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(MD)Nos.9 and 32 of 2011

The State of Tamil Nadu,
Rep. By the Deputy Commissioner (CT),
Tirunelveli Division,
Tirunelveli - 627 002. .. Appellant in both the petitions

Vs.

Tvl. S.Arunachalam,
Contractor,
Kadayanallur. .. Respondent in both the petitions

COMMON PRAYER: Tax Case Revisions filed under Section 38 of the TNGST Act, 1959, to revise the orders of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai dated 04.10.2001 passed in M.T.A.Nos.403 and 404 of 2001.

For Petitioner in both the petitions : Mr.R.Karthikeyan, Additional Government Pleader.

For Respondent in both the petitions : Mr.S.Karunakar

COMMON ORDER

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

Heard Mr.R.Karthikeyan, learned Additional Government Pleader and Mr.S.Karunkar, learned Counsel appearing for the respondent.

2.These Tax Case Revisions have been filed by the State challenging the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A.Nos.403 and 404 of 2001, dated 04.10.2001.

3. At the time when the Tax Case in T.C.(MD) No.9 of 2011 was admitted, the following substantial question of law was framed:

"Whether, in the facts and circumstances, the authorities are justified in levying penalty under Section 12(b) of the Act, when the turnover in question was drawn from the records of the Superintending Engineer, Highways Rural Works, Department Tirunelveli?"

4. At the time when the Tax Case in T.C.(MD) No.32 of 2011 was admitted, the following substantial questions of law were framed:

"1.Whether the Sales Tax Appellate Tribunal is in right providing the relief on the assessment of "sand and Jally" at 4%, whereas it was assessable to tax at 8%, as the goods are not scheduled goods and are general goods and the tax rate of 8% is mentioned under Item Entry No.67/Part (D) of the I-Schedule?

2.When the tax rate for kerosene was % as per schedule I-B/40, whereas the decision of the Sales Tax Appellate Tribunal in deciding the rate as only 3% is proper and sustainable in law?"

5. The respondent /assessee is a contractor engaged in road laying works with the Highways and Rural Works Department, Tirunelveli. Initially the Assessing Officer has granted exemption as sought for by the respondent in their returns. But, subsequently, by revision of assessment under section 16 of TNGST Act, 1959, the turnover was revised and tax and penalty were imposed. Challenging the same, the respondent preferred an appeal before the Appellant Assistant Commissioner (CT), Tirunelveli. The said appeal was dismissed, confirming the order of Assessing Officer, against which an appeal was preferred before the Tribunal. Before the Tribunal three points were raised of which we are concerned only with point No.3, which relates to levy of penalty under Section 12(3)(b) of the TNGST Act. The Tribunal modified the order passed by the Appellate Assistant Commissioner and vacated the penalty imposed under Section 12(3)(b) of the Act. The question would be as to whether the decision of the Tribunal was justified and whether the penalty could have been levied when the turn over in question was drawn from the records. The Division of Bench of this Court in the case of Apollo Saline Pharmaceuticals (P) Ltd., vs. C.T.O. (Mad.) reported in [2002] 125 STC 505 held that when the assessments were made on the basis of the returns filed and the accounts maintained by the dealer and they were not estimates have, therefore, to be regarded as assessments made under Section 12(1) to which the penal provisions of Section 12(3) were not attracted.

6.Applying the said decision to the facts of this case, it has to be necessarily held that the penalty cannot be imposed. The only distinction which is sought to be made by the learned Additional Government Pleader is that the turn over in question is drawn from the records of the Superintending Engineer, Highways and Rural Works Department, Tirunelveli. So far as this aspect is concerned, the Tribunal has examined the matter on facts and held that the revision of turnover by the Assessing Officer was based on presumption and conjectures. In such circumstances, it cannot be said that there was willful suppression of the turnover and it does not warrant imposition of penalty.

7. In the result, the questions framed are answered in favour of the assessee and against the revenue. Both the Tax Case Revisions are accordingly dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To
1 The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal (AB),Madurai.

2 The Deputy Commissioner(CT),
Tirunelveli Division, Tirunelveli- 627 002.

3 The Appellate Assistant Commissioner(CT),
Tirunelveli

+2CC to M/S.S.Karunakar, Advocate, SR.No. 55844, 55841
+1CC to the Special Government Pleader SR.No. 55944

ORDER MADE IN
TAX CASE(MD)Nos.9 and 32 of 2011
05.05.2017

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AM/SDS/SV/SAR 4/16.05.2017/3P/7C