P) Limited for both years. STA 243/03 which relates to 1995-96 is partly dismissed and partly allowed so far as tax liability is concerned. STA 56/04

which relates to 1996-97 is remanded. So far as penalty is concerned the Tribunal has observed that some of the transactions where goods were sent straightaway to the sister concern of the agent at Bangalore were also claimed as consignment sales in returns and books of accounts. There was therefore intention to evade tax and suppression of facts. In such cases penalty under Section 12 (3) (b) or 16(2) as the case may be is warranted. On the consignments relating to the agent Bhuwalka Trade Links (P) Limited which are otherwise found genuine, penalty cannot be levied. The Tribunal in the circumstances set aside the penalty levied on transactions for which deduction was allowed by respondent no. 3 and which was confirmed by it. Thus so far as penalty is concerned STA 243/03 (1995-96) is partly dismissed and remanded and STA 56/04 (1996-97) is remanded.

Mr. Rajkumar, Learned Counsel for the appellant has assailed the impugned order on several counts. Counsel has drawn my attention to the order passed by respondent no. 3. Counsel submitted that respondent no. 3 had passed a correct order after analyzing all the circumstances. The Tribunal erred in setting aside the said order partly. Counsel took me to the written submissions filed by the appellant before the Tribunal and submitted that the Tribunal has not considered the said submissions and has passed a wrong order. Counsel has reiterated those submissions. Counsel submitted that merely because the goods were immediately sold on receipt by the agent there cannot be a presumption that there were pre-existing contracts. Unless and until specific proof is produced by the respondent there would be no assumption on that score. The respondent has to prove a conceivable link between the movement of goods and the implied contract, which the respondent has failed to do. Counsel

submitted that the Appellant had filed Form F declarations obtained from its agent and also filed evidences of dispatches and had thereby discharged its burden. The scope of the enquiry of the Assessing Officer is restricted to finding out whether the particulars contained in Form F declarations are correct or not. Counsel submitted that merely because the goods were sold on the same date of arrival or two or three days after receipt of the goods at branch office that by itself will not take away the character of branch transfer. In this connection, Counsel relied on several judgments which reiterate the same proposition. Suffice it to refer to the judgments of the Madras High Court in State of Tamil Nadu v. P.M.P. Iron and Steel India Ltd.<sup>1</sup> and State of Tamil Nadu versus Coimbatore Pioneer Rolling Mills & Another<sup>2</sup>. Counsel submitted that the goods were standardized goods. They were not manufactured to the specification of any buyer. There was no compulsion to deliver them to a particular buyer. The movement of goods is not linked with any contract to come to a conclusion that there was inter-state transaction. In this connection, Counsel relied on the judgment of the Madras High Court in Ahura Welding Electrode Mfgs. Ltd.<sup>3</sup> and the judgment of the Karnataka High Court in Jindal Aluminum Ltd<sup>4</sup>. Reliance was also placed on State of Tamil Nadu versus Kalpana Lamp Components Pvt. Ltd., Madras<sup>5</sup>.

So far as penalty is concerned, Counsel submitted that merely because the appellant has claimed exemption on the turnover relating to consignment sales and the same is

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<sup>1</sup> 28 VST 370

<sup>2</sup> 30 VST 524

<sup>3</sup> 115 STC 626

<sup>4</sup> 126 STC 458

<sup>5</sup> TC Nos. 548 & 549 of 85.

disallowed that cannot be a valid and legal ground to impose penalty under Section 12(3)(b) of the TNGST Act in the absence of a best judgment of assessment under Section 12(2) of the TNGST Act. For imposing penalty under Section 12(3)(b) of the TNGST Act, the assessment should be a best judgment assessment under Section 12(2) of the TNGST Act. But in this case the turnover relating to consignment sales is available in the books of accounts of the appellant and the appellant has also claimed exemption in respect thereof in monthly returns. The Assessing Officer has after verifying the books of accounts and the returns filed by the appellant allowed the appellant's claim in the original assessment order. Merely because the Assessing Officer is taking a different stand in the assessment order to reverse the claim, that cannot be a valid ground to impose penalty under Section 12(3)(b) of the TNGST Act. Several judgments have been cited on this point. Suffice it to refer to the judgment of the Supreme Court in *Sree Krishna Electricals v. State of Tamil Nadu and Another*<sup>6</sup> and the judgment of the Madras High Court in *M/s Apollo Saline Pharmaceuticals Pvt. Ltd.*<sup>7</sup>. Counsel submitted that so far as reopening of the concluded assessment done by the Assessing Officer is concerned, it is necessary to refer to the judgment of this Authority in *Steel Authority of India Ltd. versus Secretary, Finance Department, Government of Karnataka and Others*<sup>8</sup> where it is held that having regard to *Ashok Leyland*<sup>9</sup> it is not open to the Assessing Authority to reopen the concluded assessment and to make reassessment even if new material came to light subsequently pointing to the inference that the transactions shown as stock transfers were in

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<sup>6</sup> 23 VST 249

<sup>7</sup> 125 STC 505

<sup>8</sup> [2007] 10 VST 451

<sup>9</sup> [2004] 3 SCC 1

fact inter-state sales. The reopening of concluded assessment done in this case is therefore illegal.

So far as the remand order passed by the Tribunal is concerned, Counsel placed reliance on judgment of the learned Single Judge of the Madras High Court in *Ashoka Sweets v. State of Tamil Nadu*<sup>10</sup> where a request for remand was turned down on the ground of lapse of time. Counsel submitted that in the circumstances the impugned order deserves to be set aside and may be set aside.

Mr. K.V. Vijayakumar learned Counsel for the State of Tamil Nadu supported the impugned order. Counsel submitted that the impugned order merely remands the matter and hence no interference is necessary with it. Counsel submitted that the material which came to light during inspection indicated that Bhuwalka Steel Industries, Bangalore is a sister concern of Bhuwalka Trade Links (P) Limited. The goods were delivered directly to Bhuwalka Steel Industries. Bhuwalka Trade Links (P) Limited was merely a conduit. Counsel submitted that reassessment proceedings were initiated only when inspection revealed that inter-state sales were camouflaged as consignment sales. Such re-opening of assessment is allowed by the Supreme Court in *Ashok Leyland*. Counsel submitted that the Assessing Officer is always at liberty to reject the Form F declarations on making enquiry if he finds them to be not genuine. Counsel submitted that in the circumstances there is no merit in the appeals and the appeals deserve to be dismissed.

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<sup>10</sup> [2011] 46 VST 275 (Mad)



At the outset it must be stated that the impugned remand order does not cover the entire claim for deduction made by the appellant towards consignment sales. It covers limited area. For the year 1995-96, the appellant returned total and taxable turnover of Rs.2,94,04,692/- and Rs. 20,66,389/- respectively under the CST Act. In the year 1996-97, the appellant returned total and taxable turnover of Rs. 99,20,097/- and Rs. 30,228/- respectively under the CST Act. After inspecting the business premises of the appellant and after following the procedure in light of the material disclosed in the inspection, the Assessing Officer rejected the exemption claimed on consignment sales for Rs. 2,64,14,974/- and treated those transactions as direct inter-state sales for the year 1995-96. For the assessment year 1996-97, the Assessing Officer allowed deduction on consignment sales for Rs. 64,99,961/- but on inspection of the business premises of the appellant, the Assessing Officer revised the assessment in light of material disclosed in the inspection after following due procedure. He rejected the exemption claimed on consignment sales for Rs. 64,99,961/-. Against these orders the appellant preferred appeals before the Appellate Assistant Commissioner (CT), respondent no. 3 herein, who allowed the appeals. The State of Tamil Nadu preferred appeals against the said orders of respondent no. 3 to the Tribunal. The Tribunal by the impugned order while disposing off those appeals remanded the matter to the Assessing Officer. The Tribunal found that in the year 1995-96, the appellant had effected consignment sales through several agents in other States. One of them was Bhuwalka Trade Links (P) Limited, Bangalore. The Tribunal, further, found that in the year 1996-97, the appellant had effected consignment sales only through a single agent i.e. Bhuwalka Trade Links (P) Limited, Bangalore. The Tribunal noted that Bhuwalka Steel Industries is the sister concern of the appellant's agent i.e. Bhuwalka Trade

Links (P) Limited and the goods were moved from the appellant straight to Bhuwalka Steel Industries but claim of consignment sales through agent - Bhuwalka Trade Links (P) Limited was made. The Tribunal found that Bhuwalka Trade Links (P) Limited was merely a conduit and in the circumstances came to a conclusion that the transactions of the appellant with Bhuwalka Trade Links (P) Limited where goods had directly gone to Bhuwalka Steel Industries were inter-state sales. In the circumstances, the Tribunal confirmed the findings of the Appellate Assistant Commissioner (CT) i.e. respondent no. 3 herein, whereby respondent no. 3 had allowed deduction on consignment sales made by the appellant to other agents in the year 1995-96. On this aspect it concurred with respondent no. 3 that there was no clinching evidence to corroborate the findings of inspection that the said transactions were inter-state sales. The order of respondent no. 3 allowing deduction on consignment sales made to the agent Bhuwalka Trade Links (P) Limited was set aside for the year 1995-96 and 1996-97. Thus the Tribunal found that the appellant's transactions with Bhuwalka Trade Links (P) Limited were suspect. The claim of the appellant for deduction regarding rest of the transactions was confirmed. The State of Tamil Nadu has accepted the impugned order so far as it confirmed the deduction on consignment sales to other agents. It has not preferred appeal against that part of the impugned order. These appeals, therefore, are concerned only with appellant's transactions with Bhuwalka Trade Links (P) Limited for both the years i.e. 1995-96 and 1996-97. The Tribunal has remanded the matter to the Assessing Officer only to the extent of the claim of deduction on consignment sales made by the appellant qua transactions with Bhuwalka Trade Links (P) Limited. Now the question is whether this remand order deserves to be disturbed.

What has weighed with the Tribunal is the fact that in some of the transactions goods were sent straight to the appellant's sister concern i.e. Bhuwalka Steel Industries yet claim of stock transfer was made. The Tribunal, therefore, was of the view that there was intention to evade tax and there was suppression of facts. It was argued by Counsel for the appellant that there are a series of judgments of this Authority and of various Tribunals and also of the Supreme Court which state that merely because the goods were sold on the same date of arrival or two or three days after receipt of the goods at branch office one cannot conclude that there was inter-state sale and no branch transfer. There can be no debate over this proposition. A solitary circumstance may not in a given fact situation lead to a conclusion that there was no stock transfer. But if there are other attendant circumstances like sale to a single party in same quantity, the Tribunal can conclude that there was an intention to evade tax by projecting the inter-state sales as stock transfers. It all depends on facts and circumstances of each case. There are no rigid formulas to be followed while considering whether there is inter-state sale or stock transfer. In this case the record made it clear that Bhuwalka Steel Industries is a sister concern of Bhuwalka Trade Links (P) Limited. Since the goods sent directly to the sister concern of the appellant's agent i.e. Bhuwalka Trade Links (P) Limited, the Tribunal has drawn the conclusion that the said transactions are suspect and need to be investigated. In my opinion, no fault can be found with the Tribunal because it has taken such a view. But since the Tribunal has remanded the matter in all fairness it should be treated as tentative or prima facie view.

So far as reopening of assessment is concerned, it is true that in Ashok Leyland, the Supreme Court has held that reopening of the assessment can be done on the limited grounds such as fraud, misrepresentation, collusion etc. In this connection, it is necessary to have a look at the notice dated 14.05.1999 sent by the Assessing Officer to the appellant proposing revision of the assessment for the year 1996-97. Following paragraph of the said notice is material:

"The consignments have not been moved in the ordinary course of business as stock transfer from the State of Tamil Nadu to the State of Karnataka. The consignments have been moved against specific orders for specific quantities under pre-existing contract of sale as decided in the case of Tvl. Haryana Iron and Steel Rollings Mills verses State of Haryana and in the case of Tvl. Mehta Corpn. Industries versus State of Haryana. The movements of the goods have been occasioned as an incidence of contract of sales already entered into with the buyer at the other end and thereby the Inter-state sale under section 3(a) of the CST Act has been camouflaged as consignment sale under section 6A of the CST Act."

Thus the Assessing Officer came to a conclusion on inspection that inter-state sale under Section 3(a) of the CST Act has been camouflaged as consignment sale under Section 6A of the CST Act. Thus it is only when the Assessing Officer came to a conclusion that there was deceit or misrepresentation that it sent a notice of revision. Therefore no fault could be found with the revision of assessment proceeding. However, taking an overall view of the matter I feel that the Tribunal while remanding the matter to the Assessing Officer should have left the Assessing Officer free to come to his conclusion after taking into consideration all the relevant circumstances independently and in accordance with law. Pertinently, the Tribunal has directed the Assessing Officer to decide the issue after considering relevant documents to be furnished by the appellant with respect to Bhuwalka Trade Links(P) Limited for both years.

Therefore, in all fairness, after remand the matter needs to be examined independently and in accordance with law. It is, therefore, necessary to give a direction to the Assessing Officer to carry out the exercise independently and in accordance with law after taking into consideration relevant documents and all attendant circumstances.

So far as penalty is concerned, the Tribunal has bifurcated the order of penalty imposed by the Assessing Officer. It is observed that penalty would be warranted for those transactions which have been claimed as consignment sales for the consignments which were straightaway sent to Bhuwalka Steel Industries, Bangalore. It is held that for the other consignments relating to the agent Bhuwalka Trade Links (P) Limited, which are otherwise found genuine penalty cannot be levied because there is no willful suppression.

Needless to say that after the transactions are independently viewed by the Assessing Officer he may have to reframe the order of penalty if his findings are adverse to the appellant. He will have to, however, take into consideration the submission of the appellant that for imposing penalty under Section 12(3)(b) of TNGST Act, the assessment should be a best judgment assessment under Section 12(2) of the TNGST Act. But in this case turnover relating to consignment sales is reflected in the books of accounts of the appellant and the appellant has claimed exemption in respect thereof in monthly returns. It is urged that because the Assessing Officer takes a different stand in the assessment order to reverse the claim that cannot be a valid ground to impose penalty under Section 12(3)(b) of the TNGST Act. This submission will have to be taken into account by the Assessing Officer. It appears that this

submission was made before the Tribunal but it did not receive proper attention from the Tribunal. It needs to be independently considered.

Counsel for the appellant has drawn my attention to the judgment of the Madras High Court in Ashoka Sweets where a request for remand was turned down on the ground of lapse of time. The said judgment in my opinion can be distinguished from the present case on facts. There the request was made to the High Court to remand the matter. Here the remand order is passed by the Tribunal and its validity is challenged before this Authority. There is no request for remand made to this Authority. Therefore, Ashoka Sweets case has no application to the facts of this case. So far as Form F declarations are concerned, it is open to the Assessing Officer to make enquiry and reject them if they are not found genuine. Section 6A(2) of the CST Act is relevant for this purpose.

In the circumstances, the appeals are dismissed. The Assessing Officer is directed to consider the individual transactions of the appellant with Bhuwarka Trade Links (P) Limited afresh independently and in accordance with law after considering all the attendant circumstances. The Assessing Officer is expected not to unnecessarily widen the scope of remand. While parting, it is made clear that this Authority has not expressed any final opinion on the merits of the case. All contentions may be examined independently and in accordance with law.

Sd/-  
(Justice Ranjana P. Desai)  
Chairperson