IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Revision) No.1 of 2015

The State of Tamil Nadu,
Rep. By Joint Commissioner (CT),
Chennai (East) Division,
Chennai - 600 006.
.... Appellant

-vs-

Tvl.National Trade Centre,
No.184-185 Pycrofts Road,
Chennai - 14.
... Respondent

Tax Case Revision filed by the State under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in STA No. 118/2010 dated 12.11.2013 and against the Sales Tax Appellate Tribunal, Chennai (East Division), Assessment year TNGST/2002-2003 and against the Deputy Commissioner (CT) IV, Chennai A.No. AP 51/08 dated 30.12.2009 and against the Deputy Commercial Tax officer, Triplicane II, Assessment circle , Chennai 86 and madein TNGST/0680681/2002-2002 dated 28.03.2008.

For Appellant :Mr.V.Haribabu
Additional Government Pleader

For Respondent :Mr.A.P.Srinivas

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Tax Case Revision filed by the State under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (for brevity 'TNGST Act') is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal Main Bench, Chennai in STA No. 118/2010 dated 12.11.2013.

2.Heard Mr.V.Haribabu, the learned Additional Government Pleader for appellant and Mr.A.P.Srinivas, the learned counsel for the respondent.

3.This Tax Case Revision has been filed raising the following Substantial Questions of Law:

> "(i)Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that re-assessment could not be made on mere suspicion when there was misclassification of turnover on taxable and exempted goods?
>
> (ii)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the assessment in the absence of valid records in respect of heavy profit under exempted sales and heavy loss under taxable goods?"

4.We are called upon to decide as to whether the Tribunal was correct in dismissing the appeal filed by the State, challenging the order passed by the Appellate Deputy Commissioner dated 30.12.2009. By the said order, the Appellate Deputy Commissioner allowed the appeal filed by the respondent/dealer and set aside the order passed by the Assessing Officer vide order dated 28.03.2008 for the assessment year 2001-02 under the provisions of TNGST Act.

5.In our considered view, the order passed by the First Appellate Authority is a very reasoned order and does not call for any interference. Consequently, we have to necessarily hope that the Tribunal was fully justified in dismissing the appeal by the State. We support such conclusion with the following reasons., the Revision of assessment was done by the Assessing Officer invoking his power under Section 16(1) of the TNGST Act. The question would be as to whether the said power could have been invoked in the facts and circumstances of the case. The First Appellate Authority found that the Assessing Officer had revised the assessment based on his working that there was shortage of taxable turnover to the extent of Rs.36,87,078/- and excess accounting of sales tax under exempted goods to an extent of Rs.37,07,091/-.

6.The First Appellate Authority pointed out that even for the sake of argument, this finding is taken as acceptable. The Assessing authority while revising the assessment could have added turnover of Rs.36,87,077/- as suppression or a turnover of Rs.37,07,091/- as suppression and assessment of both the turnovers at 16% is not correct. The finding referred by the First Appellate Authority is perfect and legally valid and therefore, rightly interfered with the Revision order passed by the Assessing Authority. Further more, in the original assessment dated 24.12.2003, the Assessing Officer proposed to restrict the claim of exemption of Rs.66,38,146/- and proposed to add a turnover of Rs.63,54,262/- to the taxable turnover as per the books.

7.However, after considering the objections of the dealer, the proposal was dropped and an addition of Rs.50,000/- alone was made to the taxable turnover as per books. Therefore, the First Appellate Authority rightly held that there can be no two best judgement, assessment for the same dealer for the same year. Next, the First Appellate Authority considered whether the Assessing Officer could have invoked Section 36 of the TNGST Act and after examining the facts found that the Revision of assessment itself was the case of change of opinion and no finding has been recorded that there has been any suppression on the part of the dealer.

8.The Tribunal has given independent reasons to affirm the order passed by the First Appellate Authority. It has also examined as to under what circumstances the power conferred under Section 16 of the TNGST Act could be exercised and referred to the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, UP Vs. Bhagawan Industries (P) Ltd., (reported in 31 STC 293). In the said decision, it was pointed out that if there are some reasonable grounds for the Assessing Authority to believe the whole or any part of the turnover of dealer has escaped assessment, it can take action under Section 16. However, reasonable grounds would necessarily postulate that they must be a germane to the formation of the belief regarding escaped assessment and however, the grounds are of an extraneous character, the same would not warrant initiation of proceedings under this Section.

9.Thus, in our considered view, the orders passed by the First Appellate Authority as confirmed by the Tribunal are perfectly legal and valid.

10.For all the above reasons this Tax Case Revision is dismissed and the Substantial Questions of law are answered against the petitioner/Revenue.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrm

To

1.Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai

2. The Deputy Commissioner officer, (CT), IV, Chennai.

3. The Deputy Commercial Tax officer, Triplicane, II, Chennai 86.

+1 CC to Mr.A.P.Srinivas, Advocate sr 81005.

T.C.No.1 of 2015

SP(31/12/2018)