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TC No. 61 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MRS.JUSTICE N. MALA

TC No. 61 of 2017

AND

CMP NO. 20390 OF 2017

Gtp Marbles Pvt Ltd
No.4,35, Bharathi St, Swanapuri, Salem-4.

..Petitioner(s)

Vs

The State Of Tamil Nadu
Rep By The Joint Commissioner Ct, Salem
Division, Salem.

..Respondent(s)

CMP No. 20390 of 2017

Gtp Marbles Pvt Ltd
No.4,35, Bharathi St, Swanapuri, Salem-4.

..Appellant(s)

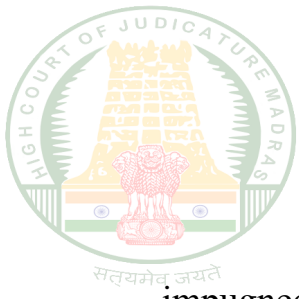
Vs

The State Of Tamil Nadu
Rep By The Joint Commissioner Ct, Salem
Division, Salem.

..Respondent(s)

TC No. 61 of 2017

Tax Case Revision filed under Section 38 of the TNGST Act, 1959, to set aside the order of Sales Tax Appellate Tribunal, Additional Bench, .bench Coimbatore dt.09/07/2012 and passed in Coimbatore Tribunal Appeal No.260/2004.

**CMP No. 20390 of 2017**

To stay all further proceedings pursuant to the passing of the impugned order by the Appellate tribunal in Coimbatore tribunal appeal No.260/04 dt.09/07/2012 pending disposal of the above TA.

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For Petitioner(s): M/s.R.Hemalatha

For Respondent(s): M/s.Dhanamadhri, St.C.

Order

(Order of the Court was made by Dr.G.Jayachandran J.)

- (1) The assessee, being aggrieved by the order of the Tribunal dated 09.07.2012, passed in CTA.No.260/2004, confirming the order of the Appellate Authority, dated 21.03.2003, made in A.P.No.234/2002, has filed the above Tax Case Revision under Section 38 of the TNGST Act, 1959.
- (2) The learned counsel appearing for the petitioner/assessee contended that during the TNGST regime, the Assessing Officer cannot go by the report of the Inspection Officer and the Inspection Officer should make a physical verification of the stock before proceeding to levy tax. In the instant case, the petitioner, dealer in Marbles, tiles and granites etc., is properly maintaining the stock and other accounts and regularly filing the monthly returns. While so, for the Assessment Year 1998-99, based on the Inspection Report, the Assessment Order was passed, based on the



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visual inspection of the stock without physical verification. The Assessment order, challenged before the Appellate Authority, was partly allowed insofar as ceramic tiles, by accepting the explanation given by the assessee that the freight charges paid, was only to gain commission from the other dealers outside the State and there was no transaction of goods as reflected in document D7, seized during inspection. However, the Appellate Authority, failed to apply the same logic to cuddapah stones and granites. Hence, an appeal before the Tribunal was preferred. But the Tribunal failed to appreciate the grounds of appeal raised and dismissed the same. Hence, the second appeal by way of Tax Case Revision before this Court.

- (3) At the time of admission, this Court has formulated the following substantial questions of law:-

[a]Whether, on the facts and in the circumstances of the case, the Tribunal was right in having merely endorsed the findings of the Enforcement Wing with regard to the alleged stock variation when it was humanly impossible to measure huge stock of goods nearly 97,000 sq.ft., taken by eye estimation in a span of just about 7 hours?

[b]Whether, on the facts and in the circumstances of the case, the Tribunal erred in having overlooked the fact that the same 1st Appellate Authority had deleted the stock variation in respect of Ceramic Tiles but sustained the stock variation in respect of Marbles, Cuddapah and Granites which are culled out from the



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same inspection conducted on 07.12.1998 by the Enforcement Wing Officials?

[c]Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in having upheld the contention of the 1st Appellate Authority in applying a different yardstick for different commodities with regard to the alleged stock variation arising out of the inspection conducted on the same day?

- (4) The learned counsel for the revision petitioner/assessee contended that a huge stock piled up in the godown of the assessee cannot be physically verified within six hours and it will take at least three days. While so, the inspection report, admittedly, pursuant to the inspection of the stock within six hours, is being relied on by the Assessing Officer, even without he making the stock verification personally to satisfy the veracity of the Inspection Officer's report. The Appellate Authority, while accepting the explanation given by the assessee in respect of the slips recovered during the inspection, particularly, the document D7, ought to have applied the same logic in respect of marbles, cuddapah and granites. Omission to apply the logic uniformly to all the products, has rendered the finding of the Tribunal, erroneous.
- (5) The learned counsel appearing for the Department, on the other hand submitted that the Appellate Authority, being satisfied with the explanation of the assessee considering the manufacturer of the ceramic tiles and dealers throughout the country, that the transfer of goods on



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payment of freight charges was only for the sake of commission, was accepted and the Appellate Authority excluded the tax additions and penalty, in respect of ceramic tiles. However, in the case of Cuddapah stones and granites, since the verification was made physically and the actual suppression being identified to the tune of Rs.4,61,860/-, the consequential order of additions and penalties were imposed.

- (6) On a perusal of the impugned order of the Appellate Authority, we find that the break-up of the alleged suppression in respect of marble, Cuddapah stones, ceramic tiles and granites, at the time of inspection and stock verification, is found to be as below:-

Sl.No	Description of Goods	Variation	Rate per sq.ft.	Value
1	Marbles at 20%	(-)5,164	Rs.50/-	2,06,560
2	Cuddapa stones at 11%	(-)7,501	Rs.10/-	75,010
3	Ceramic Tiles at 20%	(-)1,487	Rs.35/-	52,045
4	Granites at 11%	(-)7,737	Rs.50/-	3,86,850

- (7) Based on the report, the Assessment Order came to be passed on 28.06.2002, fixing the tax liability at Rs.11,16,317/- along with penalty at Rs.2,01,135/-.
- (8) The Appellate Authority, as against the order of the Assessing Officer dated 28.06.2002, partly allowed the appeal in AP.No.234/2002, and granted the relief by setting aside and deleting the additions made insofar as the alleged suppression of stocks in respect of ceramic tiles since the same was not proved. However, insofar as cuddapa stones and granites



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are concerned, the stock difference to the tune of Rs.4,61,860/- was confirmed and however, the consequential additions made, were deleted and regarding the penalty under Section 12[3][b] of the Act, the matter was remanded back for fresh consideration.

- (9) Being aggrieved by the order, the Tribunal formulated the following points for consideration:-

[a]Whether the assessment made by the Assessing Authority on the actual stock variation found in respect of marbles amounting to Rs.2,06,560/- and confirmed by the learned First Appellate Authority is correct or not?

[b]Whether the assessment made by the Assessing Authority on the actual stock variation found in respect of Ceramic tiles amounting to Rs.52,045/- and confirmed by the learned First Appellate Authority is correct or not?

[c]Whether the assessment made by the Assessing Authority on the actual stock variation found in respect of Cuddapah and Granites amounting to Rs.4,61,860/- and confirmed by the learned First Appellate Authority is correct or not?

- (10) After perusing the records and considering the discussions, the Tribunal has held the points for consideration against the assessee and dismissed the appeal, upholding the finding on facts regarding suppression arrived, based on stock difference in respect of marble, cuddapa and granite.

- (11) The substantial questions of law framed by this Court at the time of admission of the Tax Case, tested in the light of the argument made by



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the learned counsel for the petitioner, and in the light of the orders passed by the Authorities below, we find that the fact finding authorities have arrived at a conclusion that there had been a physical verification of stock and difference to the tune of Rs.4,61,860/- as suppression and it is not that the verification was made by merely high estimation and the verification of the stock physically been observed by the First Appellate Authority based on record and being a fact finding authority, we are not inclined to entertain the submission of the petitioner who even now, without producing any contra document regarding stock and purchase, merely harp on the impossibility of measuring the stocks by high estimation, whereas the records show that there was physical stock verification, at least to the extent of the amount mentioned in the order of the Appellate Authority. ***Hence, the first substantial question of law is held against the assessee/petitioner.***

- (12) Regarding the tax imposed on the alleged suppression of turnover in respect of ceramic tiles, we find that the deletion is not without any reasoning. On appreciation of the evidence, particularly D7 document, and the explanation given by the Trader and considering the said explanation as plausible explanation, the Appellate Authority has deleted the levy of tax on the alleged suppression of stock in respect of ceramic tiles alone. While the deletion is supported by reasoning and evidence, no such reasoning or evidence is available for the other products, namely



cuddapah stones and granites. Therefore, there cannot be an uniformity of all the products when different reasoning and evidence are available for different products. ***Accordingly, the 2nd substantial question of law is answered in negative.***

- (13) As stated above, the third substantial question of law is also the off-shoot of the 2nd substantial question of law and there is no different yardstick for different commodity, but different explanation and evidence being available, the outcome is different. There cannot be a similar outcome for an unsimilar or dissimilar facts. ***Hence, the third substantial question of law stands answered in negative.***

- (14) In fine, all the substantial questions of law are answered against the petitioner/assessee.

- (15) Accordingly, the ***Tax Case Revision is dismissed.*** No costs. Consequently, the connected miscellaneous petition is closed.

(G.J.,J.) (N.M.,J.)
23-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
AP

To
The Joint Commissioner Ct, Salem Division,
State Of Tamil Nadu, Salem.



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**DR.G.JAYACHANDRAN J.
AND
N.MALA J.**

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