BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.05.2017
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

TAX CASE REVISION(MD)No.17 of 2013

The State of Tamil Nadu,
Represented by the Deputy Commissioner (CT),
Madurai Division,
Madurai. .. Petitioner

Vs.

Tvl. Hotel Vasantham,
Madurai. .. Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, is presented to the Madurai Bench of Madras High Court to revise the order of the Sales Tax Appellate Tribunal (AB) Madurai dated 07.05.2004 in Madurai Tribunal State Appeal No.119/2003 relating to Tvl. Hotel Vasantham, Madurai, for the assessment year 1999-2000.

For Petitioner : Mr.R.Karthikeyan, Additional Government Pleader.

For Respondent : Mr.S.Karunakar

ORDER

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

Heard Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the petitioner and Mr.S.Karunakar, learned counsel appearing for the respondent.

2.This Tax Case Revision is directed against the order passed by the Tamil Nadu Taxation Special Tribunal (Additional Bench), Madurai in M.T.S.A.No. 119 of 2003 dated 07.05.2004.

3.The respondent-Hotel was assessed to tax on a total and taxable turnover for the year 1999-2000 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST) under self-assessment scheme by an order dated 14.12.2002. It appears that the case of the respondent/ assesse was taken up for check of accounts and accounts were called for and verified and certain defects were noticed pertaining of purchase of ghee, cardamom and cashewnuts, etc., Subsequently, there was an inspection in the place of business of the respondent by the Enforcement Wing Officials on 31.03.2000.

4.Based on the said inspection, the authorities notionally arrived at average sales per day and this was multiplied by 363 days excluding the holidays for Pongal and Deepavali and turnover was arrived and 10% was estimated towards sales made with reference to the orders received on marriage functions and festival days and estimation was also made with reference to the D-7 records.

5.Apart from that, there was also levy of penalty. Challenging this order of assessment, the respondent preferred an appeal before the Appellate Assistant Commissioner, who allowed the appeal and set aside the order of assessment, which was based on estimation.

6.This order was challenged by the Revenue before the Tribunal. The question which was considered by the Tribunal was whether the Appellate Assistant Commissioner was justified in setting aside the levy of tax on the turnover and imposition of penalty.

7.After considering the facts and circumstances of the case and noting that the estimation was based on a single day's inspection multiplied by 363 was held to be erroneous and unacceptable. That apart, other factual details were also noted by the Tribunal based on the documents placed before it and ultimately, the appeal was dismissed. Challenging the same, this revision has been preferred by the State.

8. On a perusal of the grounds of the revision, we find that the grounds are irrelevant to the facts of the case as the ground pertain to the sale of cables and accessories for cable television.

9.The learned Additional Government Pleader submitted that the question which arises for consideration is whether the estimation arrived at by the Assessing Officer, based on a single day's inspection could be rejected and whether the Assessing Officer fell in error in multiplying the proposed turnover by 363 is justified.

10.As mentioned in the previous paragraphs, the Appellate Tribunal has gone into the factual matter and done a thorough exercise while examining the correctness of the findings recorded by Appellate Assistant Commissioner. Therefore, we need not labour much on the said issue.

11. With regard to the question framed which arises for consideration according to the revenue, the same is covered by several decisions of this Court that estimation cannot be made

pursuant to single day inspection and multiplied by 363 and it would be relevant to take note of one such decision in the case of in *Ambal Cafe Vs. State of Tamil Nadu reported in [2010] 33 VST 348 (Madras).* The operative portion of the order reads as follows:

> 8.In Hotel Vallalar Vs. Registrar, Tamil Nadu Taxation Special Tribunal, Chennai [2008] 15 VST 516, this court had held, referring to State of Tamil Nadu v. New Kamaliya Hotel [2006] 147 STC 111 that "mere one day sales could not be attributed to estimate the whole year without considering the festival season, rainy season and other calamities" and that the sales may differ from auspicious day and inauspicious day and may not be uniform throughout the year and that if the result of one day sales is supported by other materials like non-maintenance of stock accouont or regular maintenance account or defective incomplete accounts, other incriminating materials available to support such a finding, then, no exception could be taken on an estimation based on one day sales results.
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> 10.Even in his order, the Joint Commissioner has not set aside the finding of the appellate authority regarding non-suppression of purchase or sales. In these circumstances, we do not find that the Joint Commissioner was justified in interfering with the appellate authority's order. In fact, the decision, New Dwaraka Lunch Home v. State of Andhra Pradesh [1993] 91 STC 36 (AP), cited by the learned special Government Pleader only supports the assessee's case. It is a short order and we extract it as below:
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> > "The short question involved in this revision is whether the authorities below, including the Sales Tax Appellate Tribunal, were justified in holding that the petitioner was guilty of suppression of turnover of sales and purchases of articles while dealing in cooked food in the name and style of M/s. New Dwaraka Lunch Home at Kakinada. It has been found as a fact by the authorities below that as compared to the returned turnover, the actual turnover of the petitioner was much more. That estimate was made on the basis of the inspection made on spot by the Commercial Tax Officer on October 12, 1987, at 8.40 p.m. in the hotel. It was found that there was cash of Rs.3,600. It was not supported by various relevant bills and the accounts also were not found to be properly maintained. On

the basis of this material, the Commercial Tax Officer made and estimate of purchase and sales undertaken by the petitioner during the year and consequently, sales tax was levied, after computing the suppressed sales and purchases. These findings are based on relevant evidence and cannot be interfered with. The Tribunal was justified in relying on the decision of the Supreme Court in Commissioner of Sales Tax v.H.M.Esufali H.M.Abdulali (1973) 32 STC 77 and in holding that on the basis of one day's inspection where the suppressed sales could be detected, estimate could be made for the whole year.

2.Reliance placed by the learned counsel for the petitioner on a decision of this Court in Padmavathi Paddy and Rice Co. v. Assistant Commissioner of Commercial Taxes [1971] 27 STC 30 (AP) for the proposition that some other evidence is required in addition to what was found on a day's inspection, is of no avail for two reasons. Firstly, the Supreme Court's decision (Commissioner of Sales Tax v. H.M.Esufali H.M.Abdulai [1973] 32 STC 77) on the point squarely applies to the case on hard and it has to be followed, and secondly on the ground that there is additional evidence, as indicated above, from which it could be iferred that Rs.3,600 found on the night of inspection represented suppressed sales.

3.For all the above reasons, therefore, no case is made out for our interference in this revision. The revision case is, therefore, rejected. No costs.

12.In the light of the above referred decision, the question which is framed for consideration has to be answered against the revenue and in favour of the assesse. Accordingly, the Tax Revision Case is dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To,

1. The Deputy Commissioner (CT),Madurai Division,Madurai.
2. The Additional Judicial Member,
The Sales Tax Appellate Tribunal (Additional Bench), Madurai

+One cc to Mr.S.Karunakar, Advocate, SR.No.55690

myr/cm/tsg

RL/4C/4P/MMS/19.5.2017

ORDER MADE IN
TAX CASE(MD) No.17 of 2013
04.05.2017