IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE DR.JUSTICE S.VIMALA

Tax Case (Revision) Petition Nos.25 and 26 of 2016
and
C.M.P.Nos.7956 and 7957 of 2016

M/s.Dinup Traders,
MMC No.436A,
Chalakara,
Palur Post,
Mahe. ... Petitioner in both Cases

Vs.

Appellate Assistant Commissioner,
(Commercial Taxes),
Puducherry. ... Respondent in both Cases

COMMON PRAYER: Tax Case Revision Petitions filed under Section 51(2) of the Puducherry Value Added Tax Act, 2007, to revise the order of the Sales Tax Appellate Tribunal, Puducherry, dated 05.02.2016 and passed in Tax Appeal Nos.11 and 12 of 2015, against the Order of the Appellate Assistant Commissioner (CT), Puducherry dated 14.09.2015 and made in Appeal Nos.31 & 32/PVAT/2015-16/AAC, against the Order of the Assistant Commercial Tax Officer, Mahe dated 06.07.2015 and made in TIN : 34730006900 for the Assessment Year 2011-2012 and April 2012 to August 2012, against the Order of the Appellate Assistant Commissioner (CT), Puducherry dated 28.04.2014 and made in Appeal No.12/PVAT/2013-2014 and Appeal No.13/PVAT/2013 - 2014, against the Order of the Assistant Commercial Tax Officer, Puducherry dated 26.03.2013 and made in TIN : 14/34730006900 for the Assessment Years April 2011 to March 2012 and April 2012 to August 2012 respectively.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
For Mrs.AL.Ganthimathi

For Respondent : M/s.D.Reena Iswariya,
Additional Government Pleader
(Puducherry)

COMMON ORDER

[Common order of the Court was made by K.K.SASIDHARAN, J.]

INTRODUCTORY:

The petitioner, who is engaged in the sale and re-sale of live chicken in Mahe, produced invoices issued by M/s.S.K.Traders, Palladam and claimed that live chicken was purchased from the said firm. The check post entries revealed that the very same lorry was used for transportation of live chicken from Palladam by another dealer M/s.Mohan Breeding Farm. The further enquiry conducted by the Assessing Officer revealed that M/s.S.K.Traders, Palladam filed a nil report before the Sales Tax Department, declaring that they have not done any business during the period in which the petitioner claimed that purchase was made from the very same Trader. In short, the petitioner purchased live chicken from M/s.Mohan Breeding Farm, but, however, produced a forged bill showing higher purchase value to make it appear as if purchase was only from M/s.S.K.Traders. The Assessing Officer took a lenient view and without preferring police complaint for forgery and falsification of records, passed an order of assessment and imposed penalty on the petitioner. The Sales Tax Appellate Tribunal modified the order passed by the Appellate Assistant Commissioner by reducing the penalty. Feeling aggrieved, the assessee has come up with these two Tax Cases invoking Section 51(2) of the Puducherry Value Added Tax Act, 2007.

2. The Enclave of Mahe, an outlining region of Pondicherry, is now a smugglers' paradise on account of less sales tax for liquor, live chicken and other articles. This case is a classic example of billing live chicken to Mahe and thereafter, taken to the neighbouring State of Kerala, where the tax rate is very high.

BRIEF FACTS:

3. The petitioner is a dealer registered with the Commercial Tax Department, Mahe. The petitioner is engaged in sale and re-sale of live chicken.

4. The Assessing Authority passed two orders on 26 March, 2013, for the period from April, 2011 to March, 2012 and April, 2012 to August, 2012. The assessment orders were challenged before the Appellate Assistant Commissioner, Puducherry. The appeals were allowed, by order dated 28 April, 2014. Thereafter, the Assistant Commercial Tax Officer considered the issue once again and passed fresh assessment orders on 06 July, 2015. The petitioner, once again, challenged the assessment orders before the Appellate Assistant Commissioner. The appeals were dismissed, by order

dated 14 September, 2015. The petitioner, thereafter, filed two tax appeals before the Sales Tax Appellate Tribunal, Puducherry. The Appellate Tribunal, while confirming the orders passed by the Assessing Authority and the related appellate orders, reduced the penalty to 75%. The appeals were partly allowed. The Tax Cases are directed against the common order passed by the Tribunal.

SUBMISSIONS:

5. The learned Senior Counsel for the petitioner contended that the Assessing Authority collected materials behind the back of the assessee and those materials were relied on to pass assessment orders. According to the learned Senior Counsel, the Assessing Officer valued the live chicken at an exorbitant rate and assessed the petitioner. Similarly, penalty was imposed without any rhyme or reason. Assessment orders are, therefore, liable to be set aside.

6. I have also heard the learned Additional Government Pleader appearing on behalf of the respondent.

DISCUSSION:

7. The assessment relates to the period from April 2011 to March, 2012 and April, 2012 to August, 2012. The assessment orders passed by the Assessing Officer on 26 March, 2013 was the subject matter of challenge before the Appellate Assistant Commissioner, Puducherry. The Appellate Assistant Commissioner allowed the appeals. The Appellate Authority was of the view that one more opportunity should be given to the petitioner herein to produce all the purchase/sales registers and invoice records for the assessment years in question. The Assessing Authority was given liberty to verify the correctness of the price from the dealers in Tamil Nadu and the prevailing market rate in the neighbouring State and to pass a fresh order on merits.

8. Thereafter, the Assessing Authority verified the returns submitted by the petitioner. The returns were subjected to cross verification at Palladam from where the purchases were made. The Assessing Authority found that the petitioner fabricated records and grossly undervalued the live chicken. The enquiry conducted by the Assessing Officer revealed that there were two bills produced for the purchase made on the same day with the very same vehicle number and the same quantity, one purchased by the petitioner to appear as if purchase was made from M/s.S.K.Traders and another obtained from M/s.Mohan Breeding Farm, Palladam. The Assessing Authority arrived at a prima facie conclusion that either the petitioner should have purchased two loads of same quantity of chicken from two different dealers on the same day and transported the same in one vehicle and reported the same to the check post authorities or either one of the purchase bills

is fictitious one. The Assessing Authority visited M/s.S.K.Traders to ascertain the genuineness of the bills produced by the petitioner. The Assessing Authority cross-checked the returns submitted by M/s.S.K.Traders before the Assessing Authority at Palladam. The enquiry revealed that M/s.S.K.Traders had not carried on business in live chicken during the period in question.

9. The Assessing Authority was, therefore, convinced that the petitioner adopted delaying tactics to avoid tax liability. The petitioner also indulged in fabrication of bills and falsification of accounts.

10. The Assessing Authority issued two pre-assessment notices calling upon the petitioner to explain as to why the assessment shall not be made, taking into account the details furnished in the notices.

11. The Assessing Authority considered the objections received from the petitioner and arrived at a conclusion that there was absolutely no merit in the case pleaded by the petitioner. The Assessing Authority has given justifiable reasons to pass the assessment orders, in the light of the pre-assessment notices. The issue was, thereafter, considered by the Appellate Authority. The Appellate Authority upheld the order passed by the Assessing Authority by giving independent reasons.

12. Before the Sales Tax Appellate Tribunal, the petitioner pleaded that materials were collected behind the back and adverse inference was drawn. The Sales Tax Appellate Tribunal scanned the materials available on record and arrived at a finding that the Assessing Authority was perfectly correct in passing assessment orders, but, however, taking into account the background facts, penalty was reduced from 100% to 75%.

13. We have perused the assessment orders passed by the Assessing Authority, the appellate order and the second appellate order passed by the Sales Tax Appellate Tribunal. We are of the view that there is no sufficient ground made out for interfering in the well considered orders passed by the authorities below. The petitioner has not produced any material to demonstrate that the finding given by the Assessing Authority has no factual or legal basis. The Tribunal, being the final Court of facts, considered the factual matrix and passed the orders impugned in the Tax Cases. We are, therefore, of the view that the petitioner has not made out a case for admitting these Tax Cases for the purpose of deciding the question of law.

14. In the upshot, we dismiss the Tax Case Revision Petitions. No costs. Consequently, the connected Civil Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

SML

To

1.The Appellate Assistant Commissioner,
(Commercial Taxes),
Puducherry.

2.The Assistant Commercial Tax Officer,
Mahe.

3.The Assistant Commercial Tax Officer,
Puducherry.

+1cc to Mrs.AL.Ganthimathi, Advocate, S.R.No.28106
+1cc to the Government Pleader, S.R.No.28093

Tax Case (Revision)
Petition Nos.25 and 26 of 2016

SV(CO)
CA(03/08/2016)