CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CENTRAL SALES TAX APPEAL NO. 6 OF 2012

[Arising out of the CTA/AP/No. 35/2000 dated 20/12/2011 passed by Assistant Commissioner (CT), Trichy Road Circle, Coimbatore.]

M/s Ansa Cosmochems, **......Appellant**
1063/4, Vidhyaranya Apts., Trichy Road,
Coimbatore – 641 045.

Versus

Commissioner of State Tax, **....Respondent**
Through the Commercial Tax Officer,
Trichy Road – 1 Circle,
Coimbatore.

APPEARANCE:

Shri N.L. Ganpathi and Amogh S. Rao, Advocates for the appellant.
Shri C. Kranthi Kumar and Shri Sabarish Subramanian, Advocates for the State of Tamil Nadu
Shri Alim Anwar, Advocate for the State of Kerala.

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

FINAL ORDER NO. 59863/2024

DATE OF HEARING : 20.09.2024
DATE OF DECISION: 11.12.2024

P.V. SUBBA RAO

M/s Ansa Consmochems[1] filed this appeal to assail the final order dated 20.12.2011[2] passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore in appeal No. 35 of 2000 filed by the appellant relating to assessment year 1996-1997.

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1. **the assessee**
2. **impugned order**

2. By the impugned order, the Sales Tax Appellate Tribunal partly allowed the appellant's appeal and set aside the assessment on turnover of Rs.66,07,846/- and the entire penalty imposed by the Commercial Tax Officer, 1 Circle, Coimbatore, but upheld the assessment to the extent of Rs.90,39,554/-. As a result, the appellant became liable to pay additional Central Sales Tax[3] of Rs. 1,44,069/- for Assessment Year[4] 1996-1997.

3. The facts which led to the issue of this order are that the appellant is a proprietary concern manufacturing talcum powder under the brand name "Z". It had its head office and manufacturing unit in Coimbatore, Tamil Nadu and a branch office at Palakkad in Kerala. It was registered with the Sales Tax Authorities of both States. The appellant was in business only for three assessment years viz., AY – 1994-1995, 1995-1996 and 1996-1997.

4. The appellant had entered into an agreement dated 28.06.1994 with **M/s Argus Cosmetics Pvt. Ltd.[5],** Chennai for sale of its cosmetic products.

5. The Tamil Nadu Sales Tax Enforcement Wing at Coimbatore inspected the appellant's premises and records for years 1994-1995 and 1995-1996 based on which the

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3. CST
4. AY
5. Argus

assessments were re-opened and revised by the Assessing Authority by separate orders dated 30.10.1998 and penalties were also imposed on the appellant.

6. By a separate original assessment order dated 30.10.1998 for AY 1996-1997 the Assessing Authority disallowed the appellant's claim for exemption from Central Sales Tax against 'F forms' to the extent of Rs. 1,56,47,400/- and also imposed a penalty of Rs. 47,88,105/-.

7. On appeal, by three separate orders dated 19.03.2008, the Tamil Nadu Sales Tax Appellate Tribunal upheld the assessments. Aggrieved, the appellant filed Central Sales Tax Appeals No. 343, 344 and 345 of 2009 before the Central Sales Tax Appellate Authority. By a common order dated 18.02.2010,the authority set aside the orders of the Tamil Nadu Sales Tax Appellate Tribunal pertaining to AY 1994-1995 and 1995-1996 and remanded the matter regarding assessment for AY 1996-1997.

8. In pursuance of the order of the CST Appellate Authority, the Tamil Nadu Sales Appellate Tribunal passed the impugned order setting aside the entire penalty and setting aside the demand of CST for the period 29.08.1996 to 31.03.1997 but upholding the demand for the period 01.04.1996 to 28.08.1996.

9. According to the learned counsel, the appellant had transferred the goods to its own depot in Palakkad in Kerala from its manufacturing facility in Coimbatore, Tamil Nadu. Therefore, no Central Sales Tax could be levied on these transfers under the Central Sales Tax Act and the appellant paid sales tax in the State of Kerala when it sold the goods from its depot in Palakkad to its customers in Kerala.

10. According to the learned counsel for the State of Tamil Nadu, the appellant had an agreement with **Argus** as per which **Argus** placed orders on the appellant for supply of goods in Kerala. In pursuance of these orders the appellant had transferred the goods to its own depot in Palakkad and from there, supplied to **Argus.** Since the purchase orders placed by **Argus** occasioned the movement of goods from Tamil Nadu to Kerala, even though they were first sent to the appellant's own depot in Palakkad, this transfer amounts to inter-state sale and central sales tax had to be paid to the State of Tamil Nadu.

11. In the impugned order, the Tamil Nadu Sales Tax Appellate Tribunal examined the D-7 records, i.e., the documents recovered on 28.08.1996 by the Sales Tax Enforcement officers during the inspection (pertaining to the period 01.04.1996 to 28.08.1996) and came to the conclusion that insofar as these consignments were concerned, they were in the nature of inter-state sales because the movement of

goods was inextricably linked with the sales. Therefore, relying on the judgment of the Supreme Court in **Indian Oil Corporation Ltd.** versus **Union of India**[6], the Sales Tax Appellate Tribunal held that the sales for this period by the appellant in Kerala through its branch in Palakkad were inter-state sales and these are valued at Rs. 90,39,554/- but upheld the assessment for the remaining turnover of Rs. 66,07,846/- during AY 1996-1997.

Submissions on behalf of the appellant

12. Learned counsel for the appellant made the following submissions :-

(i) It is seen from the Tamil Nadu CST Assessment orders for AY 1994-1995, AY 1995-1996 and AY 1996-1997 that the appellant's claim of branch transfer/exemption from CST has been allowed fully for AY 1994-1995 and AY 1995-1996, and partially for AY 1996-1997 for the period after the date of inspection (i.e. from 29.08.1996 to 31.03.1997) as per impugned order.

(ii) Thus, in all the three AYs put together, the appellant's claim of branch transfer/exemption from CST has been disallowed by TNSTAT only for about five months, i.e. from 01.04.1996 to 28.08.1996, in AY 1996-1997 purportedly based on D-7 records, which is unsustainable.

(iii) D-7 records did not contain any purchase orders of Argus Cosmetics, TNSTAT has proceeded on the fundamental error of premise that 'dispatch instructions' of Argus Cosmetics, Chennai were purchase orders (as contemplated under the agreement dated 28.06.1994). TNSTAT has done so without correlating the dispatch instructions of Argus Cosmetics, Chennai with the movement of goods from Palakkad to Ernakulam. In fact,

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4. 47 STC 1

as submitted in paragraph 18 (2) (b) above, only 1 slip (Slip No. 10) related to dispatch instructions to Ernakulam and that too only for the month of April 1996. The other dispatch instructions from April to July 1996 related only to other destinations (and not Ernakulam). TNSTAT has generalized the transactions based only on 1 slip, which is unsustainable.

(iv) Despite this Hon'ble Authority observing in its order dated 18.02.2010 (@ page 163, paragraph 8) that payments made to the appellant's office at Coimbatore for the consignments sold to Argus Cosmetics within and outside Tamil Nadu was not very material, TNSTAT has treated such payments as material. However, there is no finding by TNSTAT that any payments had been made in advance to the appellant in Coimbatore and dispatches had been made thereafter to Palakkad and deliveries had been effected at Arnakulam against such payment.

(v) The finding of TNSTAT that the Palakkad Branch of the appellant was a "conduit pipe" is contrary to the record. The Assessing Authority in Kerala had passed the assessment orders based on the Day Book, Ledger, Purchase Bills, Stock Register etc. produced by the Palakkad Branch Office of the appellant. This, coupled with the fact that the Palakkad Branch Office had independently fled GST and CST returns in Kerala, established that the Palakkad Branch office of the appellant was very much in existence. Further, as observed by this Hon'ble Authority (@ page 159), the appellant would gain nothing by manipulating the inter-state sales as local sales.

(vi) In light of the principles laid down by this Hon'ble Authority in **Siddhartha Apparels** case (supra), and the limited D-7 records considered by TNSTAT, it is clear that, on facts, there was nothing to show that the movement of goods from Coimbatore to Palakkad was attributable to, and was the direct result of, the agreement between the appellant and Argus Cosmetics, or for that matter, the direct result of the dispatch instructions of Argus Cosmetics which formed part of D-7 records.

(vii) For AY 1996-1997 the appellant had claimed CST exemption on a turnover of Rs. 1,65,66,786/- against 34 'F' Forms. However, neither the Assessing Authority, nor TNSTAT in the impugned order, have referred to 'F' Forms submitted by the appellant, which formed part of the records. The appellant has filed all the 34 'F" Forms before this Hon'ble Authority.

(34 'F' Forms submitted by the appellant for AY 1996-1997 @ pages 1-34 of additional documents filed by the appellant as a separate paper book on 03.12.2015).

The submission of 'F' Forms established the bona fides on the part of the appellant and hence the appellant's claim for exemption should have been allowed in full by TNSTAT based on the 'F' Forms.

(viii) The inferences drawn by TNSTAT and the conclusions based on such inferences are not reasonable, as they are based on surmises and conjectures".

12. Learned counsel for the appellant prayed that the impugned order may be modified and the assessment for the year 1996-1997 to the extent it is upheld by the impugned order may be set aside.

13. As an alternative plea, learned counsel submitted that if the sales are held to be inter-state sales an order may be issued under section 22 (1B) of the CST Act directing the State of Kerala to transfer the refundable amount which the appellant had paid as sales tax on the disputed transactions to the State of Tamil Nadu.

<u>Submissions on behalf of the State of Tamil Nadu</u>

14. Learned counsel for State of Tamil Nadu made the following submissions:

(i) The impugned order is correct as the Tamil Nadu Sales Tax Appellate Tribunal elaborately went through the D-7 reports from the inspection materials, collected and rightly concluded that the appellant had camouflaged direct inter-state sales as stock transfers.

(ii) The contract between the appellant and the buyer itself is sufficient to conclude that the sale is inter-state. Clause 2 of the contract states that the sales of the product could be between the appellant and the buyer on principal to principal basis. Clause 4 of the contract states that the product should be customized, made as per the specifications of the buyer, bearing the brand name of the buyer 'Z' 'ELLE' for which the buyer had inclusive marketing rights. Therefore the appellant could not have sold the goods to anybody else. Clause 8 of the contract states that the transactions between the appellant and the buyer will be on principal to principal basis.

(iii) When the products are made by the appellant as per the specifications in the contract and supplied through the branch in Palakkad, they can only be treated as inter-state sales. The Branch office of the appellant at Palakkad was only conduit with the goods sold.

(iv) The Tamil Nadu Sales Tax Appellate Authority has only rejected the forms F in respect of which sales there was evidence in the D-7 records that they were inter-state sales and not mere branch transfers.

15. In view of the above, learned counsel for Tamil Nadu prayed that the appeal may be dismissed and the impugned order may be upheld.

Submissions on behalf of the State of Kerala

16. Shri Alim Anwar, Advocate for the State of Kerala adopted the submissions made by the appellant and asserted that the impugned order may be set aside.

Findings

17. We have gone through the records of the case and considered the submissions advanced by the learned counsels for the appellant, for the State of Tamil Nadu and for the State of Kerala.

18. The short question to be answered is whether the inter-state transfer of goods by the appellant from its factory in Coimbatore to its depot in Palakkad in Kerala during from 01.04.1996 to 28.08.1996 were inter-state sales or branch transfers. It is undisputed that the goods were transferred from Coimbatore to appellant's own depot in Palakkad.

19. As per section 6A of the CST Act, where any dealer claims that he is not liable to pay Central Sales Tax in respect of any goods on the ground that the movement of such goods from one State to another was NOT occasioned by sales, the burden of proof rests on the dealer. In other words, if the dealer claims that the goods have been transferred to its own

depot or branch in another State and, therefore, no Central Sales Tax was payable, the burden of proving so rests on the dealer. If he fails to do so, the dealer has to pay the Central Sales Tax. The presumption in case of goods transferred from one State to another is that it is occasioned by sales of goods, but this presumption can be rebutted.

20. The appellant had submitted "Forms F" in respect of the goods indicating that the goods were only transferred to its branch in Palakkad in Kerala for the entire year.

21. The D-7 records recovered by the Sales Tax Enforcement Wing indicated that there was a pre-arranged sales order on the appellant from Argus to supply the goods in Kerala in respect of the turnover of Rs. 66,07,846/- during 01.04.1996 to 28.08.1996 in pursuance of which, the appellant transferred goods to its own branch at Palakkad. The details of these D-7 records are recorded in the impugned order as follows:

(i) Three slips.

(ii) Long size note book (Velavan Deluxe) containing pages numbered 1 to 150. It contains different parties' accounts and details of sales effected to Errakulam through branch from Invoice No. Br 001/3.4.96 to Br 033/21.8.96 (Page Nos. 128 to 131).

(iii) File marked 'A' containing 40 slips – It contains correspondence between the dealer-appellants and Tvl. Argus Cosmetics Limited, Chennai relating to transactions involving both supply of goods to Chennai and other State destination and also to Ernakulam in respect of the assessment year 1996-97 upto the period of inspection.

(iv) File marked 'B' containing 70 slips. It contains the similar records as in book marked 'A' relating to the year 1996-97.

22. In the impugned order, the Sales Tax Appellate Tribunal examined these records to ascertain the nature of transactions and whether the movement of goods is occasioned by the sale or transfer of goods other than by way of sale and recorded as follows:

> First, we have examined the file marked 'A' containing 40 slips which contains mainly correspondence letters between the dealer-appellants and Tvl. Argus Cosmetics Limited, Chennai. Out of 40 slips, 8 (Slip Nos. 1, 2, 12, 15, 23, 25, 29 and 39) slips are relating to correspondence letters sent by the dealer-appellants to Tvl. Argus Cosmetics Limited, Chennai enclosing the invoices raised in Palakkad Branch Office to Ernakulam Branch of Tvl. Argus Cosmetics Limited from Coimbatore Head Office for dispatch of goods.
>
> The Slip No. 1 is extracted as below :
>
> "AN/PKR/2500
> 2nd April, 1996
>
> To
> M/s Argus Cosmetics (P) Limited,
> 114, Luz Church Road,
> Mylapore,
> Madras.
>
> KIND ATTN : Mr. Ashwin Anand
>
> Dear Sir,
>
> Kindly find enclosed our Invoice No. Br 001 of 2.4.96 covering dispatch of 200 cartons of 200 gms. Of 'Z' Talcum Powder to your Ernakulam Office along with L.R. No. of 2.4.96 of Commercial Goods Transport (P) Limited.
>
> Thanking you,
>
> Yours faithfully,
>
> For ANSA COSMOCHEMS
>
> P.K. RAMESH

AUTHORIZED SIGNATORY”

8. As such the following Palakkad branch invoices were sent to Tvl. Argus Cosmetics Limited, Chennai by the dealer-appellants from Head Office, Coimbatore through the following slips :

Slip No.	Branch Invoice No./Date	Quantity
1	Br. 001/02.04.96	200 Cartons of 200 gms.
2	Br. 003/10.04.96 Br. 004/11.04.96	210 Cartons of 100 gms. 6 Cartons of 200 gms.
12	Br. 007/02.05.96	200 Cartons of 100 gms. & 200 Cartons of 200 gms.
15	Br. 008/07.05.96	200 Cartons of 100 gms.
23	Br. 011/20.05.96 Br. 012.20.05.96 Br. 013/20.05.96	150 Cartons of 200 gms. Each
25	Br. 016/01.06.96	250 Cartons of 100 gms.
29	Br. 009/18.05.96 Br. 010/18.05.96	250 Cartons of 200 gms. 150 Cartons of 100 gms.
39	Br. 025/27.07.96 Br. 026/28.07.96	200 Cartons of 100 gms. 250 Cartons of 200 gms.

9. In the slip nos. 10, 30, 31 and 40, entries related to dispatch instructions given by Tvl. Argus Cosmetics Limited, Chennai to the dealer-appellants found. The extract of slip no. 10 is as below:

Despatch instructions for Tvl. Ansa Cosmochems for April, 1996

Priority	Date of dispatch	Destination	Quantity Z-100 gms.	Quantity Z-200 gms.
I	19th April	Ernakulam	500	---
II	22nd April	Madras	200	---
III	23rd April	Ernakulam	200	---
IV	26th April	Ernakulam	200	300
V	28th April	Madras	100	100
VI	30th April	Ernakulam	200	---
VII	30th April	Madras	200	---
			1600	400

10. Likewise, the dispatch instructions had been received from Tvl. Argus Cosmetics (P) Limited, Chennai to supply the goods to different destination with priority for the four months as below :

Slip No. 10	Despatch Instruction for April, 1996
Slip No. 30	Despatch Instruction for May, 1996
Slip No. 31	Despatch Instruction for June, 1996
Slip No. 40	Despatch Instruction for July, 1996

Apart from the above, the slip nos. 13, 14, 17 and 34 are related to receipt of consideration of sale effected through

Palakkad Branch by the Head Office of dealer-appellants at Coimbatore from Tvl. Argus Cosmetics Limited, Chennai.

For example, the slip no. 13 is extracted as below:

Ref: S&D/AC/119/96-97
April 30, 1996

M/s Ansa Cosmochems,
Vidyaraja Apartments,
1063/4, Trichy Road,
Coimbatore – 641 045.

Dear Mr. Ramesh,

Please find enclosed Demand Draft No. 409799 dated 30.4.96 for Rs. 2,98,429.20 towards payment of your Invoice No. Br. 003 dated 10.4.96 for Rs. 3,68,323.20

The balance amount which has been deducted by the bank as discounting charges will be sent to you shortly.

Kindly acknowledge receipt of the above payment and arrange to send us your official stamped receipt at the earliest.

Yours Sincerely,

For Argus Cosmetics Ltd.,

Sreelakshmi S.
Executive – Sourcing

11. In the same manner, the dealer-appellants had received the consideration from Tvl. Argus Cosmetics Limited, Chennai for goods said to be sold from Palakkad Branch as below :

Slip No.	Branch Invoice No./Date	Value Received Rs.	Invoice Value Rs.
13	Br. 003/10.04.96	2,98,429.20	3,68,323.20
14	Br. 005/21.04.96	3,70,927.87	3,70,927.87
17	Br. 006/22.04.96 Br. 006/26.04.96	7,28,018.96 (For both invoices)	4,19,186.88
34	Br. 019/21.06.96	2,72,814.20	---

12. On examination of the above records clearly proved that based on the requirement of Tvl. Argus Cosmetics Limited, Chennai to its Ernakulam Branch at Kerala, orders have been placed well in advance in the form of dispatch instructions. Even the date on which goods to be dispatched, priority and quantity to be supplied to Ernakulam Branch of Tvl. Argus Cosmetics Limited,

Chennai known to dealer-appellants' Head Office at Coimbatore. In this connection, it is to be noted that the dealer-appellants effected direct inter-state sales u/s. 3(a) of the Act for other State branches of Tvl. Argus Cosmetics Limited, Chennai like Bangalore and Secunderabad, but the sales to Ernakulam Branch of Tvl. Argus Cosmetics Limited were routed through Palakkad branch of dealer-appellants.

13. The slip nos. 1, 2, 12, 15, 23, 25, 29 and 39 of file marked 'A' clearly indicated that the Head Office of the dealer-appellant sent copies of invoices raised by their Palakkad Branch to Tvl. Argus Cosmetics Limited, Chennai who had placed orders to supply the goods to their branch at Ernakulam in Kerala State. Apart from this, Tvl. Argus Cosmetics Limited in turn paid consideration for supply of goods through Palakkad Branch directly to the Head Office of dealer-appellants at Coimbatore by way of Demand Draft/Cheque. Above all, stock position of various raw materials and final products had been informed to Tvl. Argus Cosmetics Limited, Chennai by the dealer-appellants as per slip nos. 9 and 33.

For example, the extract of Slip No. 9 is given below :

"ANSA COSMOCHEMS
Registered Office :
1280, Trichy Road, Coimbatore – 641 018.

AN/PKR/2560
23rd April, 1996
<u>KIND ATTN : Mr. ASHWIN ANAND</u>
Kindly find given below stock position as of 24.4.96 morning.

Soap Stone Powder	-	616 bags
Perfume	-	193.56 Kgs.
Calcium Carbonate	-	27 bags
100 gms. Usable Cartons	-	520 Cartons (actual 961 cartons)
200 gms. Usable Cartons	-	551 Cartons (actual 774 Cartons)
Caps – 100 gms.	-	Nil (will receive on 24.4.96)
Caps – 200 gms.	-	9240 Nos. (46,000 Nos. with Transporter)

<u>Finished Stock</u> :

100 gms.	-	161 Cartons

<u>Cost composition between J.M.D.S. and Gayathri</u> :

<u>J.M.D.S.</u> <u>GAYATHIRI</u>

4750 + Freight + Dharmada = 6,941.11
+Insurance = Rs. 7,014 Freight = 500.00
7,441.11

Best Regards
Sd/- …………..
P.K. RAMESH"

14. In addition to the above as per page Nos. 128 to 131 of 'Velavan Deluxe' Long Size Note book marked as 'A', all details of sales effected by Palakkad Branch of dealer-appellants recorded. This record had been recovered from the Head Office of the dealer-appellants at Coimbatore. This contains all details like branch invoice no. and date, no. of cartons, value of bill, L.R. No. and Amount received with DD/Cheque/TT details as detailed below:

S. No.	In. No. Date	No. of 100 gms.	Cartons 200 gms.	Erna-Kulam desti-nation	Amount (Rs.)	Pay-ment (Rs.)	L.R. No.	Amount Recei-ved	DD Details	Balance
1.	Br 001/ 03.04. 96	---	205 C/s	-do-	2,53,306.20	30 Days	523980	2,41,488. 00	016787/ 18.4.96	11,818.00
2.	Br 002/ 06.04. 96	---	200 C/s	-do-	2,47,128.00	30 Days	523924	2,36,004. 00	016787/ 17.4.96	11,124.00
3.	Br 003/ 10.04. 96	210 C/s	---	-do-	3,68,323.20	30 Days	523982	2,98,429. 20	409799/ 30.4.96	69,894. 00
4.	Br 004/ 11.04. 96	---	6 C/s	-do-	7,413.84	30 Days	523983	---	---	---
5.	Br 005/ 21.04. 96	211 C/s	---	-do-	3,70,927.87	30 Days	523989	3,70,927. 87	000695/ 03.5.96	Nil
6.	Br 006/ 22.04. 96	239 C/s	---	-do-	4,19,186.88	30 Days	523990	4,19,186. 88	020178/ 15.5.96	Nil
7.	Br 007/ 30.04. 96	200 C/s	200 C/s	-do-	5,97,912.00	30 Days	523993	4,76,360. 00	745018/ 28.5.96	1,21,552.0
8.	Br 008/ 07.05. 96	200 C/s	---	-do-	3,45,945.60	30 Days	523930	2,50,000. 00	---	---
9.	Br 009/ 18.05. 96	---	250 C/s	-do-	3,05,340.10	30 Days	524101	---	---	---
10.	Br 010/ 18.05. 96	150 C/s	---	-do-	2,59,459.20	30 Days	524102	3,50,000. 00	Ch. No. 745476 of 04.6.96	---
11.	Br	---	150	-do-	1,83,204.00	30	524103	3,50,000.	Ch. No.	---

	011/ 20.05. 96					Days		00	745476 of 04.6.96	
12.	Br 012/ 21.05. 96	---	150	-do-	1,83,204.00	30 Days	524104	1,45,000. 00	---	---
13.	Br 013/ 21.05. 96	---	150	-do-	1,83,204.00	30 Days	524105	1,67,848. 43	Ch. No. 000949 of 05.6.96	15,355.57
14.	Br 014/ 30.05. 96	200	---	-do-	3,59,654.40	18.6. 96	---	3,40,364. 00	020212/ 17.6.96	19,290.40
15.	Br 015/ 31.05. 96	200	---	---	3,59,654.40	---	---	3,13,706. 00	---	---
16.	Br 016/ 31.05. 96	250	---	---	4,31,424.00	---	---	3,43,000. 00	---	---
17.	Br 017/ 17.06. 96	---	94 C/s	-do-	1,14,807.84	30 Days	524201	1,11,013. 00	018583/ 24.6.96	3,794.84
18.	Br 018/ 17.06. 96	350 C/s	---	-do-	6,29,395.20	30 Days	524202	---	---	---
19.	Br 019/ 21.06. 96	300 C/s	---	-do-	3,45,139.20	26.6. 96	524119	2,72,814. 20	Ch. No. 410486/ 25.6.96	72,325.00
20.	Br 020/ 21.06. 96	300 C/s	---	-do-	3,45,139.20	---	524118	---	---	---
21.	Br 021/ 05.07. 96	200 C/s	---	-do-	3,59,654.40	---	524127	---	---	---
22.	Br 022/ 06.07. 96	---	200 C/s	-do-	2,44,272.00	13.7. 96	524128	4,07,340. 00	---	20,136.00
23.	Br 023/ 18.07. 96	200 C/s	---	-do-	3,59,654.40	24.7. 96	524227	3,42,095. 00	019547/ 23.7.96	17,559.40
24.	Br 024/ 18.07. 96	200 C/s	---	-do-	3,59,654.40	31.7. 96	524226	3,50,000. 00	000325/ 30.7.96	9,654.00
25.	Br 025/ 29.07. 96	200 C/s	---	-do-	3,45,139.20	---	524138	---	---	---
26.	Br 026/ 28.07. 96	---	250 C/s	-do-	3,05,340.00	---	524139	---	---	---
27.	Br 027/ 28.07. 96	200 C/s	---	-do-	3,45,139.20	---	524140	---	---	---
28.	Br 028/ 29.07. 96	200 C/s	---	-do-	3,45,139.20	08.8. 96	524141	3,27,480. 20	020369/ 07.8.96	17,659.00
29.	Br 029/ 30.07. 96	200 C/s	---	-do-	3,45,139.20	---	---	---	---	---
30.	Br 030/	---	200 C/s	-do-	2,44,272.00	27.8. 96	---	2,33,946. 00	020024/ 26.8.96	10,326.00

	31.07.96									
31.	Br 031/ 21.08.96	137 C/s	---	---	2,36,420.35	---	---	---	---	---
32.	Br 032/ 21.08.96	---	273 C/s	---	3,33,431.28	---	---	---	---	---
33.	Br 033/ 21.08.96	200	---	---	3,59,654.40	---	---	---	---	---
				Total	10492679.16					

15. A verification of the above table clearly proved that the Head Office of dealer-appellants at Coimbatore had every control on the Palakad Branch in Kerala. In this connection, it is to be noted that though some goods had been sold to other State under the CST Act, 1956 from Palakkad Branch (as argued by the learned counsel) the turnover of such sale was very meager. Almost every transfer invoice raised by the Head Office of dealer – appellants finally destined to Ernakulam Branch of Tvl. Argus cosmetics Limited, Chennai. From the above, it is very clear that the Palakkad Branch was used only as conduit pipe in order to sell the goods to Ernakulam Branch of Tvl. Argus Cosmetics Limited.

16. As observed by the Hon'ble CSTAA, New Delhi the nature of the documents recovered by the Enforcement Wing Officers at the time of inspection have been examined and analysed as above and convinced that the above records clearly established that the dealer-appellant camouflaged the direct inter-state sales as stock transfer. In this connection, it is necessary to go through the judicial decisions rendered by the various courts, in similar circumstances.

…….

25. …..

In view of the above fact, we hold that the assessment made on the turnover over and above Rs. 90,39,554/- to tax is arbitrary and not sustainable and therefore we sustain only the turnover of Rs. 90,39,554/- and deleted the remaining turnover of Rs. 66,07,846/-."

23. Based on the above records, Sales Tax Appellate Tribunal recorded in the impugned order a finding that sales

had occasioned the inter-state movement of goods and for that reason, central sales tax was payable. In view of the correspondence between the appellant and **Argus** recorded above which corresponded to the invoices, we fully agree with the finding in the impugned order that sales occasioned the inter-state movement of goods under the disputed Forms F during the period 01.04.1996 to 28.08.1996. In respect of the transfers made during the rest of the AY, the order of assessment has already been set aside in the impugned order.

24. We, therefore, find the impugned order is correct and proper and needs to be upheld and we do so.

25. The alternative prayer of the appellant is that if the demand of CST is upheld, an order may be issued under section 22 (1B) of the CST Act directing the State of Kerala to transfer the refundable amount which the appellant had paid as sales tax on the disputed transactions to the State of Tamil Nadu. This section reads as follows:

> **Section 22**
>
> ******
>
> (1B) The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction:
>
> Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction.

26. The term ‘authority’ in this sub-section referred to the Central Sales Tax Appellate Authority whose powers and responsibilities have since been transferred to this tribunal (CESTAT). To issue an order under this sub-section, it is essential that:

a) that tax should have been collected by a state which is not due to it;
b) the amount of tax paid to the State should be known;
c) Central Sales Tax should be payable on the transactions;
d) the amount of Central Sales Tax payable should be known;

If these conditions are met, the amount of tax collected by a state which is not due to it can be ordered either to be refunded to the assessee or it can be ordered to be transferred to the state to which Central Sales Tax had to be paid and the amount ordered to be refunded or, as the case may be, transferred cannot exceed the amount of Central Sales Tax payable.

27. In this case, while the amount of Central Sales Tax payable to the state of Tamil Nadu is Rs. 1,44,069/- (for Assessment Year 1996-1997) on the goods transferred from Tamil Nadu to Kerala, details of the sales tax claimed to have been paid in Kerala are not available. Therefore, it is not possible to pass an order under section 22(1B).

28. In view of the above, we uphold the impugned order and dismiss the appeal.

(Order pronounced in open court on 11/12/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

PK