IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.3.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Tax Case (R) No.103 of 2015

The State of Tamil Nadu
rep. by
The Deputy Commissioner (CT)
Chennai (East) Division,
Chennai 600 006. Appellant

Versus

Tvl.Tata Elxi India Ltd.,
No.1, Visweswarpuram,
Chennai 600 018. Respondent

Prayer: Tax Case (Revision) under Section 38 of the TNGST Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal(Main Bench), Chennai in T.A.No.954 of 1999 dated 17.9.2003.

For Appellant : Dr.Anita Sumanth,
Special Govt. Pleader

JUDGMENT

(Judgment of the court was delivered by V.RAMASUBRAMANIAN, J.)

This Tax Case Revision is filed by the Revenue, under section 38 of the TNGST Act, 1959, challenging an order of the Tamil Nadu Sales Tax Appellate Tribunal.

2. Heard Dr.Anita Sumanth, learned Special Government Pleader

(Taxes) appearing for the appellant/Revenue.

3. The Tribunal took up for consideration two questions of law. They are as follows:-

> "1) Whether the lower authorities were proper in their conclusion that the said transactions were liable to tax under Section 3-A of the Tamil Nadu General Sales Tax Act (T.A.Nos.955/99 and 954/99 for assessment years 1994-95 and 1995-96)?
>
> 2) Whether the lower authorities were proper in their conclusion that penalty under Section 22(2) of the Tamil Nadu General Sales Tax Act was called for (T.A.Nos.953/99 and 956/99 for assessment years 1994-95 and 1995-96)?"

4. On question No.1, the Tribunal recorded a finding that though the assessee had a branch office in Chennai, it was not at all registered under the TNGST Act, 1959 and that it worked only as a liason office in the transaction between their Head Office in Bangalore and the BHEL in Trichy. The Tribunal also recorded a finding that there was no evidence to the contrary.

5. Though Dr.Anita Sumanth, the learned Special Government Pleader (Taxes) contended that it was the positive case of the Department that the situs of supply was in Tamil Nadu, the Department did not produce any evidence. Therefore, we find nothing wrong with the conclusion reached by

the Tribunal, on the first question.

6. Insofar as the second question is concerned, the Tribunal again recorded a finding that the appellant collected tax at the rate of 5%, but, refunded 2% of the tax collected and retained only 3%. In other words, there was a collection of tax at the rate of 3%. They also produced credit notes to prove the refund of tax relating to the same assessment year. Therefore, the Tribunal actually confirmed penalty. As against this, the Dealer has not come up with any appeal.

7. Therefore, we find no justification to entertain the above appeal. Hence, it is dismissed. No costs.

(V.R.S.J.,) (N.K.K.J.,)

Index:Yes/No 2.3.2016
Internet:Yes/No
ssk.

To:

Tamil Nadu Sales Tax Appellate
Tribunal(Main Bench), Chennai.

V.RAMASUBRAMANIAN, J.
AND
N.KIRUBAKARAN, J.

ssk.

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