

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C. (R) NO. 1706 OF 2008

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

...Petitioner

- Vs -

Tvl. A.B.T. Industries Ltd.,
180 Race Course Road,
Coimbatore.

...Respondent

Appeal filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal against the order dated 19.03.2001 in CTA No.458 of 1998 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore, preferred against the order of the Additional Appellate Assistant Commissioner (CT) Coimbatore, in Appeal No. 1068/98 dated 28.04.1998 relating to assessment year 1996-97 against the proceedings of the Commercial Tax Officer, Trichy Road Circle, Coimbatore in TNGST No. 1880204/96-97 dated 27.02.1998. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered.

For Petitioner : Mr. A.N.R.Jayapratap, G.A.(T)

For Respondent : Mr. N.Murali

ORDER
(MADE BY R.SUDHAKAR, J.)

The above Tax Case (Revision) filed by the Revenue as against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal was admitted by this Court on the following substantial question of law :-

"Whether the finding of the Assessing Officer in respect of 2(1)(a) and 2(1)(aa) that it cannot operate at the same to assess the dealer is legally correct?"

2. The facts, in a nutshell, are as hereunder :-

The assessee/respondent herein is a dealer in soft drinks and auto spares. While completing the assessment, the Assessing Authority levied additional sales tax and additional surcharge on the taxable turnover. Aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who dismissed the appeal, thereby sustained the levy of additional surcharge and additional tax. As against the same, the assessee pursued the matter once again before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal partly allowed the appeal, thereby deleted the additional sales tax holding that the turnover below 100 crores of the rupees is not assessable by the Assessing Authority as both Section 2(1)(a) and 2(1)(aa) could not prevail at the time to assess a dealer, against which the Department has preferred the present revision.

3. Both the learned Government Advocate appearing for the petitioner and the learned counsel appearing for the assessee/respondent submit that the issue involved in this revision is covered by a decision of this Court in the case of State of Tamil Nadu - Vs - National Time Co. (2011 (39) VST 247 (Mad)).

4. Heard learned Government Advocate appearing for the Department/petitioner and the learned counsel appearing for the assessee/respondent and perused the materials found in the typed set of documents.

5. In the case of State of Tamil Nadu - Vs - National Time Co. (2011 (39) VST 247 (Mad)) while dealing with the issue on the levy additional tax, this Court held as under :-

"16. To make the position more clear, for instance, in the financial year 1.4.1996 to 31.3.1997, for the period upto 31.7.1996, if the taxable turnover was Rs.50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the liability by way of additional tax should be calculated at the rate of 1.5% and if for the whole of the financial year, the taxable turn over exceeded Rs.100 crores, for the remaining amount of Rs.99.50 lakhs i.e, excluding Rs.50 lakhs, which is relatable to the period only upto 31.7.1996, the rate of tax as per the amended Section 2(1)(aa) will have to be worked out.

17. Keeping the above statutory implication

relating to payment of additional sales tax as was applicable upto 31.7.1996 and after 1.8.1996, when we examine the order of the Assessing Authority dated 28.1.1998, in the case on hand, we find that the taxable turnover of the respondent - assessee was Rs.54,97,880/- up to 31.7.1996. The taxable turnover for the financial year is stated to have exceeded rupees one crore. But for the purpose of calculation of additional sales tax, since for the whole of the financial year, the taxable turnover did not exceed one hundred crores, there would be no necessity to make any further calculation for the period beyond 31.7.1996. The Assessing Authority calculated the additional sales tax at the rate of 2% on the taxable turn over for the whole of the year.

* * * * *

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the Assessing Authority are liable to be set aside. While setting aside the order of the Assessing Authority, we direct the Assessing Authority to pass fresh orders by keeping the taxable turnover of the respondent assessee upto 31.7.1996 in a sum of Rs.54,97,880/- and calculate the tax at the rate of 1.5% on the sum of Rs.44,97,880/- (i.e.), after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of Section 2(1)(a)."

6. In such view of the matter, following the above-said decision of this Court, the substantial question of law is answered in favour of the assessee/respondent and against the petitioner/Revenue.

7. In the result, the revision fails and the same is dismissed confirming the order passed by the Tamil Nadu Sales Tax Appellate Tribunal. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commercial Tax Officer,
Trichy Road Circle,
Coimbatore.

3. The Additional Appellate Assistant Commissioner (CT)
Coimbatore.

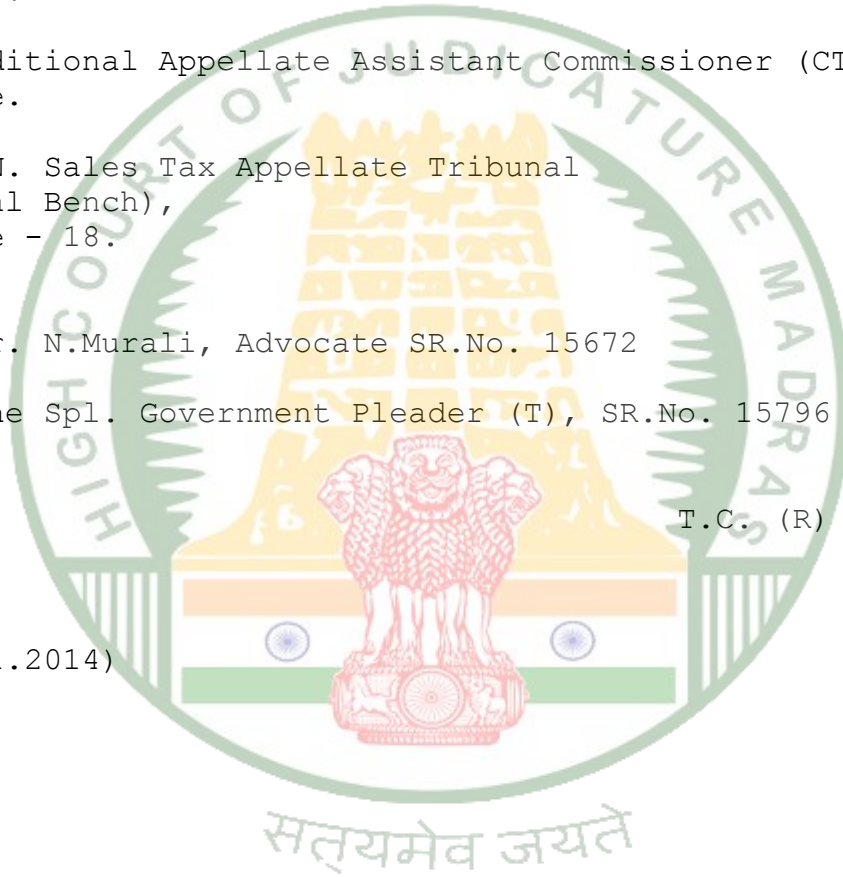
4. The T.N. Sales Tax Appellate Tribunal
(Additional Bench),
Coimbatore - 18.

1 CC to Mr. N.Murali, Advocate SR.No. 15672

1 CC to the Spl. Government Pleader (T), SR.No. 15796

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KU (CO)
PSI (05.11.2014)



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