

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 05 OF 2015

(Arising order out of date 16.09.2014 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA No. 135 of 2009 and CTA No. 13 of 2007)

Shree Karthik Papers Limited

1025 Sathy Road, Lakshmipuram,
Ganapathy, Coimbatore

.....Appellant

VERSUS

1. The Commercial Tax Officer

Ganapathy Assessment Circle
Coimbatore – 641 006

**2. The Tamil Nadu Sales Tax
Appellate Tribunal (Additional Branch),**

Represented by its Secretary
Coimbatore – 641 018

3. The State of Tamil Nadu

Represented by the Secretary,
Commercial Taxes & Religious Department,
Fort. St. George,
Chennai – 600 009

4. The State of Karnataka

Represented by the Secretary,
Department of Revenue
Bangalore – 560 001,
Karnataka

5. The State of Kerala,

Represented by the Secretary,
Department of Revenue
Kerala – 695 001,
Thiruvananthapuram

6. The State of Orissa

Represented by the Secretary,
Department of Revenue,
Bhubaneswar – 751 001,
Orissa

7. The State of West Bengal

Represented by Secretary,
Department of Revenue
Calcutta – 700 015

8. The Union of India

Through the Secretary
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 001

.....Respondents

APPEARANCE:

Shri J Rajesh, Shri Deepak Joshi, Shri M D Arsalan Ahmed, Shri Rudra Pratap and Shri Yashwardhan, Advocates for the Appellant

Shri C. Kranthi Kumar with Ms. Misha Rohatgi, Advocates for the State of Tamil Nadu

Ms. Madhumita Bhattacharjee with Shri B. Jagat Nayan for the State of West Bengal

Ms. Pritha Srikumar Iyer and Shri Ankit Swami, Advocates for the State of Karnataka

Shri Soumyajit Pari and Shri Varun, Advocates for the State of Orissa

Shri Nishe Rajen Shonker and Mrs. Devika A.L. Advocates for the State of Kerala

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: 13.02.2026

Date of Decision: 02.06.2026

FINAL ORDER NO. 51010/2026**JUSTICE DILIP GUPTA:**

This appeal has been filed by Shree Karthik Papers Limited¹ against that part of the order dated 16.09.2014 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore² that has partly allowed CTA Appeal No. 135 of 2009 filed by the State of Tamil Nadu. It needs to be noted that the Additional Appellate Assistant Commissioner, Coimbatore³, by order 30.11.2006, for the Assessment Year 1995-96 held that the assessment made on a turnover of Rs. 1,51,28,219/- for sales after 01.08.1995 should be on consignment sale basis and not on inter-State sale basis and, accordingly, penalty of Rs. 25,64,365/- imposed on the appellant was reduced to Rs. 2,21,858/-. The appellant filed CTA Appeal No. 13 of 2007 before the Sales Tax Appellate Tribunal questioning the imposition of penalty of Rs. 2,21,858/-, while the State of Tamil Nadu filed CTA Appeal No. 135 of 2009 for restoration of assessment on the turnover of Rs.

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1. the appellant
 2. the Sales Tax Appellate Tribunal
 3. the Additional Appellate Assistant Commissioner

1,51,28,219/- by treating the transaction as inter-State sale and enhancement of penalty to Rs. 25,64,365/-. The Sales Tax Appellate Tribunal dismissed CTA Appeal No. 13 of 2007 filed by the appellant. CTA Appeal No. 135 of 2009 filed by the State of Tamil Nadu was partly allowed and partly dismissed. The Sales Tax Appellate Tribunal did not interfere with the order passed by the Additional Appellate Assistant Commissioner so far as the branch transfer of Rs. 24,28,601/- was concerned, but it set aside the order of the Additional Appellate Assistant Commissioner to the extent that sales after 01.08.1995 were directed to be treated as consignment sales and held that inter-State sales had taken place. The order of the assessing authority in respect of sales turnover of Rs. 1,51,28,219/- was, therefore, restored with penalty of Rs. 25,64,365/-.

2. This appeal has been filed by the appellant to assail that portion of the order passed by the Sales Tax Appellate Tribunal that has allowed CTA Appeal No. 135 of 2009 filed by the State in part by restoring the order of the assessing authority on sales turnover of Rs. 1,51,28,219/- as also the levy of penalty to the extent of Rs. 25,64,365/-. The appeal has also challenged the order passed by the Sales Tax Appellate Tribunal dismissing CTA Appeal No. 13 of 2007 filed by the appellant.

3. The appellant contends that it is situated in the State of Tamil Nadu and is a manufacturer of paper and paper products. It had sold the paper products both on intra-State and inter-State basis, apart from sales through agents to places outside Tamil Nadu, in the State of Karnataka, Kerala, Orissa and West Bengal.

4. On 26.07.1995, the Enforcement Wing of the Commercial Tax Office, Ganapathy Assessment Circle, Coimbatore⁴ conducted inspection of the

4. the Commercial Tax Officer

premises of the appellant. On receipt of the report, the Commercial Tax Officer, completed the assessment for the year 1995-96 by order dated 21.03.1997 for a total taxable turnover of Rs. 5,74,80,750/- without making distinction between inter-State and consignment sale as claimed by the appellant.

5. The appellant filed an appeal before the Assistant Commissioner, Coimbatore⁵ challenging the assessment order dated 21.03.1997. The Assistant Commissioner, by order dated 31.12.1997, set aside the assessment order and remanded the matter for a de-novo examination.

6. The Commercial Tax Officer re-assessed the transaction made by the appellant in the Assessment Year 1995-96 and calculated the turnover by order dated 31.07.1998 in the following manner:

- (a) inter-State sale of paper covered by C Forms of Rs. 3,44,49,639/-;
- (b) inter-State sale of paper not covered by C Forms of Rs. 54,17,412/- ;
- (c) sale returns of Rs. 28,200/- ;
- (d) stock transfer to branch at Kerala of Rs. 24,28,600/-; and
- (e) consignment sales to outside the State of Rs. 1,54,28,218/-.

7. The appellant had sought an exemption on the turnover of Rs. 1,54,28,218/- towards consignment sales to other States for the period from 01.08.1995 to 31.03.1996. However, this claim was disallowed by the Commercial Tax Officer by the aforesaid order dated 31.07.1998 for the reason that the appellant had received the full value of goods before despatch of goods by discounting the bills through banks and the goods dispatched to agents were sold as such by the agents in the same quantity.

5. the Assistant Commissioner

The tax for turnover for the consignment sale of Rs. 1,54,28,218/- after 01.08.1995 was determined at Rs. 15,42,821/- with penalty of Rs. 25,54,365/-.

8. The appellant filed an appeal before the Additional Appellate Assistant Commissioner against the order dated 31.07.1998. The Additional Appellate Assistant Commissioner set aside the order dated 31.07.1998 by order dated 30.11.2006 and held that the conclusion arrived at by the assessing authority was based on the inspection conducted on 26.07.1995 and the slips found during inspection issued by the agents, which all related to the period prior to 01.08.1995. The Additional Appellate Assistant Commissioner, therefore, set aside the assessment made on a turnover of Rs. 1,51,28,219/- and held that the transaction to be consignment basis and not inter-State sales. Penalty was also reduced to Rs. 2,21,858/-.

9. The appellant filed CTA No. 13 of 2007 before the Sales Tax Appellate Tribunal against the order dated 30.11.2006 questioning the validity of the penalty of Rs. 2,21,858/-, whereas the State of Tamil Nadu filed CTA No. 135 of 2009 for restoration of assessment on a turnover of Rs. 1,51,28,219/- by treating the transaction as inter-State sale and also for restoration of penalty of Rs. 25,64,365/-.

10. The Sales Tax Appellate Tribunal, by order dated 16.09.2014, disallowed the exemption claimed on the consignment sale from 01.08.1995 for the reason that the appellant had paid the central sales tax dues prior to 01.08.1995 for the transfer of goods outside the State treating it as inter-State sale. The Sales Tax Appellate Tribunal held that if the inspection had taken place in March 1996, the appellant would have declared all the sales as inter-State sales, including the turnover of Rs. 1,51,28,219/- upto 31.03.1996. The Sales Tax Appellate Tribunal also noticed that as blank

cheques were received from the agent, the appellant was engaged in inter-State trade sale. Another factor that weighed with the Sales Tax Appellate Tribunal was that debit note had been issued and the appellant had also received advance payment from the dealers. The Sales Tax Appellate Tribunal, therefore, restored the order of assessing authority in respect of the sales turnover of Rs. 1,51,28,219/- after 01.08.1995 and the consequential penalty levied by the assessing authority. The relevant portions of the order are reproduced below:

“17. We have examined all with reference to the records and rival findings. **The inspection of the place of business was made on 26.7.95.** Certain slips were recovered. From those slips, the facts as stated in (i) to (vi) are found out by the Assessing Authority and based upon which disallowed the claim of consignment sales to the value of Rs. 1,51,28,219/-. Even though the slips revealed only certain facts of advance receipts, blank cheque, debit notes, discounting of bills etc., **the respondent-dealer had changed the mind and declared the consignment sales, claimed upto 31.7.95 as inter-state sales. If the inspection had taken place in March, 1996, it is needless to say that the respondent-dealer would have declared all the sale as inter-state sales, including the impugned turnover of Rs. 1,51,28,219/- upto 31.3.1996. By having declared the consignment sales turnover of Rs. 86,60,188/- upto 31.7.95 as inter-state sales, it clearly brings out the camouflaged nature of transaction of inter-state sale as consignment sales for the same dealers from 1.8.95 onwards.**

18. Further, there are evidences that blank cheques have been received from the agent by the respondent-dealer which proves the fact that the respondent-dealer had effected the inter-state sales to the agent and later disguised them as consignment sales.

19. **In the case of principal-agent relationship, there could not be any debit or credit notes on account of goods damaged or wastages.** Whatever

the things happened in the principal-agent relationship, it should be reflected only in the account statement furnished every month. Issuing debit notes then and there to the principal is a result of the character of inter-state only.

20. Further, all payments received, bills discounted are construed as the prior payments received from the dealers Tvl. Sivaram Traders, Bangalore, Aswin Paper Agencies, Konark Trading Company, Cuttack and Sathis Brothers, Calcutta towards the inter-state sales to these dealers and later camouflaged as consignment sales. Hence, by applying the ratio of the judgment reported in 123 STC 487 in the case of Sri Durga Distilleries v. CCT, Bangalore, we declare that, the respondent-dealer had actually effected inter-state sales to all the dealers viz., Tvl.Shivaram Trades, Bangalore, Aswin Paper Agencies, Trichur, Konark Trading Co., Cuttack and Sathis Brothers, Calcutta which are evidenced from the findings of the Enforcement Wing Officers and as well as Assessing Authority.

21. Hence, we have no hesitation to set aside the order of the Id. Addl. Appellate Assistant Commissioner and restore the order of the Assessing Authority in respect of the sales turnover of Rs. 1,51,28,219/- assessed to tax. Consequently, the penalty levied by the Assessing Authority on this count is also restored."

(emphasis supplied)

11. Feeling aggrieved, the appellant has filed this appeal against this portion of the order order dated 16.09.2014 passed by the Sales Tax Appellate Tribunal.

12. Shri J. Rajesh, learned counsel for the appellant assisted by Shri Deepak Joshi, Shri M D Arsalan Ahmed, Shri Rudra Pratap and Shri Yashwardhan made the following submissions:

- (i) The impugned order has been passed on the basis of mere assumptions, conjectures and surmises;

- (ii) The exemption claimed on consignment sales of Rs. 1,51,28,219/- relates to sale after 01.08.1995. There are two sets of transactions which were carried out by the appellant. The first is from 01.04.1995 to 31.07.1995 and the second is from 01.08.1995 to 31.03.1996. The appellant paid the central sales tax dues for the period from 01.04.1995 to 31.07.1995 but claimed that consignment sale had taken place during the period from 01.08.1995 to 31.03.1996. The assessing authority disallowed the claim of the appellant from 01.08.1995 to 31.03.1996 on the basis of materials found on inspection by the Commercial Tax Officer in the place of business of the appellant on 26.07.1995;
- (iii) The Sales Tax Appellate Tribunal has wrongly adduced liability for the transaction done between 01.08.1995 and 31.03.1996 on the basis of documents recovered prior to 31.07.1995;
- (iv) It is a well settled law that merely because there are some discrepancies in the pre-search period, it cannot lead to any presumption that the discrepancies would have continued in the post-search period, particularly when factually there was no evidence at all;
- (v) Assessment has been made on pure guess work with no material. If no adverse material was found despite scrutiny, the account books cannot be rejected on suspicion and surmises alone. In support of this contention, learned counsel placed reliance on the following decisions:
- (a) **CIT vs. Anand Kumar Deepak Kumar**⁶;
- (b) **Anantharam Veerasinghaiah & Co. vs. CIT**⁷;

6. (2007) 294 ITR 497
7. (1980) Supp SCC 13

- (c) **Jagadeesh Trading Company vs. Additional Commissioner of Commercial Taxes, Zone II, Bangalore⁸;**
- (d) **State of Karnataka vs. N.P. Bharmaiah & Sons⁹;**
- (e) **Sarada Mines P. Ltd. vs. State of Orrisa¹⁰;**
- (f) **Commissioner, Sales Tax, U.P. Lucknow vs. Saurashtra Chemicals¹¹;** and
- (g) **Hemraj Udyog vs. Commissioner of Trade Tax, U.P. Lucknow¹²;**
- (vi) The Sales Tax Appellate Tribunal grossly erred in relying on the judgment of the Karnataka High Court in **Sri Durga Distilleries vs. Commissioner of Commercial Taxes, Bangalore¹³** as this decision has no applicability to the facts of the case and is clearly distinguishable;
- (vii) The Sales Tax Appellate Tribunal failed to consider the relevant facts; relevant material on record; the relevant agreement as well as finding of facts returned by Additional Appellate Assistant Commissioner in the order dated 30.11.2006;
- (viii) The appellant had submitted Form F before the Sales Tax Appellate Tribunal issued by the agents obtained by the issuing States confirming the transfer as consignment sale in terms of section 6A of the Central Sales Tax Act, 1956¹⁴. However, the Sales Tax Appellate Tribunal failed to consider the same. Form F is a statutory document that confers the transaction of goods outside the State to be a consignment

8. (1998) 111 STC 117
 9. (2011) 41 VST 498
 10. (2017) 103 VST 122
 11. (1996) 100 STC 448
 12. (1997) 105 STC 418
 13. (2001) 123 STC 487
 14. the CST Act

sale. In support of this contention, learned counsel placed reliance upon the following decisions:

- (a) **Lux Hosieries Industries Ltd. vs. The Commercial Tax Officer and ors.**¹⁵;
 - (b) **C.P.K. Trading Company vs. Additional Sales Tax Officer, III Circle, Mattancherry**¹⁶;
 - (c) **Associated Cement Companies vs. A.C. (CT)**¹⁷;
 - (d) **Hindustan Petroleum Corporation Limited vs. The Deputy Commissioner (CT)-II (FAC)**¹⁸;
- (ix) Discounting of bills and goods sold on the same date of receipt by the agents does not convert a consignment sale into an inter-State sale;
- (x) Mere existences of pre-existing purchase orders, prior to movement of goods, does not automatically imply that the entire movement would constitute an inter-State sale, particularly when the goods are stock transferred in the regular course of business. In this connection, reliance has been placed on the decision of the Tribunal in **State of Maharashtra vs. CMS Computers Ltd.**¹⁹;
- (xi) The impugned order heavily relies on certain documents to re-characterize consignment sales as inter-State sales. All the documents relate to the period prior to 01.08.1995. These documents cannot be held to be evidence for transactions carried out subsequent to 31.07.1995; and
- (xii) The imposition of penalty upon the appellant is not justified.

15. **MANU/TN/2527/2016**

16. **(1990) 76 STC 211**

17. **2009 SCC Online Mad 791**

18. **MANU/TN/2879/2016**

19. **CST Appeal No. 01 of 2017 decided on 03.01.2025 (Tri.-Del.)**

13. Shri C. Kranthi Kumar, learned counsel for the State of Tamil Nadu assisted by Ms. Misha Rohatgi made the following submissions:

- (i) The transfer to alleged agents in Karnataka, Kerala, Orissa and West Bengal amounting to a turnover of Rs. 1,51,28,219/- are not consignment sales but are inter-State sales based on a pre-existing contracts and the presence of the agents is merely a camouflage to give the transfers a colour of consignment sale;
- (ii) As per section 6A(2) of the CST Act, as it then existed during assessment year 1995-96, the assessing authority can make an inquiry as it may deem necessary to ascertain the veracity of the particulars furnished in Form F and can accept or reject Form F based on the outcome of such inquiry. Further, the assessing authority while making the inquiry to ascertain the veracity of the particulars contained in the declaration in Form F, can call for any other information;
- (iii) It is settled principle of law that when delivery of goods to ultimate buyer is made in same lot and same quantity on the same or next day as received by the agent, the assessing authority can draw an inference that there is a pre-existing contract. In such a situation, it can be inferred that the truck loads of goods were not dispatched as and when they were manufactured but the same were dispatched in compliance of specific orders wherein the specific quantities that were to be purchased were mentioned. In this connection, reliance has been placed on **Mehta Group of Industries vs. State**

of Haryana²⁰ and Haryana Iron and Steel Rolling Mills vs. State of Haryana²¹; and

- (iv)** The levy of penalty is justified as there is wilfull suppression, concealment coupled with camouflage of the transactions as consignment sales and fabrication of records in the instant case.

14. Ms. Madhumita Bhattacharjee, learned counsel for the State of West Bengal assisted by Shri B. Jagat Nayan made the following submissions:

- (i)** M/s. Satish Brothers and Co., a registered dealer situated in West Bengal, had procured goods directly from the appellant, as is clearly borne out from the permit folders and purchase statements produced during assessment. These details show that the movement of goods from the State of Tamil Nadu to State of West Bengal was not a mere stock transfer but a movement occasioned by a prior contract of sale, thereby attracting section 3(a) of the CST Act;
- (ii)** It is settled law that where movement of goods from one State to another State takes place in pursuance of a pre-existing contract of sale, such movement constitutes as inter-State sale. The claim of "stock transfer" is, therefore, unsustainable;
- (iii)** M/s. Satish Brothers and Co., applied for eight Form F declarations covering the aforesaid transactions, but only six declarations were issued. The remaining transactions were unsupported by valid statutory declarations;
- (iv)** Under section 6A(1) of the CST Act, the burden of proof lies entirely upon the dealer claiming exemption to establish that the movement of goods was otherwise than by way of sale.

20. (1989) 75 STC 428

21. (1990) 77 STC 211

The appellant failed to furnish complete Form F declaration and other corroborative evidence and cannot claim the benefit of stock transfer; and

- (v)** The Sales Tax Appellate Tribunal rightly held that the transactions between the appellant and M/s. Satish Brothers and Co., were not genuine stock transfers but inter-State sales.

15. Ms. Pritha Srikumar Iyer and Shri Ankit Swami, learned counsel for the State of Karnataka, Shri Soumyajit Pari and Shri Varun, learned counsel for the State of Orissa, and Shri Nishe Rajen Shonker and Mrs. Devika A.L., learned counsel for the State of Kerala, however, supported the contention advanced on behalf of the appellant.

16. The submissions advanced by the learned counsel for the appellant, learned counsel for the State of Tamil Nadu, learned counsel for the State of West Bengal and the learned counsel for the other respondent States have been considered.

17. The issue that arises for consideration in this appeal is regarding the sale turnover of Rs. 1,51,28,219/- after 01.08.1995 in the Assessment Year 1995-96. The appellant claims that the transactions carried out by the appellant from 01.08.1995 to 31.03.1996 were not inter-State sales but were consignment sales and penalty also could not have been levied on the appellant. The Sales Tax Appellate Tribunal has, however, treated the transactions as inter-State sales and has confirmed the penalty levied by the assessing authority.

18. To appreciate the issue it would be useful to reproduce the relevant portions of the Agreement dated 31.07.1995 between the appellant and its agent. The Principal referred to in the Agreement is the appellant and M/s.

Konark Trading and Co., Cuttack is referred to as the agent. The relevant portions of the Agreement are reproduced below:

"The agents have agreed to place their services for selling the products of the principals on the following terms which are reduced to writing.

1. This Agreement will be effective for period of two years from 1st August, 1995, unless revised in the meanwhile.
2. **The principal will consign to the agent their products purely depending upon availability from time to time as per marketing conditions. The agents will receive the stocks, pay the freight charges, unload the same and stock and sell the goods.**
3. **The agent will sell the goods at the price recommended by the principal. The agents are entitled to recover the ex-mill price fixed by the principal, besides, the freight and handling charges for movement of the goods to the agent at equated rates fixed by the Principal. The agent will also collect local taxes, octroi etc, while effecting sales, and remit the same to the appropriate authorities.**
4. The agent will make the best possible effort to promote the sales on behalf of the Principal.
5. **The goods entrusted to the agent will remain the property of the Principal. Hence the Principal will insure the goods in transit as well as in the custody of the agent till sold.**
6. **The agent will render monthly statement of account, along with copies of invoices crediting entire sale proceeds and debiting only the freight and handling charges, local taxes and commission.**
7. **The agent will endeavour to collect the sale proceeds and remit the same to the Principal at the time of rendering the sale details periodically vis., every month / fort-night.**

8. **As a measure of business convenience, the principals are also at liberty to secure advances by drawing Hundies on the Agents based on the approximate value of the goods consigned. This advance is not considered as sale value and is collected to ensure that the Agents expeditiously dispose of the goods of the principals entrusted to them, as well as to realise the proceeds from the customers on sale of the products on behalf of the principals.**

9. The agent will maintain a proper godown and infrastructure to run an office. The agent will employ sufficient number of Staffs to be paid from out of the commission to properly maintain the godown and run the office. The stocks held by the agent as well as the premises of the agent are open to inspection by the Principal at all reasonable times.

10. **The agent will not sell the goods at prices less than recommended by the Principal unless authorised by the Principal."**

(emphasis supplied)

19. It would be seen that the Agreement provides that the agent had agreed to provide services for selling the products of the principal on certain terms and conditions. Clause 2 provides that the principal will consign to the agent their products purely depending upon availability from time to time as per marketing conditions. The agents have to receive the stocks, pay the freight charges, unload the same and stock and sell the goods at the price recommended by the principal. They can, however, recover the ex-mill price fixed by the principal, the freight and handling charges for movement of the goods to the agent at rates fixed by the principal. Clause 4 provides that the agent will make the best possible efforts to promote the sales on behalf of the principal. Clause 5 provides that the goods entrusted to the agent will remain the property of the principal. Hence, the principal will insure the goods in transit as well as in the custody of the agent till sold. Clause 7

provides that the agent will endeavour to collect the sale proceeds and remit the sale to the principal at the time of rendering the sale. Clause 8 provides that as a measure of business convenience, the principal would also be at liberty to secure advances by drawing hundies on the agents based on the approximate value of the goods consignment. However, this advance should not be considered as sale value and is collected only to ensure that the agents expeditiously dispose of the goods of the principal entrusted to them.

20. It is in the light of the aforesaid terms of the Agreement that it has to be seen whether inter-State sale had taken place during the movement of the goods from the State of Tamil Nadu where the principal was located to other States where the agents were located.

21. To appreciate this issue, it would be appropriate to examine sections 3, 6 and 6A of the CST Act and the relevant portions of these sections are reproduced below:

“3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

- a. occasions the movement of goods from one State to another; or
- b. is effected by a transfer of documents of title to the goods during their movement from one State to another.

6. Liability to tax on inter-State sales.-

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, **be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:**

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. –

(1) **Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.**

(2) **If the assessing authority is satisfied** after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section(1) are true, **he may**, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, **make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.**

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(emphasis supplied)

22. The provisions of sections 3 and 6A of the CST Act were examined at length by the Supreme Court in **Hyderabad Engineering Industries vs. State of Andhra Pradesh**²² and the relevant portion of the judgment is reproduced below:

"20. For a sale to be in the course of inter-State trade or commerce under Section 3(a), two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another within the meaning of clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State. With a view to find out whether a particular transaction is an inter-State sale or not, it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase.

23. It is an accepted position in law that a mere transfer of goods from a head office to a branch office or an inter-branch transfer of goods, which are broadly brought under the phrase 'Branch transfers' cannot be regarded as sales in the course of inter-State trade, for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of these stock transfers."

(emphasis supplied)

23. What transpires from the aforesaid decision of the Supreme Court in **Hyderabad Engineering** is that for a sale to be in the course of inter-state trade or commerce under section 3(a) of the Central Sales Tax Act, there must be a sale of goods and such sale should occasion the movement of the

22. (2011) 4 SCC 705

goods from one State to another. To find out whether a particular transaction is an inter-state sale or not, it is essential to see whether the movement of the goods from one State to another is as a result of a prior contract of sale. Under section 6A, if the dealer claims that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. The mode of discharge of this burden of proof has also been provided in the form of a declaration in form 'F'. However, if the department does not take advantage of the presumption under section 3(a), but shows a positive case of sale in the course of trade or commerce to make it liable to tax under section 6, the declaration in form 'F' under section 6A would be of no avail. Mere transfer of goods from a head office to a branch office or inter-branch transfer of goods which broadly come under the phrase 'branch transfers' cannot be regarded as sale in the course of inter-State trade for the simple reason that a head office or branch cannot be treated as having traded with itself or sold articles to itself by means of stock transfers. A contract of sale of goods would be effective when a seller agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in presenti, it is called a 'sale'; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called 'an agreement to sell'. When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred are fulfilled, the 'agreement to sell' becomes a 'sale'. When the 'sale' or 'agreement to sell' causes or has the effect of occasioning the movement of goods from one State to another, irrespective of whether

the movement of goods is provided for in the contract of sale or not, or whether the order is placed with any branch office or any head office which resulted in the movement of goods, if the effect of such a sale is to have the movement of goods from one State to another, an inter-State sale would ensue and would result in exigibility of tax under section 3(a).

24. In the present case, as would be seen from the terms of the Agreement, sale had not taken place when the goods moved from the location of the principal to the location of the agent. It needs to be noted that the aforesaid Agreement that was executed on 01.08.1995 for a period of 2 years has not been doubted by the Sales Tax Appellate Tribunal. The appellant had discharged the initial burden of proof by providing the relevant documents as well as statutory forms.

25. The Sales Tax Appellate Tribunal has placed reliance on the transactions which were characterized by the appellant as inter-State sale for the period from 01.04.1995 to 31.07.1995. Reliance has been placed on the materials found during inspection at the place of business of the appellant on 26.07.1995. The Sales Tax Appellate Tribunal merely extrapolated the material and reasoning pertaining to the pre-inspection period i.e. 01.04.1995 to 31.07.1995 and applied the same to the subsequent period from 01.08.1995 to 13.03.1996. This view is not correct as the Sales Tax Appellate Tribunal was obliged to examine the Agreement that was entered into between the principal and the agent on 01.08.1995 for a period of two years commencing from 01.08.1995. Reliance on material found on 26.07.1995 is not justified.

26. It is also seen that the Sales Tax Appellate Tribunal upheld the conclusion of the assessing authority that "if the inspection had taken place in March, 1996, it is needless to say that the respondent dealer would have

declared all sales as inter-State sale". This finding is based purely on presumption and assumption. Once an Agreement had been entered into between the principal and agent from 01.08.1995, it would be the terms of Agreement that will govern the transactions. The mode of transactions prior to 01.08.1995 has no relevance and could not have formed the basis for determining whether the inter-State sale had taken place or not with effect from 01.08.1995.

27. The blank cheques referred to by the Sales Tax Appellate Tribunal that were received from agents were for the period prior to 01.08.1995. In fact, the findings recorded by the Sales Tax Appellate Tribunal are on the basis of material and evidence which existed prior to 01.08.1995.

28. The Sales Tax Appellate Tribunal placed reliance on the judgment of the Karnataka High Court in **Sri Durga Distilleries**. This decision was rendered under the Karnataka Sales Tax Act and the estimation was upheld on the possibility of adoption of similar pattern for sales effected locally within the State of Karnataka. The dispute in the present case relates to inter-State sales where ingredients of section 3(a) and (b) of the CST Act need to be established. In the present case, as noted above, the distinguishing factor is that an Agreement had been entered into w.e.f. 01.08.1995 and, therefore, it is this Agreement that will determine whether inter-State sale had taken place or not.

29. The findings recorded by the Additional Appellate Assistant Commissioner to hold that inter-State sale had not taken place needs to be referred to and they are:

"11. I have examined the above contentions of the assessing authority in the light of the counter arguments placed by the learned counsel at the time of hearing. **As rightly argued by the learned Authorised Representative, the character of**

consignment sales transactions would not get changed merely because the appellants had received money by discounting the bills with their bankers and raising hundis. In the decision reported in 4 TNCTJ P.179, the Honourable High Court of Madras, in T.C.(Appeal)No 39 of 1996 and TCM.P.No.28 of 1998 dated 25.6.98 has held that the documents produced by the assessee and accepted as genuine establish the consignment sales and merely because the appellants was able to discount the bills it cannot render the transactions between the consignor and consignee as liable to tax. The above findings of the High Court of Madras in the case of C.V.G. Industries Ltd has clearly negated the contention of the assessing authority. **The second objection raised by the assessing authority is that the consignment agents, in some cases, sold the goods in one lot to ultimate buyers which clearly established that the transactions which occasioned the movement of goods from the State of Tamil Nadu to other states were inter-State sales. As narrated earlier, such sale by the agents in bulk quantities, or in one lot could not change the character of the transaction. As rightly explained by the learned Authorised Representative, the immediate demand of the goods in other states necessitated the sales in bulk quantities or in one lot. The assessing authority had noted in the impugned proceedings that no accounts were produced by the appellants to show that freight and handling charges were borne by the appellants. But the statement of accounts received from the consignment sales agents and filed in the assessment file reveals that the consignment sales agents had debited the accounts of the appellants with the amount paid by them towards freight and handling charges.** For instance Tvl.Ashwin Paper Agencies had debited Rs.14535/- towards freight and handling charges in the month of August 95 and Rs.4590/-in the month of December 1995 etc. **In fact, clause-6 of the agreement stipulates that the agent will render monthly statement of account along with copies of**

invoices crediting entire sale proceeds and debiting only the freight and handling charges. Clause-5 of the agreement stipulates that the goods entrusted to the agent will remain the property of the Principal. Hence the Principal will insure the goods in transit as well as in the Custody of the agent till sold. These clauses in the agreements explain the nature of the transactions. The dominion and control over the goods, till they were sold, vested with the appellants.

12. The assessing authority had mentioned in the impugned proceeding about the recovery of certain slips by the inspecting officers of the Enforcement Wing and in fact he had held that those records clearly established that the transactions in question were inter state sales. **The inspection itself was conducted on 26.7.95. The slip relating to the placement of an order by M/s.Ashwin Paper Agencies dated 23.6.95, Xerox copy of a blank cheque issued by Konarak Trading Company, Cuttack, debit notes issued Tvl.Shivram Traders, Bangalore were all related to the period prior to 1.8.95. The appellants themselves volunteered to pay the CST due, treating the transaction prior to 1.8.95 as interstate sales. Those post transactions could not be held as evidence for rejecting the claim of genuine consignment sales transactions. After a thorough examination of the facts involved in this case, I am of the considered view that the assessment made Rs.1,51,28,219/- at 10% treating the transactions as inter state sales rejecting the claim of exemption as consignment sales is not legally tenable. I, therefore set aside the assessment made on a turnover of Rs.15128219/-assessed at 10% CST."**

(emphasis supplied)

30. It would be seen that the following findings have been recorded by the Additional Appellate Assistant Commissioner in the aforesaid order:

- (i)** The consignment agents had submitted Form F declarations for the value of goods received by them for effecting consignment sales and had also submitted statement of accounts;
- (ii)** The appellants had submitted consignment invoice and the Form for the claim of exemption as consignment sales;
- (iii)** Character of consignment sales transactions would not get changed merely because the appellants had received money by discounting the bills with their bankers and raising hundis;
- (iv)** Sale by agents in bulk quantities or in one lot could not change the character of the transaction;
- (v)** The immediate demand of the goods in other states necessitated the sales in bulk quantities or in one lot;
- (vi)** Statement of accounts received from the consignment sales agents and filed in the assessment file reveals that consignment sales agents had debited the accounts of the appellants with the amount paid by them towards freight and handling charges;
- (vii)** Clause 5 of the agreement stipulates that the goods entrusted to the agent will remain the property of the Principal;
- (viii)** The Principal will insure the goods in transit as well as in the custody of the agent till sold;
- (ix)** These clauses in the agreements explain the nature of the transactions;
- (x)** The dominion and control over the goods, till they were sold, vested with the appellant;
- (xi)** Slips, copy of blank cheque, debit notes were all related to the period prior to 01.08.1995; and

- (xii) The prior transactions could not be held as evidence for rejecting the claim of genuine consignment sales transactions.

31. The Sales Tax Appellate Tribunal failed to advert to the aforesaid findings and has based its decision merely on the basis of documents recovered during search which were for a period prior to 01.08.1995.

32. The contention of the learned counsel for the State of Tamil Nadu that the Agreement dated 01.08.1995 is a forged and fabricated document, cannot be accepted. The Sales Tax Appellate Tribunal has not recorded this finding even though the Additional Appellate Assistant Commissioner had referred extensively to this Agreement. It is also not possible to accept the contention of the learned counsel for the State of Tamil Nadu that transfers to agents in the State of Karnataka, Kerala, Orissa and West Bengal were not consignment sale but inter-State sale. The terms of the Agreement entered on 01.08.1995 clearly show that inter-State sale had not taken place. The contention of learned counsel for the State of Tamil Nadu that full sale price had been received by the appellant prior to the movement of goods and hence there was a pre-existing contract for specific quantities of goods is not based on evidence available on record.

33. Learned counsel for the State of Tamil Nadu is also not correct in contending that the appellant had failed to satisfy the assessing authority about nature of transaction on the particulars obtained in Form F.

34. The Additional Appellate Assistant Commissioner had meticulously examined the Agreement and evidence on record and had recorded a categorical finding that inter-State sale had not taken place. Nothing has been brought on record to show that this finding recorded by the Additional Appellate Assistant Commissioner is perverse.

35. The Additional Appellate Assistant Commissioner had reduced the penalty to Rs. 2,21,858/- for the following reasons:

"14. With regard to the levy of penalty under section 9(2) of the CST Act 56 read with the section 12(3)(b) of the TNGST Act 1959 as it stood during the relevant period taking into consideration of the fact that the assessment made on a turnover of Rs. 2428600/- and on a turnover of Rs. 15128219/- at 10% CST has since been set aside, the difference in tax is worked out as under:

Interstate sales turnover of Paper Covered by 'C' Forms	} Rs. 3,444,963/- at 4%
Interstate sales of paper not covered By 'C' Form	} Rs. 541,741/- at 10%
Tax assessed Rs. 1377986/- + Rs. 541741/-	= Rs. 1919727.00
Tax Paid	= Rs. 1623917.00
Balance	= Rs. 295810.00

15. As per the graded scales of penalty provided under section 12(3)(b) of the TNGST Act 1959, penalty levied under section 9(2) of the CST Act 56 read with sec 12(3)(b) of the TNGST Act 1959 is modified to 75% of the difference in tax at Rs. 221858/-.

16. In find, the appeal stands partly allowed, partly dismissed and partly modified."

36. The Sales Tax Appellate Tribunal had restored the penalty levied by the assessing authority for the reason that the order of the assessing authority in respect of sales turnover of Rs. 1,51,28,219/- was restored. As the order of the Sales Tax Appellate Tribunal holding that inter-State sales has taken place in respect of 1,51,28,219/- has been set aside and it has been ordered that transfers were consignment sale, the penalty imposed by the Additional Appellate Assistant Commissioner is required to be restored.

37. It is not possible to accept the contention of the learned counsel for the appellant that the penalty of Rs. 2,21,858/- imposed by the Additional Appellate Assistant Commissioner should be set aside. The Additional

Appellate Assistant Commissioner has given good and cogent reasons to impose penalty of Rs. 2,21,858/-. This apart, the appellant should have filed a separate appeal to assail the order passed by the Sales Tax Appellate Tribunal in CTA Appeal No. 13 of 2007.

38. Thus, for all the reasons stated above, this appeal is allowed and the order dated 16.09.2014 passed by the Sales Tax Appellate Tribunal in CTA Appeal No. 135 of 2009 is set aside. However, the order dated 16.09.2014 passed by the Sales Tax Appellate Tribunal in CTA Appeal No. 13 of 2007 is maintained and the appeal is dismissed.

(Order pronounced on **02.06.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)