IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MR. JUSTICE **N. SATHISH KUMAR**

Tax Case (Revision) No.48 of 2013

M/s.Chanda Softy Ice Creams
No.G-7, Wellingdon Estate,
24, Commander-in-Chief Road, Egmore,
Chennai - 600 105. ... Petitioner

-vs-

The State of Tamil Nadu Rep. by
The Joint Commissioner (CT)
Chennai (Central) Division,
Chennai. ... Respondent

Tax Case Revision filed under Section 38 of the TNGST Act against the order of the Tamil Nadu Sales Tax Appellate Tribunal, (Main Bench), Chennai dated 29.11.2012 in STA No.74 of 2010 for the Assessment year 2003 - 2004.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.V.Haribabu
Addl.Govt.Pleader

J U D G M E N T

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

This appeal by the assessee under Section 38 of the TNGST Act, is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) in S.T.A.No.74 of 2010. The matter arises under the provisions of the TNGST Act and the assessment year in question pertains to 2003-04.

2. The Tax Case (Revision) was admitted on 05.09.2013 on the following substantial questions of law:-

> *" 1.Whether under the facts and circumstances of the case, the Appellate Tribunal is right in overriding the mandatory application of the provisions of Section 3-D(1) of the TNGST Act, 1959 for the year TNGST 2003-04, by erroneously holding that the compounding benefit is applicable only to a hoteliers or restaurants AND NOT TO SMALL EATING HOUSES LIKE THE PETITIONER?*
>
> *2.Whether the Appellate Tribunal is right in law in confirming the Officer's conclusion of making a 50:50 best of judgment assessment in respect of the reported total taxable turnover of the petitioner under Section 3D overriding the specific direction of the First Appellate Authority?*
>
> *3.The Appellate Tribunal failed to appreciate the legal provisions*

adumbrated under Section 3D that where the assessment is being completed at the dealer's option under Section 3D of the TNGST Act, 1959, then the Assessing Officer is legally estopped in law to make an independent assessment de hors the provisions of Section 3 D".

3. The short question which falls for consideration is whether the demand for the relevant assessment year should be assessed under Section 3-D(2) of the TNGST Act.

4. Section 3-D deals with Payment of tax by hotels, restaurants and sweet stalls. It is not disputed by the Revenue that the assessee was assessed under Section 3-D(2) for the assessment years 1996-97, 1997-98, 1998-99, 1999-00, 2000-01, 2001-02, 2002-03, 2004-05, 2005-06, 2006-07 and only for the subject assessment year, the assessee was not assessed under the said section.

5. This case has had a chequered history and this is second round of litigation. In our considered view, we need not labour much to decide as to whether the Tribunal was right in interfering with the order passed by the Appellate Deputy Commissioner dated 17.09.2009, by which

the appeal filed by the assessee was allowed. The answer to the question should be in favour of the assessee for the following reasons; that the assessment was completed at the first instance by order dated 31.03.2015. The assessee filed appeal before the Appellate Assistant Commissioner, who passed an order on 19.01.2007 allowing the assessee's appeal and a specific direction was issued to the Assessing Officer to assess the disputed turn over under Section 3-D(2) of the TNGST Act.

6. At this juncture, it will be worthwhile to quote the operative portion of the order passed by the Appellate Assistant Commissioner:-

> ".....An hotel or eating houses has to be asssessed either under Section 3-D or classified under item 29 of Part C of I Schedule and hence naturally fall under Section 3(D)(2) of TNGST Act, '59. There is no doubt that the appellants are in nature of running a eating house as the assessment pertaining to earlier years are assessed under Section 3D of TNGST Act '59 and no evidence recorded by the assessing officer to support the fact they do not fall under the category of hotel or eating house. Hence I find no reason to sustain the assessment made by the assessing officer and the same is set aside and remanded back to the assessing officer to assess the disputed turnover under Section 3(D)(2) of TNGST Act '59."

7. The above order had attained finality. The Revenue did not file any appeal against the said order. Therefore, judicial discipline demands that the Assessing Officer should implicitly obey the order passed by the Appellate Authority or the Tribunal. But unfortunately, the Commercial Tax Officer, Egmore - I Assessment Circle, failed to follow the same and passed an order rejecting the appellant's case by order dated 06.11.2007. This order was challenged by the assesseee by way of appeal before the Appellate Deputy Commissioner, who by order dated 17.09.2009 allowed the appeal specifically noting that the earlier direction issued by the Appellate Assistant Commissioner dated 19.01.2007 has attained finality. The Tribunal without noticing the same and without taking into consideration the facts of the case erroneously allowed the appeal filed by the State.

8. The Hon'ble Supreme Court in the case of ***Union of India v. Kamlakshi Finance Corporation Limited [AIR 1992 SC 711]*** has held that the subordinate authorities are bound by the directions issued by the Appellate Authorities, if such hierarchy is not followed, then it will

result in judicial anarchy. Therefore, the Assessing Officer is bound to follow the direction issued by the Appellate Authority in its order dated 19.01.2007 in A.P.No.50 of 2006, especially when the Revenue has not filed any appeal against the said order.

9. In the light of the above, the order passed by the Tribunal calls for interference. Accordingly, the Tax Case Revision is allowed; the Order passed by the Tribunal is set aside and the order passed by the first Appellate Authority dated 17.09.2009 in A.P.No.227 of 2007 is restored and the substantial questions of law are answered in favour of the assessee. No costs.

[T.S.S.,J.] [N.S.K.,J.]
13.12.2018

svki

To

1.The Joint Commissioner (CT)
The State of Tamil Nadu
Chennai (Central) Division, Chennai.

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

T.S. SIVAGNANAM J.
AND
N.SATHISH KUMAR,J.

(svki)

T.C.A.No.48 of 2013

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