IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2017

CORAM:

THE HONOURABLE **MR. JUSTICE S.MANIKUMAR**
AND
THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

Tax Case (Revision) No.23 of 2017

The State of Tamilnadu,
rep. by the Joint Commissioner (CT),
Coimbatore Division,
Coimbatore. ... Petitioner

Vs

Tvl.Blue Sea Hosiery,
9, Azaat Street,
Tiruppur 641 601. ... Respondent

Prayer: Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 26.03.2015, passed in CTSA.No.60 of 2008.

For Petitioner : Mr.Kanmani Annamalai,
Addl. Govt. Pleader (Taxes)

O R D E R

(Order of the Court was made by **S.MANIKUMAR, J.**)

Tax Case Revision is filed against the order, dated 26.03.2015, made in CTSA.No.60 of 2008, on the file of the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

2. Short facts leading to the revision are that for the assessment year 2003-04, the Commercial Tax Officer (FAC), Tiruppur-Central II Assessment Circle, Tirupur, in TNGST No.2460414/2003-04, dated 05.01.2005, assessed the total and taxable turnover of Rs. 9,07,198/-, as against the reported total and taxable turnover of Rs.8,98,915/- and Rs.Nil, respectively. The Assessing Officer levied tax on a turnover of Rs.8,98,915/-, at the rate of 4% Rs.4,220/- at 16% and Rs.4,063/- at the rate of 10%, by rejecting the claim of the respondent that they have effected sale of business, as a whole. The Assessing Officer also levied penalty at Rs.58,335/-, under section 12(3)(b) of the TNGST Act, 1959.

3. Being aggrieved by the same, the respondent has preferred an appeal in A.P.No.22 of 2005, before the Appellate Assistant Commissioner (CT) (FAC), Pollachi, contending inter alia that,

(i) The Assessing Officer has erred in rejecting the claim on a footing that the appellants are not eligible as there was no sale of furniture and equipments but were provided by M/S. P.V.S. Knittings, on rental basis. As there was no furniture and equipments owned by the appellants, there were no sales of the same. Thus the Assessing Officer has failed to note that whatever assets held by the appellants were sold as a whole to M/S. P.V.S. Knittings and therefore eligible for exemption as per the explanations attached to section 2(R) of the Act '59 which defines "Turnover".

(ii) The Assessing Officer has ought to have accepted the facts that the sales of Gensets and sewing machines were covered in sale deed executed for this purpose and as such no separate bill is required for verification. The purchase bills of gensets and sewing machines were produced which prove that there was earlier tax sufferance. Hence the assessment made without taking proper cognizance of the sale deed is not fair on the part of Assessing Officer and hence liable to be set aside.

(iii) The Assessing Officer has erred in levying penalty under section 12(3)(b) of the Act when there was no suppression of any turnover levy of tax.

(iv) The Assessing Officer ought to have considered the rulings of the Madras High court in Appollo Saline Pharmaceuticals Private Limitted v. Commercial Tax Officer reported in 125 STC 505, that no penalty under Section 12(3) is attracted even for the assessment years 1993-94 and 1994-95 when the assessments were made on the basis of accounts and based on any other materials and where not estimates. In this case, the tax has been levied on the turnover as per books and as such the penalty, either lessor or higher, is not at all warranted and hence they have prayed to set aside the levy of penalty. Finally, they requested to allow the appeal and justice be rendered."

4. The Appellate Assistant Commissioner (CT) (FAC), Pollachi, has framed two points for consideration, which are as follows:

"i) whether the Assessing Officer is justified in levying tax at rate of 4% on a turnover of Rs.8,98,915/-, at 16% on a turnover of Rs.4,220/- and at 10% on a turnover of Rs.4,063/- by rejecting the claim of the appellants that they have effected the sale of business as a whole, is correct or not ?

ii) whether the Assessing Officer is justified in levying a penalty of Rs.58,335/ - under section 12(3)(b) of the TNGST Act '59, is correct or not?”

5. After considering the rival submissions, the Appellate Assistant Commissioner (CT) (FAC), Pollachi, vide order, dated 25.01.2007, held that the assessment made by the Assessing Officer, is not sustainable and that the penalty levied under Section 12(3)(b) of the Act, based on the assessment order, is also not sustainable, according to law. Hence, the Appellate Assistant Commissioner has directed deletion of the above and allowed the appeal, in toto.

6. Being aggrieved by the same, State of Tamil Nadu, represented by Joint Commissioner (CT), Coimbatore, has filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, on the following grounds,

“The Appellate Assistant Commissioner [CT], Pollachi has, in his proceedings in AP No. 22/2005 dated 25.01.2007, set aside the assessment made on a turnover of Rs. 9,07,198/- for the reason that the sales of business as a whole is not exigible to tax. He has relied on various judicial decisions and allowed the appeal filed by the dealers. He has also set aside the penalty of Rs.58,335/ - levied under Section 12[3][b] of the TNGST Act, 1959 as not sustainable.

A perusal of the assessment order shows that the Assessing Officer has verified the copy of the sale deed and found that the dealers have effected sale of finished goods i.e., hosiery goods and machineries [assets]; that they have not effected sales of furniture and other officer equipments; that the assets sold by them has not suffered single point tax earlier; that the objection of the dealers to the effect that the furniture and equipments were belonging to Tvl. P.V.S.Knittings, Tiruppur, that they have been received on rental basis has made them ineligible to claim deduction as sale of business as a whole; that the dealers have not raised any sale bill to verify the relevant purchases of Genset and Sewing Machines.

The Assessing Officer's observations are found to be reasonable in view of the decision reported in 88STC 323[Ori] in which in which it is held that "the expression 'business' engulfs many aspects like good will, stock in trade, rights and liabilities. A business is a mercantile pursuit of a trading concern. When a business is entirely transferred, it implies transfer of the whole undertaking and enterprise". The above judgement insists upon the fact that there must be material to show that there was transfer of liabilities, assets, furniture, goodwill etc. For the reasons stated above, it is prayed that the Hon 'ble Tribunal may be pleased to restore the order of the Assessing Officer".

7. The Tribunal has addressed two points for consideration, which are as follows:

"(i) What are the documents available as the proofs for the disposal of the business as a whole?

(ii) When the business as a whole is disposed of, is it taxable or not?"

8. After considering the rival submissions and material on record and the decisions of the Courts in **Deputy Commissioner CT v. Behanan Thomas [1977 (39) STC 325 [Mad]; CST v. L.Vasudeva Rao [1981 (48) STC 447 (MP)]; Monsanto Chemicals of India (P) Ltd. v. State of Tamil Nadu [1982 (151) STC 278 (Mad.)]; Deputy Commissioner CT v. Cheran Transport Corporation [1985 (150) STC 95 (Mad)]; Deputy Commissioner of Sales Tax (Law) v. Dat Pathe [1985 (159) STC 374 (Ker)]; and Coromandal Fertilizerz Ltd., v. State of Andhra Pradesh [1989 (112) STC 1],** the Tribunal, vide order, dated 26.03.2015, held as follows:

"Point No.I:

6. The learned Appellate Assistant Commissioner has verified the Trading, Profit and Loss Account filed for the year in dispute at Page No.9 of the assessment file, copy of the sale deed for the sale of business filed at Page No.11 of the assessment file and copy of deed of dissolution of partnership filed at Page No.19 of the assessment file, which are sufficient enough to hold that the business as a whole was sold or disposed of as a result of dissolution of the firm.

Point No.II:

7. Only the sale of goods or deemed sale of goods especially after the 48th amendment to our constitution in the regular course of business alone is taxable. But when the whole business is disposed of it is different as held in the following case laws:

The Full Bench of Hon'ble High Court of Andhra Pradesh, after elaborately discussing the judgements of the Hon'ble High Courts and Hon'hle Supreme Court in ***Deputy Commissioner CT v. Behanan Thomas [1977 (39) STC 325 [Mad]; CST v. L.Vasudeva Rao [1981 (48) STC 447 (MP)]; Monsanto Chemicals of India (P) Ltd. v. State of Tamil Nadu [1982 (151) STC 278 (Mad.)]; Deputy Commissioner CT v. Cheran Transport Corporation [1985 (150) STC 95 (Mad)]; Deputy Commissioner of Sales Tax (Law) v. Dat***

Pathe [1985 (159) STC 374 (Ker)] held that the transfer of entire business undertaking together with movable properties, even assuming sale of goods, cannot be regarded as a sale in the course of business by a dealer. The said court further held that a transaction appurtenant to, or connection with, the running of business must be an ongoing activity, which goes along with such business as an adjunct or incidental thereof. If the sale of entire undertaking or a unit thereof is intended to be treated as "business activity". It is reasonable to extent that a clear and specific language has to be employed to give effect to that idea. But, in the definition of "business" it was not so. As such, an activity directed towards the end of termination of business is not a transaction in the course of business ***[Coromandal Fertilizerz Ltd., v. State of Andhra Pradesh [1989 (112) STC 1]***.

In view of the above facts, we hold that the respondent-dealers have disposed of the entire business, which will neither constitute a taxable turnover nor a taxable event.

In fine, the State appeal stands ***DISMISSED***."

9. Being aggrieved by the same, the instant Tax Case Revision has been filed, on the following substantial questions of law,

“1] The Appellate Tribunal has grossly erred in interpreting the expression "transfer of business as a whole?

2] The Appellate Tribunal has failed to note that Sec. 3[2] of the Tamil Nadu General Sales Tax Act 1959 are designed as charging provisions as evident to levy tax at appropriate rate to the commodity for which purpose it is used that is sales in the course of business or sales at the time of disposal of business?

3] Whether the Appellate Tribunal accepts the usage of furniture and other office equipments on rental basis without any documentary evidence?

4] Whether the Appellate Tribunal is correct in deduction of the turnover which was derived as sale proceeds with referent to sale deed?

5] Why the Appellate Tribunal failed to consider the stand taken by the assessing officer on light of **88 STC 323[Ori]** favourable to the Department, in which not only goods were pointed out but also rights and liabilities?

6] Whether the Appellate Tribunal considers the word' an activity' as 'sales' to be exempted as per 112 STC 1 on concluded para?”

10. Though Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes), appearing for the appellant, made

submissions, in support of the above substantial questions of law, stated supra, going through the material on record, we are of the view that both the Appellate Assistant Commissioner (CT) (FAC), Pollachi and the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, have gone into the facts of the case and the judgements referred to above and passed well considered orders, which do not call for any interference.

11. Substantial questions of law, raised by the revision petitioner are answered in negative. Hence, the Tax Case Revision Petition is dismissed. No costs.

(S.M.K., J.) (V.B.S., J.)
12.07.2017

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To

The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore.

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

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