IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

T.C. (R) NO. 39 OF 2015

The State of Tamil Nadu
rep. by the Deputy Commissioner (CT)
Coimbatore Division
Coimbatore - 18. .. Petitioner

- Vs -

Tvl. S.K.F. Bearing India Ltd.
Coimbatore. .. Respondent

Tax Case Revision filed filed against the order dated 4.6.2003 passed by the Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore, made in Coimbatore Tribunal State Appeal No.72/2002.

against the Order of the Addl. Appellate Asst.Commissioner (Commercial Taxes) Coimbatore dated 23.7.2001 A.Nos.1051, 1052, 1053, 1269 and 1270/2000 1991-92, 90-91, 89-90, 92-93 and 1994-95 respectively against the Order of the Commercial Tax Officer Avinashi Road Circle,Coimbatore dated 28.3.2000 in Ref.530/96/A4.

For Petitioner : Mr. Manohar Sundaram, AGP (Taxes)

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

This revision has been filed by the appellant/Revenue, aggrieved against the order passed by the Tribunal in ordering refund of the amount to the assessee/respondent.

2. Heard the learned Addl. Government Pleader (Taxes) appearing for the petitioner and perused the materials available on record.

3. A perusal of para-5 of the order of the Tribunal would reveal that since there is no provision for levy of penalty under Section 14 of the TNGST Act, the penalty levied under Section 12 (3) (b) cannot be sustained and, therefore, the order of the Appellate Assistant Commissioner deleting the same was confirmed. For better clarity, the relevant portion of the order of the Tribunal is reproduced

hereinbelow :-

> "5. Regarding penalty under section 12 (3) (b) of the TNGST Act, for the asst. year 1994-95, since it is stated in the first page of the assessment order that the respondent has sought for opening of the case, the asst. under Section 14 of the Act by furnishing the annual return and paying the tax of Rs.4,70,947/= revision is under section 14. Section 14 (3) states that penalty if any imposed and collected under Section 12 (3) shall be refunded to the dealer without interest on cancellation of the original assessment order. Since there is no provision for levy of penalty under section 14 the penalty levied under section 12 (3) (b) for the year 1994-95 was rightly deleted by the Appellate Assistant Commissioner and we uphold the same as just and proper.
>
> No valid or reasonable ground is put forth by the department, calling for interference with the order of the Appellate Assistant Commissioner."

4. Learned Addl. Government Pleader appearing for the appellant laid much stress on Section 14 of the TNGST Act canvass the plea that the penalty imposed cannot be refunded and the order of the Tribunal is liable to be set aside. For better clarity, Section 14 of the Tamil Nadu General Sales Tax Act is extracted as hereunder :-

> "14. Fresh assessment in certain cases. -
> (1) Any dealer assessed under sub-section (2) of Section 12 may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for reassessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time or the submission of the incorrect or incomplete return was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted:
>
> Provided that no application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be.

(2) If the amount of tax on the basis of the cancelled assessment has already been collected and if the amount of tax arrived at as a result of the fresh assessment is different from it, any amount overpaid by the dealer shall be refunded to him without interest, or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(3) Penalty, if any, imposed and collected under sub-section (3) of Section 12, shall be refunded to the dealer without interest on cancellation of the order of original assessment."

5. In an admitted case of fresh assessment in terms of Section 14 of the TNGST Act, sub-section (3) of Section 14 provides that penalty, if any, imposed and collected under sub-section (3) to Section 12 shall be refunded to the dealer without interest on cancellation of the order of original assessment. In the instant case, there is no dispute that it is a case of fresh assessment in terms of Section 14 and, therefore, the penalty levied under Section 12 (3) of the Act has been rightly deleted by the authorities below.

6. In the above circumstances, we find no justification for the State to file an appeal against the said legal position. The grounds raised by the State that the Tribunal has misinterpreted Section 14 (3) of the TNGST Act is totally erroneous, since the recording of fact is that the assessee in this case has complied with the requirement of Section 14 for fresh assessment and, therefore, is entitled to the relief under Section 14 (3), which has been recorded as a matter of fact by the Appellate Assistant Commissioner and the Tribunal. For the reasons abovesaid, this Court finds no reason to interfere with the order passed by the Tribunal.

7. Accordingly, this tax case revision fails and the same is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

GLN

To

1. Deputy Commissioner (CT)
Coimbatore Division
Coimbatore - 18.

2. Sales Tax Appellate Tribunal
Additional Bench
Coimbatore .

3.The Additional Appellate Asst.Commissioner,
(Commercial Taxes) Coimbatore.

4.The Commercial Tax Officer,
Avinashi Road Circle, coimbatore.

1 cc to Spl. Government Pleader(Taxes).Sr.No.26977

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pmk.10.7.2015