IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2016

Coram:

The Hon'ble Mr.Justice NOOTY.RAMAMOHANA RAO
AND
The Hon'ble Dr.Justice ANITA SUMANTH

Tax Case Revision No.54 of 2016

The State of Tamilnadu rep. by
the Joint Commissioner (CT)
Chennai (Central) Division,
Chennai - 600 006. .. Petitioner

Versus

Tvl. Turel Sales Corporation,
No.4A, Haddows Road,
Chennai 600 006. .. Respondent

Tax Case Revision filed under Section 38 of the TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 09.03.2015 in STA No.141 of 2010.

For Petitioner .. Mr.Kanmani Annamalai, AGP

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO., J)

This Tax Case Revision is preferred by the State against the orders passed by the Sales Tax Appellate Tribunal Additional Bench, Chennai, which is decided in STA No.141 of 2010 dated 09.03.2015.

2. The State has raised the following four substantial questions of law for determination at our hands:-

(i) Whether the Tribunal is right in deleting the suppression made based on the records recovered at the time of inspection?

(ii) Whether the Tribunal is right in deleting the penalty levied under Section 9(2)(A) of the CST Act?

(iii) Whether the Tribunal is right in holding that the Assessing Officer has to verify whether the transaction related to the disputed turnover were accounted for before or after the date of inspection and he cannot say when it was done, when admittedly the dealer failed to produce the accounts before the inspection and at the time of assessment?

(iv) Whether the Tribunal is right in holding that the disputed turnover were accounted for in the books of accounts of the sister concern of the dealer and paid tax to that effect when the dealer himself claimed that the disputed turnover is covered by machine given for trial & demonstration purpose and claimed exemption?

3. The Respondent/Assessee, for the Assessment Year 1994-95, has been assessed on the total taxable turnover of Rs. 1,74,95,920/- and 1,68,47,870/- under the Central Sales Tax Act, 1956. Aggrieved by the said assessment order, the dealer has preferred appeal before the Appellate Deputy Commissioner (CT)-III, who in turn partly allowed the appeal and partly remanded the case. The Appellate Authority has specifically directed for reexamining the records seized

from the premises of the Assessee at the time of inspection in view of the finding that the disputed entries were accounted for in the books of account of the Assessee as well as its sister concern.

4. The Assessing Officer himself is not very clear as to whether such entries have been found made prior to the date of inspection or subsequent thereto. When the Department is not very sure as to the point of time the entries are made in the records maintained by the Assessee as well as its sister concern, then the benefit of doubt must be necessarily extended in favour of the Assessee and it cannot be stretched in favour of the State, all the more so when penalty proceedings are initiated. In these set of circumstances, the Sales Tax Appellate Tribunal has concurred with the finding of the Appellate Deputy Commissioner, Commercial Taxes-III with regard to the deletion of tax on turnover of Rs.38,62,990/-. Consequently, there would not be any tax due. When there is no tax due, the question of imposing penalty would not arise and hence the penalty stands deleted. Those findings have now been upheld by the Tribunal.

5. In view of the concurrent finding of fact recorded by the Appellate Deputy Commissioner, Commercial Taxes-III as well as the Tribunal, we see no

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reason to interfere with the said order of the Tribunal, more so when the Department itself is not very sure as to point of time the entries are made in the books of accounts of the Assessee i.e. before or after the date of inspection.

6. The Tax Case Revision stands dismissed. No costs.

7. We appreciate the efforts made by the learned counsel for the Department, to whom we have provided an opportunity to verify the records and bring to our notice if any contradiction is noticed by him.

(N.R.R., J) (A.S.M., J)
09.11.2016

Index:Yes/No
Internet:Yes/No
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The Registrar,
Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Chennai

TCR No. 54 of 2016