IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.32605 of 2004
and
W.P.M.P.No.39489 of 2004

Tvl.FABCO, The North Arcot District
Small Scale Sheet Metal Fabricators
Service Industrial Co.op.Society Ltd.,
Rep.by its Special Officer,
249/10, Main Bazaar,
Vellore ... Petitioner

Vs.

1. The Tamil Nadu Sales Tax Appellate Tribunal,
rep.by its Secretary,
City Civil Court Buildings,
II Floor,
High Court Campus,
Chennai-600 104.

2. The Appellate Assistant Commissioner(CT),
C.T.Buildings,
Fort Round,
Vellore-1.

3. The Deputy Commercial Tax Officer,
Vellore(Rural) assessment Circle,
C.T.Buildings,
Fort Round,
Vellore-1 ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the first respondent in S.T.A.No.1539 of 2000, dated 6.10.2003 and quash the same as illegal, arbitrary against the provisions of the Act and also without authority of law and further direct the first respondent to decide the appeal on merits after giving reasonable opportunity to the petitioner.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mrs.S.Kanmani Annamalai, Additional Government Pleader

ORDER

Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mrs.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2. The petitioner is an Industrial Co-operative Society and they are aggrieved by an order passed by the Tamil Nadu Sales Tax Appellate Tribunal in allowing the appeal filed by the Revenue against the order passed by the Appellate Assistant Commissioner (CT), Vellore, in A.P.No.642 of 1998, dated 08.11.1999, for the assessment year 1995-96.

3. This appeal pertains only to the order of penalty imposed on the petitioner Society under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act (hereinafter referred to as the 'Act' in short). Since the writ petitioner Society did not appear before the Tribunal, the Tribunal allowed the revenue's appeal by the impugned order. The procedure adopted by the Tribunal is incorrect. Even if the petitioner, who was the respondent before the Tribunal, did not appear, yet it is incumbent upon the Tribunal to assign reasons as to why the order passed by the first appellate authority is erroneous and only after assigning reasons, the Tribunal could have allowed the appeal. Therefore, the order passed by the Tribunal calls for interference.

4. Having come to such a conclusion, under normal circumstances, the matter would have been remanded to the Tribunal. However, considering the fact that this writ petition has been pending since 2004 and there is an order of interim stay granted by this Court, which is also in force and also taking note of the fact that the petitioner is an Industrial Cooperative Society, this Court is inclined to consider as to whether the order passed by the assessing officer, imposing penalty under Section 12(3)(b) of the Act is warranted.

5. The most important fact to be taken note of is that the assessment year, which is subject matter in this writ petition, pertains to the year 1995-96. The assessing officer proceeded to levy penalty stating that there is difference between the tax assessed and the tax paid. While testing the

correctness of the order passed by the assessing officer, the lower appellate authority, in my view, has rightly pointed out that the assessment has to be done as one under Section 12(1) of the TNGST Act, as held by the Honourable Supreme Court in the case of S.G.Jayaraj Nadar and Sons vs. State of Madras [28 STC 700] and the assessing officer invoked the penal provision under Section 12(3)(b) of the TNGST Act. If the assessment has to be taken as one made under Section 12(1) of the Act, then the penalty will not be attracted under Section 12(3) and when an assessment is made under Section 12(2) of the Act then only penalty will be attracted under Section 12(3) of the Act. This is because of the fact that sub-Section (1) was included in Sub-Section (3) of Section 12 of the Act only by the VII Amendment Act (Act 22/02) with effect from 1.7.2002. Therefore, the reasons assigned by the lower appellate authority is perfectly justified.

6. Accordingly, the writ petition is allowed. The impugned order passed by the Tribunal is set aside. The order passed by the first appellate authority, dated 8.11.1999, is confirmed and consequently, the levy of penalty made in the order of assessment, dated 16.7.1998, under Section 12(3)(b) of the TNGST Act, is set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Secretary,
   Tamilnadu Sales Tax Appellate Tribunal,
   City Civil Court Buildings,
   II Floor,
   High Court Campus,
   Chennai-600 104.

2. The Appellate Assistant Commissioner(CT),
   C.T.Buildings,
   Fort Round,
   Vellore-1.

3. The Deputy Commercial Tax Officer,
Vellore(Rural) assessment Circle,
C.T.Buildings,
Fort Round,
Vellore-1

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.35332
+1cc to the Special Government Pleader(T), S.R.No.35495

W.P.No.32605 of 2004

ALA(CO)
CA(19/07/2016)