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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM:

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE T.RAJA

TAX CASE (REVISION) NO.27 OF 2015

The State of Tamil Nadu
represented by
The Deputy Commissioner (CT)
Chennai (East) Division,
Chennai - 600 006.

.... Petitioner

Vs.

Tvl.K.C.P.Limited,
No.2, Dr.P.V.Churian Crescent Road,
Chennai - 600 105.

.... Respondent

Prayer: Tax Case Revision is filed under Section 38 of TNGST Act, 1959 against the Order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in S.T.A.No.509 of 2002 dated 27.10.2003.

against the order of the Appellate Assistant Commissioner(CT) IV, VI floor, Koralagam Annex, Chennai 108, dated 17.10.2000 in A.P.No.296/2000 against the Assessment order dated 28.3.2000 in Asst. No. & year 071702/89-90 by the Commercial Tax Officer, Anna Salai II, Assessment Circle, Chennai-6.

For Petitioner : S.Kanmani Annamalai AGP(T)

For Respondent : Mr.N.Inbarajan

O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

This Tax Case (revision) is filed by the Revenue as against the Order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai dated 27.10.2003 made in S.T.A.No.509 of 2002 in respect of the assessment year 1989-90 and on abolition of the Tamil Nadu Taxation Special Tribunal, the revision is transferred to this Court, wherein the following questions of law have been raised for



consideration before this Court:

1. Whether in the facts and circumstances of the case, the Tribunal is legally correct in having deleted the turnover pertaining to value of materials issued free of cost by the customers for manufacturing the machinery while excise duty has been levied on the entire value of the machinery including the turnover for which free supply of materials were received by the assessee?

2. Whether the order of the Tribunal in having deleted the penalty levied under Section 12(5)(iii) of the Tamil Nadu General Sales Tax Act, 1959 is legally correct while such levy of penalty had been levied for filing of incorrect and incomplete returns for omitting to include the turnover relating to free supply of materials, sale of assets and sale of exim scrips?"

2. By a common Order covering assessment years 1987-88 to 1992-1993, the Tribunal considered the claim of the assessee on six questions of law, which are as follows:

"1. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the assessment on the value of materials issued free of cost by the customers for use in machinery ordered by such customers along with respondent's own materials but treated as turnover of the respondent?

2. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the assessment on the sales effected by respondents workshop at Vuyyuru Andhra; Pradesh to buyers in Tamil Nadu and assessed as local sales in the state of Tamil Nadu?

3. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the assessments made under Section 3-A of the Tamil Nadu General Sales Tax Act on the receipts by way of user charges of computes in the respondent's premises?

4. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the assessment on the turnover relating to inter-State sales of machinery from Vuyyuru, Andhra Pradesh to Cauvery sugars and Chemicals Ltd., and later used in works contract of erection and commissioning in Tamil Nadu and assessed to tax under Section 3-B?

5. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the assessment on the labour charges,



and

6. Whether the Appellate Assistant Commissioner (CT) was proper in deleting the penalties levied under Section 12 (5) (iii) and Section 16(2) of the Tamil Nadu General Sales Tax Act?"

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3. The brief facts of the case herein are that the respondent/ assessee manufactured machinery as ordered by the customer using partly the customer's materials and the assessee did not include the value of the customer's materials as part of the cost of the machinery delivered on the ground that there was no transfer of materials involved in the transaction. It is the matter on record that there was an inspection in the place of business on 10.2.1993 and again on 24.2.1997. On the supplies made by Fuller KCP Limited, Madras under the head "Free supply" for manufacture and supply of machinery and machinery parts, the assessee used his own materials and manufactured machinery parts as per the specifications of the customers. In that process, the assessee charged tax on the value of their input, labour, etc., but excise duty was calculated on the whole value of the machinery parts including the "free supply" materials and sales tax was charged by the assessee. Based on the D-3 proposal, when notices were issued to reopen assessment, it was submitted that there was no free supply of material of value at Rs.3,500/-. The assessee called for the materials based on which the proposal was made. The request was however rejected taking the view that the burden of proof always rested on the assessee. Thus, the Assessing Officer confirmed the levy of 10% tax on the free supply of material made by the customers to the assessee for the purpose of incorporation into the machinery and which ultimately as machinery was sold to Fuller KCP Limited. Having regard to the above assessment, penalty was also levied on the assessee. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner. The assessee placed copy of the invoice in support of his claim. The first appellate authority pointed out that customer supplied materials to the assessee for doing job work and there is no transfer of property from the customer to the assessee nor was the title transferred in respect of the goods supplied for job for valuable consideration. The first Appellate Authority further pointed out that the assessee did not use the goods. Based on this, the first appellate authority held that there was no ground to sustain the assessment made. Aggrieved by that, the State filed appeal before the Sales Tax Appellate Tribunal, which confirmed the view of the Appellate Assistant Commissioner. The Tribunal held that the turnover was assessed relating to pure labour charge and even to the extent of the materials used in the manufacture and sold by the assessee there was no liability to tax, having regard to the fact that the nature of the transaction was pure labour. Aggrieved by this, the present revision is filed by the State.



4. The present issue involved in this revision has been considered by this Court in T.C.(R) No.41 of 2009, which was filed as against the common order of the Tribunal dated 27.10.2003 in S.T.A.Nos.277, 281, 282, 286, 284 and 509 of 2002 (the present revision is filed against STA No.509 of 2002) and by order dated 04.12.2013, this Court dismissed the revision filed by the State holding as follows:

"As far as the assessment on turnover of Rs.3,500/- is concerned, the consistent case of the assessee is that inspite of the request made by the assessee for the materials based on which the assessment was made, till the stage of the appeal, no copy was furnished by the revenue. It is further stated by the assessee that during the assessment year under consideration there was no free supply materials for the turnover of Rs.3,500/-. Noting the above, the Tribunal held that the question of assessing the turnover on the assessee did not arise. Even otherwise, the value of the materials supplied by the customer free of cost could not be included in the value of the sale consideration since it was never sale of the parts by the assessee. The said view was taken by the Tribunal in respect of batch of assessment years and we have no information given today as to whether the State has come on appeal as against those years. Thus, going by the facts found by the Tribunal and that the Enforcement Wing had taken the figure based on the excise duty paid on the machinery manufactured, and in the absence of any further materials for the assessee to rebut, we do not find any justifiable ground to confirm the order of the assessment. Consequently, we do not find any ground to disturb the finding of the Tribunal. The Tax Case revision is dismissed. "

5. In the instant case also, the Assessing Officer did not furnish the material, based on which the assessment was made. Since the issue has been considered and decided by this Court on a revision filed against the common order of the Tribunal dated 27.10.2003 in respect of the very same assessee, following the above-said decision of this Court dated 04.12.2013 in T.C.(R)No.41 of 2009, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



To

1. The Tamil Nadu Sales Tax
Appellate Tribunal (Main Bench)
Chennai,

2. The Appellate Assistant
Commissioner (CT) - IV, Chennai.

3. The Commercial Tax Officer,
Anna Salai-II,
Assessment Circle,
Chennai.

4. The Deputy Commissioner (CT)
Chennai (East) Division
Chennai -6.

1 cc to Spl.G.P. (Taxes) SR.No.17496

1 cc to Mr.N.Inbarajan ,Advocate, SR.No.17472

T.C.(R) NO.27 OF 2015

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pmk.13.4.2015