

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/11/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (R) Nos.56 and 58 of 2017

The State of Tamil Nadu
rep. By The Deputy Commissioner (CT)
now re-designated as Joint Commissioner (CT)
Trichy Division
Trichy.

... Petitioner/Appellant in both
the cases

Vs

Tvl. Gothai Dal Traders
No.10 Kasukkara Street
Mannargudi.

... Respondent/Respondent in both
the cases

Prayer Tax Case Revision Petitions filed under Section 38 of TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, dated 18/2/2010, passed in S.T.A.Nos.717 and 756 of 2005 and preferred against the proceedings of the Deputy commissioner Tax Officer, Mannargudi, assessment number year and dated TNGST3860138/2000 - 2001 & 2001 - 2002 & CST 216112/2000-2001 & 2001 - 2002 dated 28.02.2002 and 31.01.2003 respectively and preferred against the proceedings of the Appellant Assistant Commissioner (CT), Thanjavur, Appeal number and Assessment Year and dated AP Nos.CST.7/2002/CST,AP-3/2003/CST, dated 05.08.2003.

For petitioner
For respondent

... Ms.Narmadha Sampath
... Mr.P.R.Kumar

C O M M O N O R D E R

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

As facts, submissions and challenge to the above said orders are common, both the Tax Case Revision Petitions are taken up together and disposed of by a common order.

2. Gothai Dal Traders, Mannargudi/respondent, is a dealer in Dals and Grams and an assessee, on the file of the Deputy Commercial Tax Officer, Mannargudi. For the year 2000 - 2001, they claimed exemption from tax, as second sales of green grams, to Tvl.Venkateshwara Traders, to the tune of Rs.14,18,744/-. Similarly, for the assessment year 2001 - 2002, they claimed exemption to the tune of Rs.27,13,270/-. According to the revision petitioner, Enforcement Wing Officer of Chennai (East), visited the place of business of Venkateshwara Traders, Chennai. Upon verification of the accounts, the Officials were of the view that purchase turnover of Rs.14,18,744/-, for the assessment year 2000 - 2001 and Rs.27,13,270/-, for the assessment year 2001 - 2002, had not been properly accounted for, in their purchase accounts.

3. Revision Petitioner has further contended that according to the assessing officer, verification revealed that vehicles had moved from Mannargudi and the vehicles moved to the Container Corporation of India, Tondiarpet, Chennai, were one and the same. But exemptions were claimed. On the above materials, the Assessing Officer, came to the conclusion that the respondent has suppressed inter-state sales and disallowed exemption of Rs.14,18,744/- and Rs.27,13,270/-, for the assessment year 2000 - 2001 and 2001 - 2001, respectively, and accordingly, determined the taxable turnover.

4. Deputy Commissioner (CT)/Assessing Authority, assessed the respondent, on the alleged suppressed interstate sales of Rs.14,18,744/-, for the assessment year 2000 - 2001 and Rs.27,13,270/- for the assessment year 2001 - 2002, with equal addition for probable omissions, for the above said assessment years, besides levied penalty under Section 9 (2-A) of the Tamil Nadu General Sales Tax Act, 1959, r/w. Section 12 (3) (v) of the Tamil Nadu General Sales Tax Act, 1959.

5. Being aggrieved, the respondent/assessee filed two separate appeal Nos.AP.NosCST 7/2002 and 3/2003, dated 5/8/2003, for the assessment years 2000 - 2001 and 2001 - 2002, respectively.

6. After hearing the parties and considering the materials on record, the Appellate Assistant Commissioner (CT), Tanjore, found that though a request has been made by the respondent/dealer for cross-examination of Venkateshwara Traders, whose statement had been relied on, the same had been turned down by the assessing authority, and by further observing that there is no reason, as to why the Books of Accounts, registers, invoices and other documents, submitted by the dealer/respondent, should not be considered and after threadbare

analysis of the material on record, ruled that Audi alteram partem, which ought to have been adhered to, has not been followed and for the abovesaid reasons, allowed the appeal Nos.AP.CST 7/2002 and AP.CST 3/2003 filed by the respondent, against the orders, disallowing exemption from tax, and penalty, awarded by the Assessing Officer.

7. Being aggrieved, the revision petitioner has filed S.T.A.Nos.717 and 756 of 2005, for the assessment years 2000 - 2001 and 2001 - 2002, respectively, before the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.

8. Though the revision petitioner has assailed the correctness of the orders of the Appellate Assistant Commissioner, (CT), Tanjore, on several grounds, the Tribunal, declined to interfere with the said orders.

9. As against the orders passed in S.T.A.Nos.717 and 756 of 2005, instant Tax Case Revision Petition Nos.56 and 58 of 2017, respectively, have been filed, on the following substantial questions of law.

"1. Whether in the facts and circumstances of the case, the Tribunal is legally correct in merely affirming the order of the first lower authority, without appreciating the material facts by application of independent mind.

2. Whether the order of the Tribunal in not having restored the consequent penalty is legally sustainable?"

10. Ms. Narmadha Sampath, learned Special Government pleader submitted that to constitute inter-state sales, there should be intention of movement of goods, outside the State. According to her, in the instant case, the details of entry in the register maintained by the authorities of the Container Corporation of India, Tondaiarpur, Chennai, proved that goods were moved outside the State, thus there is proof of inter-state sale.

11. Learned Special Government Pleader further submitted that the same vehicles, in which the goods were transported from Mannargudi, were used for sending the goods to the Container Corporation of India, Chennai, and therefore, there cannot be any possibility of local sale, as claimed by the assessee.

12. We have heard Mr.P.R.Kumar, learned counsel for the dealer/respondent in both the Tax Case Revision Petitions.

13. Perusal of the order of the Assessing Authority, for

the years 2000 - 2001 and 2001 - 2002, shows that when the dealer/respondent, claimed exemption of tax of Rs.14,18,744/- and Rs.27,13,270/-, for the assessment years 2000 - 2001 and 2001 - 2002, respectively, the assessing authority, has found that the dealer/respondent had effected sales to Venkateshwara Traders, Chennai. The Enforcement Wing Officials (Chennai) East, seemed to have visited the place of business premises of Venkateshwara Traders and verified the extract taken from the Container Corporation of India, Tondaiarpur, Chennai. They also verified the accounts of Venkateshwara Traders.

14. Enforcement Officials have found that green gram has been purchased from Gothai Dal Traders. There were 14 transactions between Venkateshwara Traders and the respondent. Eight transactions were not accounted by Venkateshwara Traders. However, from the materials, indicating movement of lorries, the enforcement officials have noticed that, lorries have moved from Mannargudi to Container Corporation of India, Chennai. Thus, on the above basis, the Assessing Officer, had come to the conclusion that dealer had effected inter-state sales and suppressed the same.

15. Perusal of the objections of the dealer summarised by the Assessing Officer, in his order, for the above said assessment years, shows that purchase accounts of Venkateshwara Traders have been verified by the Enforcement Wing Officer and arrived at the conclusion that the buyer had not accounted for the purchase. Perusal of the objections of the respondent also shows that dealers had requested an opportunity to cross-examine the purchaser regarding the transactions in question.

16. When the correctness of the conclusion of the Assessing Officer that there was suppression of inter-state sales, was tested, after considering the entire evidence on record, failure of the assessing authority, to adhere to the principles of audi alteram partem, failure of the assessing authority to assign appropriate reasons, for not considering the books of accounts, register, invoices and other documents, submitted by the dealer, the Appellate Assistant Commissioner (CT) Tanjore, vide, common order, made in A.P.No.7/02/CST, for the assessment year 2000 - 2001 and A.P.No.3/03.CST, for the assessment year 2001 - 2002, respectively, categorically held that the assessing authority had simply relied on the statement of the buyer, and come to the conclusion of suppression of interstate sales by the dealer/respondent herein.

17. Perusal of the order of the Appellate Assistant Commissioner (CT) Tanjore, also shows that in order to verify the veracity of the statement of the buyer, suo motu, the appellate authority has also summoned the buyer, for cross-

examination, but then the summons has been returned, as unserved. Thus, in the absence of any clinching evidence, held that the dealer/respondent herein, had not indulged in inter-state sales, and thus, not liable for penalty. Accordingly, set aside the order of assessment.

18. When STA Nos.717 and 756 of 2010, were filed by the revision petitioner, advertent to the pleadings and submissions, the Sales Tax Tribunal, has framed the following points for consideration:-

"(i). Whether the disputed turnover could be assessed to tax under Central Sales Tax Act 1956?

(ii). Whether any penalty is warranted in this case?"

19. Dealing with the above points for consideration, at paragraph No.10 in the common order STA Nos.717 and 756 of 2010, dated 18/2/2010, the Tribunal held as hereunder:-

"10. The dealer had proved by the possible evidence in their such as invoices raised in favour of the purchasers viz., Sree Venkateswara Traders, Chennai and the lorry receipts and permit obtained from the Thanjavur Marketing Committee, etc. Hence, the assessee had amply established that they had effected local sales only. But the assessing Officer had completely relied upon the report of the Enforcement Wing Officers, who in turn totally accepted the statement of the purchaser of the dealer, viz., Sree Venkateswara Traders in Chennai to the effect that they did not purchase the disputed consignments from the dealer. At the same time, the said Enforcement Wing Officers as also the assessing Officer did not, for no ground or reason whatsoever, accept the claim of the assessee that they did not effect local sales to their purchasers M/s. Sree Venkateswara Traders, Chennai even in the light of the assessee have produced necessary documents such as invoices, lorry receipts besides ledger extracts and sales and payments details regarding these transactions. It is pertinent to note at this juncture that even the legitimate request of the assessee

for cross examination of the purchasing dealer who disowned such purchases viz., M/s.Sree Venkateswara Traders, Chennai was abruptly turned down by the assessing officer. Had the assessing Officer afforded an opportunity to the assessee to cross examine their purchaser on their denial of effecting purchases from the dealer some light could have been possibly thrown either on the falsity or the truth of the claim of either party. Under this circumstance, we cannot simply throw out the contention of the assessee that the real culprit was the buying dealer viz., M/s. Sree Venkateswara Traders who might have instructed the lorry drivers to unload consignment at the Container Corporation of India, at Thondiarpet, in Chennai. In this situation, refusing an opportunity to the dealer to cross-examine the said buyer had resulted in grave injustice to the dealer. It is more so when there are no materials on record to suggest that the consignments despatched by the dealer under the guise of local sales to Chennai from Mannargudi in fact reached the ultimate buyer in other States.

11. In the light of the discussion held above, we are of the considered view that the assessing officer had no materials sufficient enough to hold that the dealer had under the guise of effecting sales of dhalls to the registered dealer in Chennai had in reality effected interstate sales and evaded tax under the Central Sales Tax Act, 1956 and on the other hand, the assessee had by documentary evidence established that these disputed transactions were pure and simple sales to a registered dealer in Chennai. Hence we hold that the turnover could not be assessed to tax under the Central Sales Act, 1956 as has been rightly held by the learned First Appellate Authority and we answered this point against the appellant."

20. Though Tax Case Revision petitioner has challenged the orders of both the Appellate Assistant Commissioner (CT), Tanjore, and the Tribunal, on the substantial questions of law, stated supra, going through the material on record, we are of

the view that both the authorities, have threadbare analysed the evidence on record, and arrived at a proper conclusion that when the assessee had produced necessary documents, such as invoices, lorry receipts, ledger extracts and sales and payment details, in support of the transactions effected by them, there is no reason to reject the same and the assessing officer has relied on the statement of the buyer, whose cross-examination had been denied, by the assessing officer.

21. Veracity of the statement of the buyer can be ascertained, only on cross-examination. Though there was an allegation of inter-state sale, the buyer had denied the same. Material on record discloses that even the assessing Officer had recorded that, it was the buyer, who had not accounted for, the eight transactions. Merely because there was movement of lorries from the place of the dealer/vendor/assessee, from Mannargudi to Container Corporation of India, Tondiarpet, no conclusion cannot be reached that, it was the vendor/dealer, who has effected inter-state sales and thus, there was suppression.

22. Excepting the statement of the buyer, Venkateswara Traders, which had not been put to cross-examination and movement of the lorries, verified by the Enforcement Wing Officials, no concrete and clinching evidence is available on record to arrive at the conclusion that there was suppression of inter-state sales, by the dealer/respondent.

23. Merely because the vehicles had moved from Mannargudi to the Container Corporation of India Ltd., there cannot be any interference that the vendor had effected interstate sales on the above, both the appellate authority and the Tribunal have recorded their concurrent findings that the vendor cannot be found fault with, but the buyer is the real culprit. Under Article 226 of the Constitution of India, Courts should not interfere with the concurrent findings of the fact unless, on conclusion, by material on record, hold that there is perversity.

What is 'perverse' was considered by the Hon'ble Supreme Court in a detailed judgment in Arulvelu and another vs. State Represented by the Public Prosecutor and another (2009) 10 SCC 206 wherein it was held as under:-

"26. In M. S. Narayanagouda v. Girijamma & Another AIR 1977 Kar. 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough, (1878) 1 LR 1r 331 the Court observed that a perverse verdict may probably be defined as

one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey* 106 NW 814, the Court defined 'perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition PERVERSE:- Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. Longman Dictionary of Contemporary English - International Edition PERVERSE: Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English - 1998 Edition PERVERSE: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) PERVERSE: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition PERVERSE: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

24. In *Kuldeep Singh Vs. The Commissioner of Police & Others*, reported in {(1999) 2 SCC 10, the Hon'ble Supreme Court, held as follows:-

"A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as

perverse and the findings would not be interfered with."

25. In State of NCT of Delhi v. Sanjeev reported in 2005 (5) SCC 181 = AIR 2005 SC 2080, the Hon'ble Supreme Court observed thus,

".....to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards."

26. In State of A.P., v. Abdul Khuddus reported in 2007 (15) SCC 261, the Hon'ble Supreme Court, at Paragraph 12, held that,

"we are unable to sustain the order of the High Court, which had set aside the findings of fact arrived at by the Special Court, which, in our view, were arrived at on consideration of the materials on record and which, by any stretch of imagination, cannot be said to be based on no evidence or surmises or conjectures and therefore, it was not open to the High Court, in the exercise of its writ jurisdiction, to set aside the findings of fact arrived at by the Special Court which were based on sound consideration of the materials on record."

27. In Arulvelu v. State reported in 2009 (10) SCC 206, the Hon'ble Supreme Court, at Paragraph 29, explained what "perverse" means,

"29. In Kuldeep Singh v. The Commissioner of Police, (1999) 2 SCC 10, the

Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the

findings would not be interfered with."

30. The meaning of 'perverse' has been examined in *H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others* 1992 Supp (2) SCC 312, this Court observed as under:

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

28. In *The General Manager (P) Punjab & Sind Bank v. Daya Singh* reported in (2010) 11 SCC 233, at Paragraph 24, the Hon'ble Supreme Court, held as follows:

"24. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in *Triveni Rubber & Plastics v. CCE*, AIR 1994 SC 1341. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arilvelu v. State*, 2009 (10) SCC 206. The decision of the High Court cannot therefore be sustained."

29. In S.R.Tiwari v. Union of India reported in 2013 (6) SCC 602, at Paragraph 30, the Hon'ble Supreme Court, held as follows:

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

30. In the light of the above decisions, finding of fact recorded by both the Appellate Assistant Commissioner, Tanjore, and the Sales Tax Appellate Tribunal, (Main Bench), Chennai, cannot be said to be perverse, warranting interference. There is no merit in the contention of the writ petitioners nor there is any case to interfere, on the substantial questions of law, raised.

31. Accordingly, both the Tax Case Revision Petitions are dismissed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-ii)

//True Copy//

WEB COPY

Sub Assistant Registrar

mvs.

To

1. The Tamil Nadu Sales Tax
Appellate Tribunal (Main Bench), Chennai.

2. The Deputy Commissioner Tax Officer,
Mannargudi.

3. The Appellate Assistant Commissioner (CT),
Thanjavur.

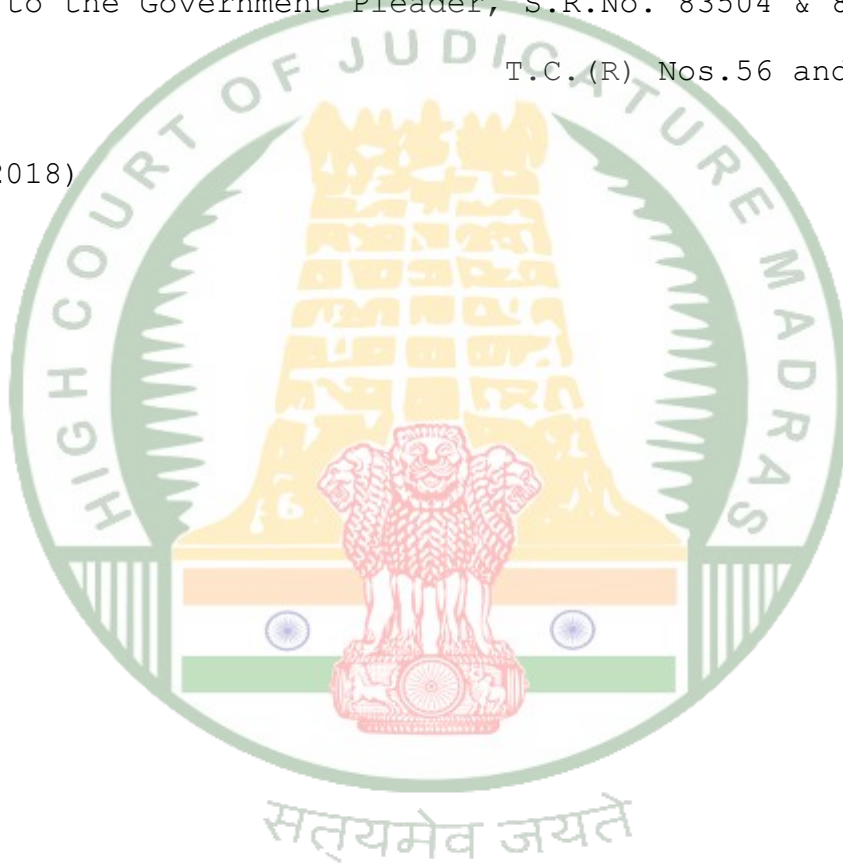
4. The Joint Commissioner(CT)
Trichy Division,
Trichy.

+2cc to Mr. Advocate, S.R.No. 82797 & 82796

+1cc to the Government Pleader, S.R.No. 83504 & 83505

T.C.(R) Nos.56 and 58 of 2017

mr (CO)
TR(19/01/2018)



WEB COPY