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) Nos.1864, 1865 and 1892 of 2008

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

.. Petitioner in the above T.Cs

versus

Thiru D.V.Perumalsamy Chettiar
Dottampalayam,
Sathyamangalam.

..Respondent in the above T.Cs

PRAYER: PETITIONs filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal as against the order dated 03.07.1992 made in C.T.M.P.Nos.205, 204 of 1991 and C.T.A.No.142 of 1991 on the file of the Sales Tax Appellate Tribunal (AB), Coimbatore. Prayer in TC Nos.1864, 1865, 1892/08 against the order of the Appellant Assistant Commissioner (CT) dt. 13.12.90, 13.12.90, 13.12.90 made in appeal No.238/90, 239/90 for the assessment year 1988-1980 1989-90 against the assessment order dated.17.07.90, 17.07.90, 17.07.90 respectively made in TNGST No.710725 against the order of the Deputy Commercial Tax Officer, Sathyamangalam made in TNGST Nos.710725/88-89 respectively. After the abolition of the Tribunal, the matters have been transferred to this Court and renumbered.

For Petitioner : Mr.Manoharan Sundram, AGP

C O M M O N O R D E R
(Made by R.SUDHAKAR,J.)

The above Tax Case (Revisions) are filed by the Revenue as against the order of the Sales Tax Appellate Tribunal dated 03.07.1992 made in C.T.M.P.Nos.205, 204 of 1991 and C.T.A.No.142 of 1991.

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

The assessment in these cases relate to the assessment years 1988-89 and 1989-90. The assessee is said to be a dealer in handloom sarees. The place of the business of the appellant was inspected on 16.12.1989. At the time of inspection, it was found that the stock available was 100 Nos. of handloom sarees and cotton yarn 100 counts 16 bags. On enquiry, Mr.P.Soundararajan, son of the assessee deposed that the cotton yarn required for manufacture of handloom saree was used to be received from persons hailing from Coimbatore and those parties used to deliver the required quantum of cotton yarn at the business premises of the consumers like the assessee. It was found that in the accounts, instead of showing the purchase of cotton yarn, entries have been made as if the cotton sarees were purchased from the master weavers. In view of the deposition, the Assessing Authority had arrived at the purchase value of cotton yarn taxable under Section 7A of the Tamil Nadu General Sales Tax Act. Aggrieved by the same, the assessee filed appeals before the Appellate Assistant Commissioner, who, after examining the contention of both sides, came to the conclusion that the assessee was entitled to partial relief. Accordingly, he has given certain relief with regard to penalty for both the assessment years. As against the same, the assessee filed appeals before the Tribunal and the Revenue filed an Enhancement Petition before the Tribunal. The Tribunal, after examining the records, allowed the appeals filed by the assessee and dismissed the enhancement petition filed by the Revenue holding as follows:

> "In this case we found that the cause of revision under section 16 for the year 1988-89 and the assessment under section 7A for the year 1989.90 are based on the statement and we have discussed in (c). The credibility of the statements and its contents were not analysed thread bare before adopting the same as the foundation of the entire exercise by the Department. The proposal by the Enforcement wing which speaks about purchases of cotton yarn from the unregistered dealers in Coimbatore is not in consistance with the administration of Act. Cotton yarn is a schedule commodity and even if the sale is for one rupee the same ought to be taxed. Merely observing that the purchases are from unregistered dealers in Coimbatore means that the Department has not taken things serious enough to unearth the entire episode but rest content with treating the appellant a dealer in exempted goods all through the years as a manufacturer was had used taxable goods viz., cotton yarn without any proof of sufference of tax earlier. The fact that the appellant is a manufacturer is also not established beyond doubt. The question of supplying yarn to master weaver by the appellant is also not corroborated with any evidence to show from the transport document or title to

the goods. The stock of yarn stated to be available on the inspected date is also not convincingly proved related to the appellant himself. The First Appellate Authority eventhough helds that the statements credibility could resorted to 50:60 basis choice as there is no ciaching evidence in favour of the Department.

In the circumstances we feel that it is just and proper to allow the case in favour of the appellant. With regard to the Enhancement Petitions, we are of the view that as we have fully allowed the claim of the appellant the prayer for the state to restore the 50% allowance given by Appellate Assistant Commissioner (CT) Erode could not be compled with.

In the result, the appeals are allowed and the Enahnced at Petition are Dismissed."

3. A reading of the order of the Tribunal reveals that the Department has not established its case for allowing the enhancement petition. There is no evidence on record to show that the appellant had purchased cotton yarn from the unregistered dealers. It is relevant to note that the Department had not produced the D3 file, which contains the statement of master weaver. The Tribunal took the view that the Department had not taken pains to make a proper investigation of the case and it solely relied on the statement recorded by the son of the assessee.

4. Since the entire case is based on the statement of the person, who was not concerned with the affairs of the sole proprietary concern and there being no material to determine the breach as alleged, we have no hesitation to hold that the Department has failed to prove that the assessee had purchased cotton yarns from the unregistered dealer.

5. Being pure question of fact , we find no question of law much less any substantial question of law arises for consideration in these Revisions. Accordingly, the above Tax Case (Revisions) are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner (CT) Salem Division Salem.

2. The Appellate Assessment Commissioner (CT) Erode.

3. The Commercial Tax Officer, Sathyamangalam.

+ 3 ccs to the Special Government Pleader Sr. 24145 & 24147

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JP(CO)
EU 22.05.2015