IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Revision) No.1649 of 2008

The State of Tamil Nadu
represented by
The Deputy Commissioner (CT),
Coimbatore Division,
Coimbatore.
.. Petitioner

versus

Tvl.Thulasidas Muarjee and Co.,
92, T.V.Samy Road, R.S.Puram,
Coimbatore - 2.
.. Respondent

PRAYER: PETITION filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal as against the order dated 22.2.2000 made in Coimbatore Tribunal Appeal No.253/96 and CTMP No.77/98 on the file of the Sales Tax Appellate Tribunal (AB), Coimbatore. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

against the Order of the Assistant Commissioner(CT), Coimbatore dated 24.4.96 and made in A.P.No.217/95 for the Assessment Year 1992-93 against the Order of the Deputy Commercial Tax Officer, Coimbatore dated 28.2.95 and made in TNGST Asst.No.303106/92-93 for the Assessment Year 1992-93.

For Petitioner : Mr.Manoharan Sundram, AGP

O R D E R

(Made by R.SUDHAKAR,J.)

This Tax Case (Revision) is filed by the Revenue as against the order of the Sales Tax Appellate Tribunal dated 22.2.2000 made in C.T.A.No.253 of 1996 and CTMP No.77 of 1998.

2. The brief facts of the case are as follows:

The assessment in this case relates to the assessment year 1992-93. The Assessing Authority, originally, accepted the return filed by the assessee and determined the total and taxable turnover. Subsequently the business premises of the assessee was inspected and the Officers of the Enforcement Wing found certain discrepancies in the books of accounts and seized certain records and slips. Based on the inspection results, the Assessing Authority reopened the assessment and determined the turnover and worked out the suppression. Consequently, he levied penalty under Section 16(2) of the Tamil Nadu General Sales Tax Act. Aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who set aside the additions to the tune of Rs.42,63,300/- and also the equal addition made, but sustained the addition to the extent of Rs.4,56,840/- and equal amount towards probable omission to the extent of Rs.2,28,400/-. As against the same, the assessee preferred further appeal before the Tribunal.

3. The Tribunal, examined the entire 130 slips recovered and after considering the explanation submitted by the respondent/assessee concurred with the findings of the Appellate Assistant Commissioner and also recorded a reason after independent examination of the documents in issue. For better clarity, we extract the relevant portion of the order of the Tribunal.

> "11. The learned first appellate authority after verification of the entire documents produced by the assessees would observe that for some of the items against which delivery notes and Form XX raised upto the date of inspection were subsequently billed and therefore if such billed quantity of cotton waste is taken into consideration, the stock discrepancy shall vanish may also be true. However, with regard to the above two contentions, it was stated to have been verified by the learned first appellate authority by way of another formula to determine the taxable turnover. After working out the formula the Appellate Authority stated that the estimation for the discrepancy of 2,13,165 kgs and the consequent estimation were not found to be warranted. He also would observe that the formula adopted in the appellants accounts is found to have been reflected the reasonable values for first sales and second sales. The appellants account is found reasonably in order and requires no interference. When all the composite factors of the claim of first sale second sale is taken into consideration, the wastage adopted at 10% and the subsequent biling made by the assessees were also taken into consideration, it was

observed that the quantity shown as discrepancy in stock was not found to be existing.

12. Our independent examination of the observations made by the learned first appellate authority shown that the appellants have clearly explained towards discrepancy in stock by stating that as per the quotations already made by the indenting buyers, the appellants have already sent delivery notes in respect of Tvl.Sri Rajeswari Mills Limited, Gudiyattam, Abba Traders, Coimbatore, Srinath Company, Coimbatore and Deepak Traders, Coimbatore and all the transactions were found accounted for. The appellants are maintaining a fairly reasonable account and during the year 1992-93, the appellants have sent bill No.858, 859, 860, 862, 874, 887, 888, 889, 890, 891, 893, 906, 907, 911, 913, 914 and 915 to various assessees and despatched the quantities between the dates 28.1.93 to 3.2.93. All the transactions were covered by bill of sale as well as delivery notes. Similarly in bill No.954 to 1034, bills were issued for a total value of Rs.2,81,433/- and the short weight in slip no.129 was also explained by way of adequate document in support of their contention. The appellants have also filed affidavit from the buyers for having effected the purchases. Even prior to the date of inspection, the transactions were accounted for in some of the cases and in part they were accounted subsequent to the date of inspection. Such facts would not be countered by the learned Additional State Representative by way of filing supportory evidence to restore the additions deleted by the learned first appellate authority. Relying upon the true nature of the documents filed in favour of the appellants, we are to observe that the learned first appellate authority has come to the right conclusion after examination of the entire documents filed before him at the time of first appeal. Eventhough the Enhancement Petition was filed to restore the entire additions made by the Assessing Authority, they have not properly countered the reasonings given by the first appellate authority for the restoration of the assessment. On a question of fact, we therefore feel that the learned first appellate authority has correctly decided the issue in respect of the discrepancy in stock worked out by the Assessing Authority. For the reasonings submitted before the learned first appellate authority and for the records submitted before us for examination, we therefore feel that the order passed by the learned first appellate authority does not call for any interference. The Enhancement Petition filed by the learned Additional State Representative could not be sustained and therefore ordered to be dismissed."

4. With regard to the levy of penalty, the Tribunal set aside the entire penalty holding as follows:

> "13. With regard to penalty sought to be restored, we have already stated the reasons for deletion of the turnover even sustained by the learned first appellate authority. We have also not concurred with the view of the learned first appellate authority with regard to the turnover of Rs.4,56,840/- and the further additions made therein for the reasonings stated in the earlier paragraphs. In as much as we have deleted the entire taxable turnover sought to be revised u/s 16[1] of the Act, for the reasons already stated, the penalty could not be levied u/s 16[2] of the Act. We therefore, set aside the entire levy of penalty."

5. Aggrieved by the same, the Revenue has filed the present Tax Case (Revision) raising the following grounds:

> "The Tribunal ought to have seen that the stock variation was arrived at after taking into consideration of all relevant factors and the dealer himself had accepted the stock variation and signed the statement.
>
> The Tribunal ought to have seen that the Inspecting Officers had signed the Last Form XX on the date of inspection and arrived at the stock difference. The stock variation was arrived at on the quantity and that the value was arrived at which will not make any difference, since the dealer prepared bill for the goods supplied through Form XX later.
>
> The Tribunal failed to consider that the stock variation is due to unaccounted purchases and sales. The estimation arrived at by the Assessing Authority was reduced by the first Appellate Authority.
>
> The Tribunal ought to have seen that the first Appellate Authority had confirmed the suppressions out of the slips arrived at by the Assessing Authority.

6. The above grounds raised by the Revenue are pure questions of fact. The Tribunal, being a final fact finding authority, has examined all the entire slips and considered the explanation offered by the assessee that all the transactions were covered by bill of sale as well as delivery notes.

7. Being pure question of fact, we find no question of law much

less any substantial question of law arises for consideration. Accordingly, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

2.The Asst.Commissioner (CT)
Coimbatore

3.The Deputy Commercial Tax Officer, Coimbatore.

1 cc to Spl Government Pleader(Taxes),Sr.No24766

Tax Case (Revision) No.1649 of 2008

jsv(co)
pmk.22.5.2015