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.2 of 2015

The State of Tamil Nadu,
Rep. By Joint Commissioner (CT),
Chennai (Central) Division,
Chennai – 6.
Now rep. By the Joint Commissioner(CT),
Large Taxpayers Unit, Dugar Towers, 5th Floor,
No.34 (Old No.123), Marshall Road, Egmore,
Chennai – 8.

.... Appellant

-vs-

Tvl. Voltas Limited,
No.503, Anna Salai,
Chennai.

... Respondent

Tax Case Revision filed by the State under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) (for brevity 'the Act') is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in TA No. 400/2001 dated 24.08.2006 against the order passed by the Deputy Commissioner (CT) Appeals Chennai dated 28.11.2000 and made in Appeal No and year 9/98 and against the order passed by the Assistant Commissioner(CT) Central Assessment Circle II dated 28.11.1997 and made in TNGST/32394/89-90.

For Appellant : Mr.Mohammed Shaffiq
Special Government Pleader

For Respondent : Mr.K.A.Parthasarathy
for Mr.N. Inbarajan

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 is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in TA No. 400/2001 dated 24.08.2006.

2.Heard Mr.Mohammed Shaffiq, the learned Special Government Pleader for appellant and Mr.K.A.Parthasarathy, the learned counsel for the respondent.

3.This Tax Case Revision has been admitted on 11.02.2015 on the following Substantial Questions of Law:

> "(i)Whether on the facts and circumstances of the case, the Tribunal is legally correct in having held that proforma invoices cannot be assessed to tax in the absence of proof that they represented concluded sales while the assessees were able to prove in respect of all other proforma invoices that those proforma invoices were followed by regular sale invoices or cancelled as repetition or duplication?
>
> (ii)Whether the Tribunal is legally correct in deleting the consequential penalty levied under Section 12(5)(iii) of the TNGST Act, 1959?
>
> (iii)Whether the Tribunal is correct in deleting the penalty levied under Section 12(5)(iii) of the Act on the turnovers representing credit notes and tax component involved in the works contract receipts?"

4.The Revenue is aggrieved by the order of the Tribunal in allowing the respondent's appeal and deleting the addition made by the Assessing Officer as confirmed by the First Appellate Authority. We have considered the reasons assigned by the Tribunal for setting aside the addition which was made and we find the reasons are germane and proper. We support such conclusion with our following reasons.

5.The assesseee's case is that certain customers has sought for proforma invoices, which was issued, so as to enable them to obtain loan for purchase of Air Conditioned equipment. The Assessing Officer disbelieved the stand of the dealer and held the sale to be concluded sale and consequently held that there was a suppression of the sales turnover as final bills were not raised. As rightly pointed out by the Tribunal, if the case of the Revenue is that proforma invoices has to be treated as sale by the dealer, then the onus is on the Revenue to establish the same.

6.Thus, the Revenue having not discharged the burden of proof cast upon them, the Tribunal rightly held that the proforma invoices could not be treated as sales and the assessee's cannot be made liable to pay tax. Thus, the finding rendered by the Tribunal on this aspect is confirmed. The next two questions are related to levy of penalty under Section 12(5)(iii) of the TNGST Act. The Tribunal after considering the fact that the turnover was very much available in the books of accounts and there was only a dis-allowance of claim of exemption and non-payment of taxes was also on the bonafide belief that the claim of deduction and exemption will be allowed, deleted the same. The bonafides of the reasons assigned by the Tribunal are perfectly valid and in consonance with the law laid down by this Court in several decisions. Thus, the Substantial Questions of Law Nos. 2 and 3 are also answered against the Revenue.

7.In the result, the Tax Case Revision is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2. The Joint Commissioner (CT) Appeals
Chennai (Central) Division, Chennai 6.

3. The Joint Commissioner(CT)
Large Taxpayers Unit,Dugar Towers, 5th Floor
No.34(Old No. 123) Marshall Road, Egmore, Chennai 8.

4. The Deputy Commissioner (CT) Appeals
III Floor, Wavoo Complex, 191 NSC Bose Road
Chennai.

5. The Assistant Commissioner(CT)
Central Assessment Circle II, Chennai.

+1 CC to Mr.N. Inbarajan, Advocate sr 81073
+1 CC to Govt. Pleader sr 81485.

T.C.No.2 of 2015

SR(CO)
SP(23/01/2019)