IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

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

Tax Case (Revision) Nos.1944 to 1947 of 2008

The State of Tamil Nadu
represented by the Deputy Commissioner (CT)
Salem Division, Salem.
.. Petitioner in the above T.Cs

versus

Tvl.Andavar Minerals and Industries,
Osavakkadu, Pallakkapalayam Post,
Tiruchengode Taluk.
.. 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 14.3.1991 made in C.T.A.No.484, C.T.M.P.No.318 of 1990, C.T.A.No.481 of 1990 and C.T.M.P.No.315 of 1990 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore against the order of the Appellate Assistant Commissioner (CT) Erode made in A.Nos.601/89, CST 89/89, CST 88/89 and A.P.600/89 dt.26.3.90 respectively in the Assessment Years 1987-88 and 1988-89. After the abolition of the Tribunal, the matters have been transferred to this Court and renumbered.

For Petitioner : Mr.Manoharan Sundram, AGP (T)

For Respondent : No appearance

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 State as against the order dated 14.3.1991 made in C.T.A.No.484, C.T.M.P.No.318 of 1990, C.T.A.No.481 of 1990 and C.T.M.P.No.315 of 1990 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

2. The brief facts of the case are as follows:
The assessment in these cases relate to the assessment years 1987-88 and 1988-89. The assessee filed return of income for the

assessment years in question reporting the total and taxable turnover. The business place of the assessee was inspected by the Enforcement Wing Officials and found that the assessee had not maintained any production-cum-stock account. During inspection, the officials recovered the sale bill book relating to the business of the assessee. The Assessing Officer examined the records and assessed the total and taxable turnover for both the assessment years after including grinding charges, loading and unloading charges and freight charges in the total turnover as pre-sale expenses. The Assessing Officer also levied penalty under TNGST Act as well as under CST Act. Aggrieved by the same, the assessee filed appeals before the Appellate Assistant Commissioner, who reduced the addition from 15% to 5% and deleted the entire penalty in respect of assessment under TNGST Act for both the assessment years. In respect of assessment under CST Act, the Appellate Assistant Commissioner confirmed the assessment made but deleted the entire penalty levied for both the assessment years. Aggrieved by the same, the assessee filed appeals and the Revenue filed Enhancement Petition before the Tribunal. The Tribunal, after perusing the records, modified the assessment made, thereby dismissed the enhancement petition filed by the State holding as follows:

> "4. When we peruse records, these charges have been shown separately and according to the appellant the price mentioned in the sale bills is the real price of the mineral per tonne and grinding, loading and handling and freight are shown separately. According to the decision reported in T.A.92/82 to 98/82 dated 5-8-82, these charges will not form part of sale price. According to the decision reported in T.A.1136 and 1137 dated 13-4-83 and T.C.1037/82/dt. 7-10-82, handling charges are also not taxable. In the circumstances, we feel as the grinding charges, loading and unloading charges and freight charges as per invoice are only post-sale expenditure and we are unable to sustain the levy of tax on a turnover of Rs.4,31,035/- and Rs.4,87,908/- for the assessment year 1987-88 and 1988-89 respectively under TNGST and Rs.1,32,364/- and Rs.79,196/- for the assessment year 1987-88 and 1988-89 respectively under CST. Accordingly, these turnovers are ordered to be deleted.
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> 5. In respect of addition towards defects, considering the circumstances and the explanation offered by the learned Authorised Representative it is ordered to be reduced to 2 1/2%.
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> 6. The learned Additional State Representative has filed and Enhancement Petitions in respect of levy of penalty, which has been deleted by the learned Appellte Assistant Commisioner in toto for the reason and prayed for restoring the penalty. The learned Authorised Representative in his counter argument rightly contended that the turnover finds place in the accounts and the learned Appellate Assistant Commissioner has given a clear

finding for the deletion of penalty. In the circumstances, the Enhancement petitions fails and stands dismissed.

With the above observation of these four appeals TNGST appeals are modified and CST appeals are allowed and the Enhancement petitions are also stands dismissed."

3. Aggrieved by the order of the Tribunal, the Revenue has filed the present Tax Case (Revisions) before this Court.

4. Heard learned Additional Government Pleader appearing for the petitioner and perused the materials placed before this Court.

5. The core issue involved in these revisions is whether the expenses, viz., grinding, loading and unloading and freight charges, claimed by the assessee is post-sale expenses or pre-sale expenses.

6. The Tribunal, after examining the records and based on facts has come to the conclusion that these expenses are post-sale expenses and could not be included in the turnover.

7. Being pure question of fact, we find no reason to differ with the finding of fact arrived at by the Tribunal, which is a final fact finding authority. Accordingly, this Tax Case (Revision) stands dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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

2.The Deputy Commissioner (CT)
Salem Division, Salem.

3.The Secretary, Central Board of Revenue,
New Delhi.

4.The Appellate Assistant Commissioner (CT)
Erode.

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