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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.05.2017
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

TAX CASE REVISION(MD)No.5 of 2011

M/s.V.V.Anandham & Sons,
42,Andikinar Street,
Virudhunagar. .. Petitioner

Vs.

1. The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Commercial Taxes Buildings,
Dr.Thangaraj Salai, Madurai-625 020.

2. The State of Tamil Nadu,
Represented by the Joint Commissioner(CT),
Tirunelveli Division, Tirunelveli.

3. The Commercial Tax Officer-III,
Virudhunagar.
Presented Designated at as
The Assistant Commissioner(CT),
Virudhunagar. .. Respondents

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench) Madurai dated 05.01.2011 in M.T.A No.40/2002 in so far as the levy of Additional Sales Tax sustained for the assessment year 1996-97.
(Appeal No.337/2001 dated 21.11.2001 on the file of the Appellate Assistant Commissioner (CT), Madurai (North) against TNGST No.5760465/96-97 dated 13.02.1998 on the file of the Commercial Tax Officer-III, Virudhunagar).

For Petitioner : Mr.R.D.Ganesan
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader.

ORDER
[Order of the Court was made by T.S.SIVAGNANAM, J.]

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Heard Mr.R.D.Ganesan, learned counsel for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

2.This Tax Case Revision is filed by the assessee, challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai in M.T.S.A.No.40 of 2002, dated 05.01.2011.

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3.The question which arises for consideration in this case is as to whether the Tribunal has committed an error in not holding that for the purpose of ascertaining the rate of tax, turnover for the year shall have to be taken and appropriate rate of tax has to be adopted for levy of additional sales tax on the turnover upto 31.07.1996.

4. The petitioner/assessee contended that the assessment year cannot be split up for the purpose of levy of Additional Sales Tax when the taxable turnover throughout the year for assessment being below Rs.100 crores as per the amended provision of Section 2(1)(aa) of the Act 31 of 1996, for the year 1996-1997.

5. In support of such contention, reliance was placed on the decision of the Division Bench of this Court in the case of ***State of Tamil Nadu Vs. Kirthilal Kalidas & Co.*** reported in ***(2014) 70 VST 359 (Mad),*** wherein the following order was passed:

> ***The issue as regards the levy of additional sales tax in respect of the assessment year 1996-97 is covered by the decision of this Court in the case of State of Tamil Nadu v. National Time Co. reported in [2011] 39 VST 247(mad) that after taking the taxable turnover for the entire year, the taxable turnover up to the date of amendment has to be assessed with reference to the relevant tax rate therein applicable to the period.***
>
> ***In the circumstances, setting aside the order of the Sales Tax Appellate Tribunal, the matter is remanded back to the Assessing Officer to work out the liability based on the decision of this Court. Thus, taking the taxable turnover for the entire year, the taxable turnover up to the period July 31, 1996, has to be worked out to attract the liability at the rates specified therein and beyond that, the liability of the turnover has to be worked out based on the amended provision depending on the taxable turnover crossing rupees 100 crores for the whole year.***
>
> ***The tax case revision stands disposed of accordingly. No costs.***

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6.The above legal position has not been controverted by the

Revenue. In the circumstances, while setting aside the order passed by the Sales Tax Appellate Tribunal, the matter is remanded back to the Assessing Officer to work out the liability based on the decision of this Court. Thus, taking the taxable turnover for the entire year, the taxable turnover up to the period July 31, 1996, has to be worked out to attract the liability at the rates specified therein and beyond that, the liability of the turnover has to be worked out based on the amended provision depending on the taxable turnover crossing rupees 100 crores for the whole year.

7.This tax case revision stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
   Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench),
   Commercial Taxes Buildings,
   Dr.Thangaraj Salai,
   Madurai-625 020.

2. The Joint Commissioner(CT),
   Tirunelveli Division, Tirunelveli.

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

4. The Commercial Tax Officer-III,
   Virudhunagar.
   Present by Designated at as
   The Assistant Commissioner(CT),
   Virudhunagar.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55951
+ 1 CC TO Mr.R.D.GANESAN, ADVOCATE IN SR No. 55727

PS
TE/JC : 22/05/2017 : 3P/7C

ORDER MADE IN
TAX CASE REVISION (MD)No.5 of 2011
05.05.2017

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