

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. 1854 OF 2008

The State of Tamil Nadu
rep. By Deputy Commissioner (CT)
Madras (Central) Division
Madras - 600 006.

...Petitioner

- Vs -

Tvl. Uptron India Limited,
282, T.T.K.Road,
Alwarpet, Madras - 18.

...Respondent

Appeal filed under Section 38 of the Tamil Nadu General Sales Tax Act against the order dated 30.3.1993 made in T.A.No.1181 of 1992 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Madras.

For Petitioner : Mr. S.Manoharan Sundaram
AGP(T)

ORDER
(MADE BY R.SUDHAKAR, J.)

The above Tax Case (Revision) is filed by the Revenue as against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether the order of the Tribunal cancelling the levy of penalty under Section 22(2) and thereby allowing the appeal and dismissing the enhancement petition is erroneous in law?

2. Whether the Tribunal ought to have seen that in case of Section 22 Penalty, the levy follows as a matter of course wherever the assessee is found to

have collected tax in contravention of the provision so the Act and as held in 57 STC 69 and 72, the Tribunal ought to have confirmed the levy of penalty and dismissed the appeal?

3. Whether the Tribunal ought to have seen the fact that the tax had been remitted to the Government will not sanctify due to the illegal collection and hence the Tribunal ought to have allowed the enhancement petition and restored the assessee officer's report?"

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

The assessee/respondent herein is a dealer in electronic goods. During checking of accounts, the Assessing Authority found that the assessee had collected tax on electronic goods at 15% instead of 10%. Hence, the excess collection was quantified by the Assessing Officer and levied penalty under Section 22(2) of the Tamil Nadu General Sales Tax Act at one and half time of the excess collection. Aggrieved by the same, the assessee filed an appeal before the Appellate Assistant Commissioner, who reduced the penalty at 50% of the excess collection. Before the tribunal, the assessee filed an appeal and the Department has also filed an enhancement petition to restore the penalty. The Tribunal after hearing both sides found that there was no illegal retention of the amount by the assessee and that the collection of tax at 15% was paid to the Government. In so holding, the Tribunal came to the conclusion that penalty is unwarranted under Section 22(2) of the Act and allowed the appeal filed by the assessee, thereby dismissed the enhancement petition filed by the Department. Being aggrieved by the order of the Tribunal, the Revenue is before us.

3. Learned Additional Government Pleader appearing for the petitioner submits that in respect of the very same assessee, this Court decided the same issue in the decision reported in (2010) 29 VST 500 (Mad) (State of Tamil Nadu V. Uptron India Limited), in favour of the assessee and against the Revenue.

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

5. In the decision reported in (2010) 29 VST 500 (Mad) (State of Tamil Nadu V. Uptron India Limited) while dealing with the issue on the levy of penalty under Section 22(2) of the Tamil Nadu General Sales Tax Act on the excess collection of tax, this Court held as under :-

"If so construed from the facts noticed supra, it could be seen that all that the assessee has done in this case was that they collected tax at the rate of 15 per cent as per the original rate without being aware of the reduction of tax at the rate of 10 per cent. The tax so collected was duly remitted to the Government. No amount was retained by the assessee, which factum has not been disputed by the Revenue.

In view of the law laid down by the apex court in Ajit Mills case [1977] 40 STC 497 and on the admitted facts, it cannot, therefore, be said that the assessee has collected any amount by way of tax or purporting to be by way of tax so as to be held liable or render itself liable for contravention of section 22 (1) of the Act. The assessee collected the amount, brought the same on account and remitted it to the Government faithfully. Therefore, it is not possible to hold that the assessee had collected tax as interpreted by the Supreme Court in Ajit Mills' case [1977] 40 STC 497 in contravention of the provisions of section 22(1) of the Act. In Selvakumar Timber Traders' case [1984] 57 STC 69 (Mad), the assessing officer levied penalty for violation of section 22(1) of the Act. The Appellate Assistant Commissioner reduced the quantum of penalty. The Tribunal considered the second appeal of the assessee as well as the Department's enhancement petition asking for restoration of penalty as originally levied by the assessing officer and held that there was no case for restoration of the penalty levied by the assessing officer and that the Appellate Assistant Commissioner was justified in reducing the quantum of penalty. The enhancement petition filed by the Government was dismissed. The High Court upheld the order of the Tribunal and dismissed the revision filed by the Department. So is the judgment in the case of P. Ramasamy v. State of Tamil Nadu [1984] 57 STC 72 (Mad). Similar view has been taken by this court in the case of State of Tamil Nadu v. Sasman and Company reported in [1984] 57 STC 160 and in the case of State of Tamil Nadu v. Jaya Pharmacy reported in [1984] 57 STC 164 (Mad). The above judgments show that depending upon the facts and circumstances of the case, it is a matter for discretion of the assessing officer to determine as to whether the penalty provision under section 22(2) of the Act is attracted in a case where collection has been made in

violation of section 22(1) of the Act and that the imposition of penalty is not warranted. The discretion, indeed, has to be exercised judiciously, properly and bonafidely.

In the given set of facts, as stated above, we are of the view that the Tribunal exercised its jurisdiction under section 22(2) of the Act judiciously, properly and bonafidely, which requires no interference at our hands in the revisional jurisdiction of this court under section 38 of the Act.

Therefore, the revision petition is dismissed. No costs."

6. It is seen that the above-said decision was rendered by this Court in the revision filed by the State as against the dismissal of the Enhancement petition filed before the Tribunal in respect of the very same assessee. The present revision is filed by the Revenue as against the grant of relief by the Tribunal to the assessee in the appeal filed by the assessee. In such view of the matter, following the above-said decision of this Court, the substantial questions of law are 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//

सत्यमेव जयते
Sub Assistant Registrar

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To

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

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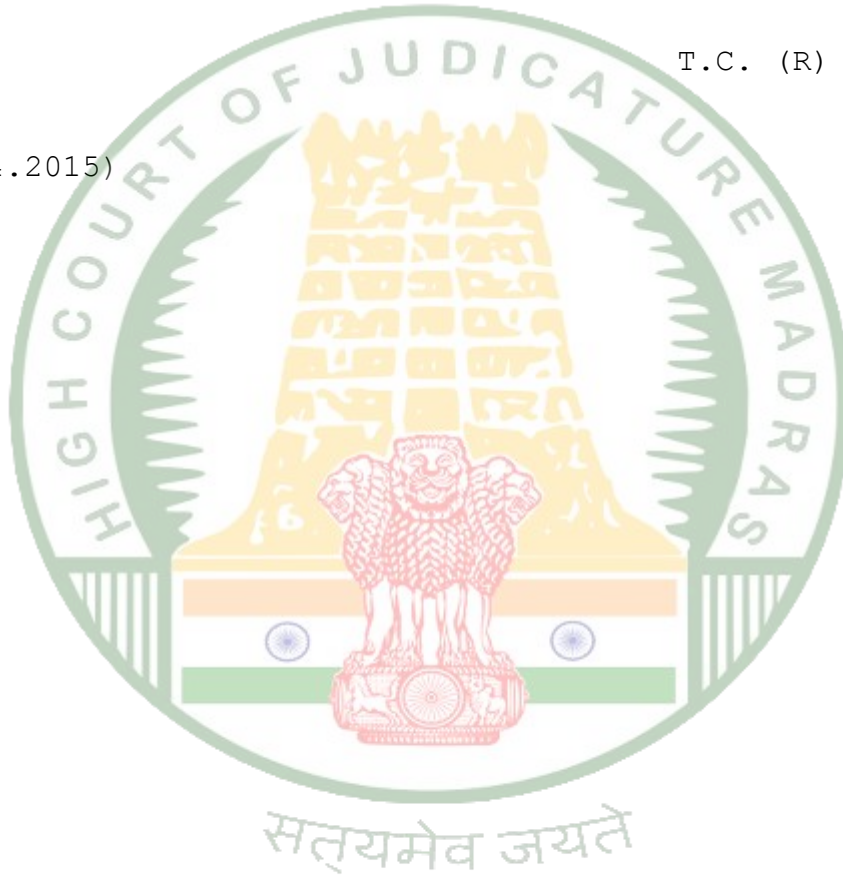
2. The Appellate Assistant Commissioner (CT) IV,
Chennai.

3. The Commercial Tax Officer,
Myalpore Assistant Circle,
Chennai - 18.

1 CC to the Spl. Government Pleader, SR.No. 15797

T.C. (R) NO. 1854 OF 2008

GGK (CO)
PSI (06.04.2015)



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