In the High Court of Judicature at Madras

Date :: 31.07.2015

Coram ::

The Hon'ble Mr. Justice R. Sudhakar
and
The Hon'ble Ms. Justice K.B.K. Vasuki

Tax Case Revision No. 49 of 2015

Palani Andavar Mills Ltd.
236, Dhally Road
Udumalpet. ... Petitioner

-vs-

The State of Tamil Nadu
represented by
The Commercial Tax Officer
Udumalpet (South) Circle. ... Respondent

.. .. ..

Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the Common Order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore – 18, in C.T.R.A. Nos: 06/2014 dated 02.03.2015.

For petitioner :: Mr. N. Inbarajan

Folr respondent :: Dr. Anitha Sumanth for
M/s. Manohar Sundaram

.. .. ..

<u>**O R D E R**</u>

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

Aggrieved by the order passed by the Tribunal dismissing its review application, the assessee has filed the present revision raising the following substantial questions of law :

" (i) Whether in the facts and circumstances of the case and in law, a single member of the Tribunal can pass orders on the review application under Section 36 (6) of the Act, when the order was passed by a double member bench of the Appellate Tribunal ?

(ii) Whether in the facts and circumstances of the case and in law, the Tribunal failed to appreciate other evidence of Form G and Form AR 4 application, evidencing actual export of godos by the exporter ?

(iii) Whether in the facts and circumstances of the case and in law, the Tribunal committed an error that absence of filing of Form H will deny the benefit of exemption claimed under Section 5 (3) of the Act ?

(iv) Whether in the facts and circumstances of the case and in law, the Tribunal failed to appreciate that Form H is not mandatory for the claim of exemption under Section 5 (3) of the Act ?"

2. Though the assessee has raised the above questions of law for consideration in this revision, the learned counsel appearing for the petitioner submits that at the threshold this Court may consider the issue that the impugned order passed by the Tribunal is contrary to Section 30 (3) (a) (iv) of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as T.N.G.S.T. Act. According to him, the impugned order passed by a single member of the Sales Tax Appellate Tribunal in a review application filed to review the order passed by two member bench is clearly against law and on this sole ground, this tax case revision should be allowed.

3. On the other hand, Dr. Anitha Sumanth, learned counsel appearing for the State would submit that, though the turnover in the present case is more than Rs. 1 lakh, for want of an additional member, the post remaining vacant for some time, matters were pending and therefore, the single member took upon himself the role of reviewing the order under Sec. 36 (6) (a) of the T.N.G.S.T. Act.

4. We have heard Mr. Inbarajan learned counsel appeairng for the revision petitioner and Dr. Anitha Sumanth for Mr.Manohar Sundaram learned counsel appearing for the State and perused the materials made available on record.

5. It is seen from the material documents produced that the appeal filed by the assessee in Appeal No: 17 of 2004 challenging the orders of the Appellate Assistant Commissioner (CT), (FAC), Pollachi, in AP No. CST 74/02 dated 03.11.2003, was first disposed of by the Sales Tax Appellate Tribunal, Coimbatore, consisting of Two Member Bench on 28.11.2013. That order finds a place at Page 21 of the typed set along with this tax case revision. Thereafter, the petitioner moved the Tribunal again by filing a review application under Section 36 (6) of the T.N.G.S.T. Act to review its own order. That Review Application No: 6/2014 came to be disposed of by the Tribunal consisting of a single member Bench on 02.03.2015.

6. Section 30 (3) (a) (iv) of the Tamil Nadu General Sales Tax Act, 1959, reads as follows :

> "Sec. 30 (3) (a) The functions of the Appellate Tribunal may be exercised --

(i) by a Bench consisting of three members constituted by the Chairman, or

(ii) by a Bench consisting of two members constituted by the Chairman, or]

(iii) [...........] (omitted by Act 6/63 w.e.f. 1-4-1963)

(iv) by a single member of the Appellate Tribunal nominated in this behalf by the Chairman, in cases where the total turnover as determined by the assessing authority does not exceed one lakh rupees. ”

7. A cursory reading of the aforesaid Section clearly bars the single member from exercising such power of review on both the grounds viz. (i) the turnover admittedly exceeds one lakh rupees and (ii) a single member cannot review an order passed by two member Bench.

8. In such view of the matter, we have no hesitation in setting aside the impugned order. Accordingly, the impugned order is set aside and the matter is remanded to the Tribunal for passing appropriate orders on merits by a competent Bench of the Tribunal. This tax case revision is allowed. There shall be no orders as to the costs.

Index : Yes / No (R.S.J.) (K.B.K.V.J.)
Website : Yes / No 31.07.2015
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R. Sudhakar, J.
and
K.B.K. Vasuki, J.

To

The Commercial Tax Officer
Udumalpet (South) Circle.

T.C. (R) No: 49 of 2015

31.07.2015