In the High Court of Judicature at Madras

Dated : 23.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice M.DURAISWAMY

Tax Case (Revision) No.3 of 2016

Indian Hotel Company Ltd.,
Chennai-2. ...Petitioner

Vs

The State of Tamil Nadu, rep.by the
Joint Commissioner (CT), Chennai
(East) Division, Chennai-6. ...Respondent

REVISION under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order dated 29.10.2013 made in S.T.A.No.17/2013 on the file of the Sales Tax Appellate Tribunal, Main Bench, Chennai for the assessment year 2003-04.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

Order of the Court was made by V.RAMASUBRAMANIAN,J

This tax case revision is filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 by the assessee, challenging an order of the Tamil Nadu Sales Tax Appellate Tribunal, Chennai Main Bench.

2. Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.S. Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondent.

3. The petitioner/assessee is carrying on hotel business. The Assistant Commissioner (CT) passed an order dated 28.2.2011 for the assessment year 2003-04, accepting the total and taxable turnover reported by the assessee. However, a revision of assessment was made on the estimation of sale of liquor to an extent of Rs.85,25,535/- on the ground that the reported sales was disproportionate to the value of the purchases reported.

4. The assessee filed a first appeal in A.P.No.39/2011. The First Appellate Authority passed an order dated 31.7.2012 setting aside the estimated sales omission. But, the First Appellate Authority refused to grant relief in respect of certain other disputed turnovers. In other words, the First Appellate Authority partly allowed the appeal of the assessee.

5. As against the disallowed portion, the assessee filed a further appeal before the Sales Tax Appellate Tribunal under Section 36 in T.A.No.19/2012. As against that portion of the order of the First Appellate Authority setting aside the estimated sales omission, the Revenue filed an appeal in S.T.A.No. 17/2013 before the very same Tribunal.

6. Despite the fact that both appeals arose out of a common order passed by the First Appellate Authority, the Tribunal took up for hearing the appeal of the Department, which was subsequent in point of time and

disposed it of independently by the order impugned in this revision.

7. Therefore, the assessee has come up with the above revision, raising the following substantial questions of law :

> *"(i) Whether in the facts and circumstances of the case, the Tribunal erred in law and on facts in reversing the order passed by the Appellate Assistant Commissioner and thereby erred in restoring the levy of tax on the estimated sales omission of liquor on the only ground of proof of sufferance of tax ?*
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> *(ii) Whether the Tribunal has substantially erred in law and on facts in rejecting the claim of exemption on the ground of proof of sufferance of tax when that was not the case or basis of the Assessing Authority ?*
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> *(iii) Whether the Tribunal is justified in disposing the appeal filed by the State without considering and disposing the appeal filed by the petitioner in T.A.No.19/2012 in the interest of justice both to the petitioner and the respondent ?*
>
> *(iv) Whether in the facts and circumstances of the case, the Tribunal committed error in levying tax on the third point of sale by the petitioner, for which, there is no competence to levy tax as provided under Section 3(2-B) read with Sixth Schedule to the Tamil Nadu General Sales Tax Act, 1959 ?*
>
> *(v) Whether the Tribunal has substantially erred in law in shifting the point of taxation in the*

hand of the petitioner being the third point of sale, which is not provided under Section 3(2-B) read with Sixth Schedule to the Tamil Nadu General Sales Tax Act, 1959 ? and

(vi) Whether in the facts and circumstances of the case, the Tribunal is right in restoring the sales omission in respect of sales turnover of liquor purchase from TASMAC having accepted that the entire purchases were from TASMAC, who is the second seller ?"

8. The facts that we have narrated above are not in dispute. It is admitted that the second appeal filed by the assessee before the Tribunal, which was anterior in point of time, is now pending. Therefore, we are of the considered view that the third question of law deserves to be answered in favour of the assessee.

9. Hence, the revision is allowed, the third question of law is answered in favour of the assessee and the order of the Tribunal is set aside. The matter is remanded back to the Tribunal for a fresh consideration to be done along with T.A.No.19/2012. The other questions of law are left unanswered. It is made clear that the Tribunal shall take a decision independent of the decision taken earlier. No costs.

23.3.2016

Internet : Yes

V.RAMASUBRAMANIAN,J
AND
M.DURAISWAMY,J

RS

To
1.The Joint Commissioner (CT), Chennai (East) Division, Chennai-6.
2.The Sales Tax Appellate Tribunal, Chennai Main Bench.

TCR.No.3 of 2016

23.3.2016