IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2017

CORAM

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr.Justice ANITA SUMANTH

W.P.No.41314 of 2002

Dhiraj Brothers ... Petitioner

Vs.

1. The State of Tamil Nadu,
   represented by the Secretary
   The Tamilnadu Sales Tax Appellate Tribunal,
   City Civil Court Buildings,
   Madras.

2. The Appellate Assistant Commissioner (CT) I,
   Chennai.

3. The Deputy Commercial Tax Officer,
   Mooremarket South Assessment Circle,
   Chennai-1. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari to call for the records on the file of the first respondent herein in STA No.69/99 dated 29.12.2000 and quash the same as illegal.

For Petitioner : Dr. A. Thiyagarajan
Senior counsel for
Mr.S.Balamurugan

For Respondents : Mr.Kanmani Annamalai
Additional Government Pleader
(Taxes)

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O R D E R

(Order of the Court was made by Dr.Anita Sumanth, J.)

This Writ Petition is filed challenging an order of the Tamilnadu Sales Tax Appellate Tribunal dated 29.12.2000. Though the Writ Petitioner challenges the order of the tribunal both on the determination of tax as well as on the revival of penalty, Sri.A.Thiyagarajan appearing for the assessee would restrict the scope of the challenge to the aspect of penalty alone.

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2. An order of assessment was passed originally on 30.12.1994, wherein, in addition to tax levied, penalty was imposed by the assessing officer in terms of Section 9A of the Tamilnadu General Sales Tax Act 1959 (hereinafter referred to as 'Act'). The aforesaid order of assessment was set aside by the Appellate Assistant Commissioner (CT)I on 8.12.1995 for re-consideration of the matter both on the aspect of levy of tax as well as on the levy of penalty. The matter was remitted to the assessing authority in full for denovo adjudication. In the remand proceedings, the assessing authority, vide order dated 31.1.1997 passed an order confirming the levy of tax, but has not chosen to levy penalty. The matter was carried in appeal before the Appellate Assistant Commissioner (CT) I, who, vide order dated 31.7.1998 reversed the order of assessment.

3. The State filed an appeal before the Tamilnadu Sales Tax Appellate Tribunal, Chennai, which, vide order dated 29.12.2000 reversed the order of the Appellate Assistant Commissioner (CT) I, restoring the levy of tax. Inter alia, the Tribunal also restored the levy of penalty, being of the view that the assessing authority had originally levied the same and the Appellate Assistant Commissioner had deleted it. This finding is perverse in so far as the order of assessment dated 31.1.1997 does not levy penalty at all. The question of restoring the levy of penalty thus, does not arise.

4. Sri. Kanmani Annamalai, appearing on behalf of the State would seek to justify the order stating that the penalty had in fact been levied by the authority in original assessment proceedings dated 30.12.1994. This submission however cannot be countenanced for the reason that the order of original assessment has been telescoped into the order of the Appellate Assistant Commissioner (CT) I dated 8.12.1995, which in fact, sets aside the entire assessment to be re-done denovo.

5. In the light of the above discussion, the order of the Tamilnadu Sales Tax Appellate Tribunal, Chennai is set aside to the extent of the penalty levied. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msr

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To

1.The Secretary
The Tamilnadu Sales Tax Appellate Tribunal,
City Civil Court Buildings,
Madras.

2.The Appellate Assistant Commissioner (CT) I,
Chennai.

3.The Deputy Commercial Tax Officer,
Mooremarket South Assessment Circle,
Chennai-1.

+1cc to Mr.S.Balamurugan, Advocate, S.R.No.9864
+1cc to the Special Government Pleader(T), S.R.No.9955

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CA(CO)
CA(10/10/2017)

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