BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.05.2017
CORAM :
THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Tax Case (Revision) (MD) No.2 of 2011

M/s.Nandhini Hosieries,
represented by its Proprietor V.R.Rajkumar
93, Deputy Collector's Colony,
Managiri, Madurai. ... Petitioner

Vs.

The Commercial Tax Officer,
Tallakulam Circle,
Madurai. ... Respondent

Petition filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai in MTSA No.973 of 2001, dated 09.07.2008.

MTSA No.973 of 2001 is filed against the orders of the Appellate Assistant Commissioner (CT), Madurai (North) in A.P.No.474/99 dated 19.04.2000.

A.P.No.474/99 is filed against the Assessment Order passed by the Commercial Tax Officer, Thallakulam Assessment Circle in TNGST No.4880545/96-97 dated 29.10.99.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.Raja Karthikeyan,
Additional Government Pleader.

ORDER

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

This tax case revision by the assessee is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai in M.T.S.A.No.973/2001, dated 09.07.2008. The said appeal was filed by the revenue challenging the order passed by the Appellate Assistant Commissioner (CT), Madurai (North) in A.P.No.474 of 1999, dated 19.04.2000 relating to the assessment year 1996-1997 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act).

2.The petitioner-dealer's assessment for the year 1996-1997 was completed by the Assessing Officer based on the claim for exemption made by the dealer. As the sale involved was that of cotton knitted fabrics, the Enforcement Wing Officials of the respondent Department inspected the place of business and recovered certain slips alleged to contain entries of business transactions. Based on the report submitted by the Enforcement Wing Officials, the Assessing Officer by an order dated 29.10.1999 completed the assessment redetermining the total taxable turnover after giving allowance for exemption of demanded tax, surcharge, additional sales tax and penalty, apart from equal addition. This order was put to challenge by the petitioner before the Appellate Assistant Commissioner, Madurai (North) contending that the Assessing Officer committed a gross error in mechanically adopting the report of the Enforcement Wing Officials and had arrived at the alleged sales suppression and purchase suppression based on notional value. It was contended that the petitioner is a small manufacturer and that there was no basis to come to a conclusion that they would be in a position to manufacture banians for the value of Rs.33 lakhs when they had no capacity to generate such amount of manufacturing of such huge products. Further, the Assessing Officer failed to take into consideration the fact that the question of manufacturing of such huge volume is impossible and this is established by the consumption of electricity, stock of raw materials etc. It was further pointed out that even though the sales suppression has been estimated at Rs.33 lakhs, there was no single case of sales suppression indicated by the Department during the course of inspection. Thus contending the entire estimation has no basis, the Assessing Officer erred in levying penalty and imposing one time addition.

3.The questions of law which arise for consideration are as follows:-

"(i)Whether the actual suppression arrived at with regard to slips and with regard to the stock variation under Section 7-A of the TNGST Act, 1959 is sustainable?

(ii)Whether the equal addition for possible omission is warranted?

(iii)Whether the consequential estimation arrived at under Section 7-A of the TNGST Act, 1959 is sustainable? and

(iv)Whether consequential surcharge, additional sales tax and penalty are leviable?"

4.In this tax case revision, the petitioner dealer has canvassed only two points before us, namely, with regard to the stock variation and equal addition. It is fairly submitted that as the other matters being factual, the petitioner accepts the finding rendered by the Tribunal.

5.The Appellate Assistant Commissioner while considering the appeal pointed out that all the relevant purchase and sales of banians have been duly accounted in the accounts and they have been included in the turnover reported in the returns filed and the Assessing Officer himself verified and allowed exemption thereon in the same assessment order and therefore, the actual sales suppression arrived at by the Assessing Officer is not sustainable and ordered the same to be deleted. Further, it was pointed out that the alleged purchase suppression as well as the sales suppression with reference to the stock variation and the assessment made under Section 7-A of the TNGST Act on the basis of stock variation cannot be said to be correct because the stock difference has been arrived in terms of the money value on the basis of trading account and by adopting the notional gross profit of 20%.

6.Referring to the decision of the Sales Tax Appellate Tribunal in M.T.A.Nos.450 of 1975 and 55 of 1996, etc., set aside the suppression estimated with reference to such stock variation arrived at in terms of money value. Further, it was held that since the alleged sales suppression has been deleted, there is no case for further addition of equal amount for possible omission and there is no case for estimation of purchase turnover liable to tax under Section 7-A of the TNGST Act and therefore, the equal addition for possible omission and consequential levy of tax under Section 7-A of the TNGST Act were ordered to be cancelled. As a consequence thereof, the surcharge, additional sales-tax and penalty levied on the petitioner was also cancelled.

7.Aggrieved by the said order, the State preferred an appeal before the Sales Tax Appellate Tribunal. The Tribunal framed only one point for consideration, namely, whether the order of the Appellate Assistant Commissioner is sustainable or not?

8.As mentioned above, we are concerned in this appeal to examine as to whether stock variation was justified and equal addition was warranted. For such purpose, we need to peruse paragraph 5(e) of the order passed by the Tribunal.

9.On a bare reading of the paragraph (e), it is evidently clear that the Tribunal was entirely swayed by the finding recorded by the Enforcement Wing Officials. Time and again, this Court pointed out that the report of the Enforcement Wing Officials could at best be a starting point for an enquiry or may be a reason for the Assessing Officer to issue a notice calling upon the dealer to explain discrepancies. On reply/objection being filed by the dealer, it is the Assessing Officer who has to independently apply his mind to the objection raised by the dealer and based on the records come to an independent conclusion and not solely be guided by the report of the Enforcement Wing Officials. In fact, the Tribunal has precisely done what it ought not to have done. The Assessing Officer arrived at the sales suppression and purchase suppression based on the notional value by adding the gross profit of 20%. This finding being erroneous was set aside by the Appellate Assistant Commissioner. Therefore, the Tribunal could not have committed the same mistake which was committed by the Assessing Officer and embarked upon an exercise based on the report submitted by the Enforcement Wing Officials. Though the Tribunal gave a partial relief to the dealer by arriving at stock difference at Rs.91,505/-, the Tribunal has rendered a finding as if the dealer has admitted this stock difference. The basis of such a finding is by referring to a statement recorded from the dealer by the Enforcement Wing Officials.

10.As mentioned above, the report of the Enforcement Wing Officials cannot be taken as gospel truth but the dealer has every right to place before his Assessing Officer the actual details duly supported by records. Therefore, the Tribunal ought not to have solely relied upon the statement said to have been recorded from the dealer by the Enforcement Wing Officials.

11.In somewhat a similar case which arose before the Principal Bench in the case of S.Moorthy Vs.The Joint Commissioner of Commercial Taxes (SMR), Chennai dated 08.11.2013, the Tribunal approved the view of the Appellate Assistant Commissioner that the slips recovered during the inspection and the entries in the slips did not contain specific dates of the transaction and therefore, it could be construed for the whole period and not for any particular period, thus, giving benefit of doubt, further addition was cancelled. Equally, stock discrepancy was also cancelled. When this order was revised by the Joint Commissioner without specifying any period, this Court set aside the order passed by the Joint Commissioner.

12.In the case of State of Tamil Nadu represented by the Deputy Commissioner of Commercial Taxes, Trichy Division, Trichy Vs. M/s.K.J.Auto Units, Trichy-1 in Tax Case (Revision) No.677 of 2006, dated 08.09.2011, it was pointed out that the inspecting officials had not adopted quantitative analysis method to arrive at stock variation and that such assessment could not be made on the notional value.

13.By applying the above referred decisions to the case on hand, the only conclusion that can be arrived at is that the Tribunal could not have arrived at the stock difference notionally, that too, by placing reliance on the report of the Enforcement wing Officials.

14.The Appellate Assistant Commissioner has given independent reasons for deleting equal addition. We find that in paragraph 5(e) of the order passed by the Tribunal, there are no reasons given by the Tribunal to sustain equal addition, though according to the Tribunal, the dealer was entitled to partial relief insofar as the alleged stock difference. The above reasoning would equally apply to the finding arrived at by the Tribunal with regard to the purchase suppression by referring to D-7 slips as mentioned supra.

15.The Appellate Assistant Commissioner has done a thorough exercise and come to the conclusion that the relevant purchase and sales of banians have duly been accounted in the account and they have been included in the turnover reported in the returns filed by the dealer and the Assessing Officer himself verified and allowed exemption thereof. Therefore, the equal addition on the alleged ground of proved purchase suppression vide D-7 slips is also deleted.

16.In the light of the above discussion, we find that the order passed by the Tribunal is unsustainable with regard to two issues namely, with regard to the stock variation and equal addition and to that extent, the order passed by the Appellate Assistant Commissioner is liable to be sustained.

17.In the result, the Tax Case Revision stands allowed to the extent indicated by answering both the questions in favour of the assessee and against the revenue. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Commercial Tax Officer,
   Tallakulam Circle, Madurai.

2. The Sales Tax Appellate Tribunal (Additional Bench),
   Madurai.

3. The Commercial Tax Officer,
   Tallakulam Assessment Circle, Madurai.

4. The Appellate Assistant Commissioner (CT),
   Madurai North, Madurai.

+1cc to M/S.S.Karunakar, Advocate SR.No. 56084
+1cc to Special Government Pleader (Taxes), SR.No. 56297

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09.05.2017

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