IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM :

THE HON'BLE MR.JUSTICE **R.SUDHAKAR**
and
THE HON'BLE Ms.JUSTICE **K.B.K.VASUKI**

Tax Case (Revision) No.2353 of 2008

State of Tamil Nadu Rep by
The Deputy Commissioner of
Commercial Taxes,
Tiruchirapalli Division,
Tiruchirapalli. ..Petitioner

V.

R.Rajasekaran ..Respondent

PRAYER : Petition filed under Section 38 of the Tamil Nadu General Sales Tax Act against the order dated 16.09.1991 made in TA.Nos.96, 97, 98 and 99 of 1991 on the file of Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Madurai.

For petitioner : Mr.Mohanram Sundaram, AGP (Taxes)

For Respondent : No appearance.

ORDER
(Delivered by K.B.K.VASUKI, J.)

The Revenue is the petitioner before this Court. The respondent who is the manufacturer of printing types, was originally assessed to total and taxable turnover for the year 1988-1989 and notice was issued under Section 16 of the Act, proposing to revise the assessment by bringing it under Entry 81 of the first schedule through TNGST Act 1959 and proposing to levy penalty and surcharge under Section 12(5)(ii) of the Act for filing the annual return belatedly. On receipt of the same, the respondent filed his objection. The original Assessing Authority rejected the objection raised by the dealer and levied penalty for filing the annual return belatedly. Aggrieved against the same, the assessee preferred an appeal before the Appellate Authority, Assistant Commissioner (CT), Trichy, who remanded the matter for going into the question as to whether printing types sold and used in hand for operated printing machines are power driven printing machines to be brought under item 81 of the first schedule.

2.The assessee questioned the order of remand by way of further appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The Sales Tax Appellate Tribunal disposed of batch of appeals involving identical issue by a common order, by relying on the decision of the High Court reported in **25 STC 381 (N.A.V.Naidu V. The Commissioner of Commercial Taxes, Bangalore)** wherein it is held that printing machinery cannot be worked without printing types and the printing types can neither be a part nor accessory. It is further found by the Tribunal that the printing types made by the assessee are meant for hand operating and are not suitable for any power operated machines and are not included under item 81 and the printing types made by the appellant are hence taxable at 5%. The Tribunal having found so, allowed the appeal. Hence, this tax case revision by the Revenue before this court.

3.The Revision is admitted on the following substantial questions of law :

> (i)Whether the Tribunal was right in holding that the printing types would not come under Entry 81 of the first schedule to the Act, particularly, when the first appellate authority has remanded the matter to consider whether the sale of the assesse of the printing types is to class of persons who operated the printing machines without application of any fuel, i.e,hand operated?
>
> (ii)Whether the Tribunal is correct in applying the judgment in the case of N.A.V.Naidu V. The Commissioner of Commercial Taxes, Bangalore - 25 STC 381 in allowing the appeal?

4.Heard the learned counsel for the petitioner and perused the records.

5.The two issues involved herein are (i)whether the printing types manufactured and sold by the assessee are part or accessory; and (ii)whether the same is meant for hand driven machinery or power driven machinery. It cannot be disputed herein that in the event of the same being answered in affirmative, the Revenue has no case before this Court. While, the original Assessing Officer failed to go into this aspect, the first Appellate Authority, having determined the point for consideration correctly, again omitted to go into the same on facts and thought it fit to remand the matter for fresh disposal. Whereas the Sales Tax Appellate Tribunal after considering both the issues, which are factual in nature, decided the issues on the basis of the findings arrived at by the same. As the findings rendered by the Appellate Tribunal involve no legal issue, no question of law arises herein calling for interference with the factual findings rendered by the Appellate Tribunal and no case is hence made out by the Revenue for granting any relief in this revision.

6.In the result, the Tax case revision is dismissed. No costs.

(R.S.J.) (K.B.K.V.J.)
30.04.2015.

Internet : Yes/No
Index : Yes/No
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To
1.The Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Madurai.
2.The Deputy Commissioner of Commercial Taxes, Tiruchirapalli Division, Tiruchirapalli.

R.SUDHAKAR, J.
and
K.B.K.VASUKI, J.

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