IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.6647 of 2008 and

MP 2 of 2008

M/s. Vijex Office Products
rep. by its Proprietor
Nilesh Kumar Baid
No.500/G, P.V.Complex
100 Feet Road
Gandhipuram
Coimbatore 641 012. .. Petitioner

Vs.

1. Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench)
   Coimbatore 641 018.

2. The Appellate Assistant Commissioner of Commercial Taxes (Main)
   Coimbatore.

3. The Commercial Tax Officer
   Gandhipuram Assessment Circle
   Coimbatore. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records on the file of the first respondent in his order in Coimbatore Tribunal State Appeal No.18/05 dated 12.12.2007 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondents : Mr.Kanmani Annamalai
Addl. Govt. Pleader (Taxes)

O R D E R
(Made by Anita Sumanth,J)

This writ petition challenges an order of the Sales Tax Appellate Tribunal dated 12.12.2007.

2. The short point relates to the assessability of a sum of Rs.4,20,553/- as turnover. An order of assessment dated 16.4.2004 was passed adopting a sum of Rs.4,20,553/- as stock difference/suppression. The contention of the assessee was to the effect that the amount represented incentive receipt.

3. The Appellate Assistant Commissioner (AAC) notes as a fact that there was no physical stock variation or purchase suppression and the addition was effected notionally by the Inspecting Authorities. The AAC also notices that the Trading and Profit and Loss Account reveals a cumulative receipt of incentives of an amount of Rs.11,51,789/- till 31.3.2003 and a sum of Rs.9,06,069/- till the time of inspection on 10.01.2003. These findings of

fact have not been contested by the Revenue. The aforesaid order of the AAC was reversed by the Tamil Nadu Sales Tax Appellate Tribunal solely on the basis of a statement recorded from the assessee.

4. Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader for the Revenue.

5. Admittedly, the variation has been arrived at only on the basis of the statement recorded from the assessee and not on the basis of any purchase suppression, defect or irregularity detected in the course of inspection. The AAC also records as a matter of fact that the notional variation arrived at by Enforcement Wing would stand telescoped in and explained by the sales incentive received till the date of inspection. These findings have not been alleged or found to be perverse. On the other hand, the Tribunal proceeds on a tangent relying solely on the statement recorded from the assessee. In the absence of any incriminating material/evidence of suppression found at the time of inspection, we are of the view that the Tribunal erred in reversing the order of the AAC and the factual findings therein.

6. The order of the Tribunal stands reversed and the order of the AAC stands restored. The writ petition is allowed. No costs. Consequently, M.P.No.2 of 2008 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To

1. Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
Coimbatore 641 018.

2. The Appellate Assistant Commissioner
of Commercial Taxes (Main)
Coimbatore.

3. The Commercial Tax Officer
Gandhipuram Assessment Circle
Coimbatore.

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.6746
+1cc to the Government Pleader, S.R.No.6806

nrjk(CO)
md(19/04/2017)

W.P.No.6647 of 2008.