IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.(R).No.71 of 2017

The State of Tamil Nadu,
rep. by the Joint Commissioner (CT),
Coimbatore. .. Petitioner

Vs.

Tvl. Bannari Amman Sugars Limited,
252, Mettupalayam Road,
Coimbatore. .. Respondent

Prayer: Tax Case Revision Petition filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 26.03.2013 passed in C.T.R.A.No.2 of 2005 praying to review the order dated 14.11.2002 made in C.T.A.No.430 of 2002 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore.

For Petitioner : Mr.V.Haribabu
Additional Govt. Pleader (Taxes)

ORDER

(Order of this Court was made by **S.MANIKUMAR, J.**)

Tax Case Revision is filed to revise the order of the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 26.03.2013 passed in C.T.R.A.No.2 of 2005, filed to review the order dated 14.11.2002 made in C.T.A.No.430 of 2002 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore.

2. Short facts leading to the Tax Case Revision are that, the respondent herein, are the manufacturer of sugar and dealers in granite, molasses, fertilizer etc, and accessed on a total and taxable turnover of Rs.70,27,19,167/- and 43,03,53,904/- respectively, for the assessment year 1996-97, under Tamil Nadu General Sales Tax Act, 1959 by the Commissioner Tax Officer, Mettupalayam Road Circle, Coimbatore. The Assessing Authority in his order dated 28.8.2000, levied Additional Sales Tax of Rs.42,27,150/- at the rate of 2.5% on the turnover of Rs.16,90,85,969/- as the taxable turnover of the dealer upto 31.7.96 exceeded Rs.10 lakhs.

3. Aggrieved by the said levy of the Additional Sales Tax, the dealer filed appeal in AP.No.1 of 2000, before the Appellate Authority, viz., Appellate Assistant Commissioner (CT), Coimbatore and vide order, dated 21.1.2002, the appellate authority confirmed the assessment and dismissed the appeal. Against which, the respondent-dealer filed second appeal in C.T.A.No.430/12, before the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore, which allowed the appeal on 14.11.2002, on the grounds, inter alia that the taxable turnover of the dealer for the whole year was below Rs.100 crores. For arriving at the above conclusion, the Appellate Tribunal has also considered the decisions in **Siemens Ltd., v. State of Tamil Nadu** reported in **110 STC 313** and **State of Tamil Nadu v. V.N.Krishnasamy Naidu** reported in **183 STC 553**.

4. Aggrieved by the abovesaid order, State has preferred a review application in C.T.R.A.No.2 of 2005, before the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore, praying to review the order of the Tribunal, passed in C.T.A.No.430/02, dated 14.11.2002. The said review came to be dismissed on 26.3.2013, on the grounds that the State has not raised any valid ground for review and further held that if the revenue was aggrieved by the order of the Tribunal, it should have filed a tax case, before this Court. Relevant portion of the review order, is extracted hereunder:

"In the grounds of Review application, the Revenue has not given any fresh facts which were not presented before this Tribunal at the time of passing its order. The decision of the Tamil Nadu Taxation Special Tribunal, Chennai, in Geethanjali Mills vs. Commercial Tax Officer, Sankarankoil, relied on by the Revenue has been actually considered by the Assessing Authority and learned first appellate authority. This Tribunal has also considered the above decision of the Tamil Nadu Taxation Special Tribunal before coming to the conclusion that the Additional Sales Tax liability would arise for the year 1996-97 only if the total taxable turnover crosses Rs.100 crores. If the Revenue is aggrieved of the order of the this Tribunal, it should have filed Tax case before the Hon'ble High Court of Madras. But the Revenue has filed the Review application without adducing any fresh facts. Therefore, we are of the considered view that in the Review application, there are no valid grounds for invoking the review. Hence, this petition is dismissed in favour of the dealer-Respondent."

5. The abovesaid order is challenged in this Tax Case Petition, on the following substantial questions of law:-

"(i) Whether in the facts and circumstances of the case, the Tribunal is right in law in dismissing the Review application filed by the State without considering the fact that the amendment of Section 2(1)(aa) in which the upper limit of taxable turnover of Rs.100 crores is came into force with effect from 1.8.96?

(ii) Whether in the facts and circumstances of the case, the Tribunal is right in rejecting the review application without considering the fact that the dealer's turnover upto 31.7.96 exceeds Rs.10 lakhs which is liable for Additional Sales Tax asa decided by this Court in the case of Tvl. National Time Co. reported in 39 VST 247?

(iii) Whether the facts and circumstances of the case, the Tribunal is right in law in rejecting the Review Application filed by the State on the ground that no fresh materials were adduced before the Tribunal when it is covered by this Court, rulings reported in 39 VST 247?"

6. In support of the above substantial question of law, the Joint Commissioner, Coimbatore has contended that the Appellate Tribunal has failed to appreciate that the Additional Sales Tax is leviable for the period from 01.04.1996 to 31.07.1996, since the turnover exceeded ten lakhs. The Tribunal has failed to consider that enhancement of exemption from 10 lakhs to 100 crores, was made only with effect from 01.08.1996, by Amendment Act 31 of 96, and the threshold limit was increased only with effect from 01.08.1996 and therefore, according to the petitioner, till 31.07.1996, the levy of Additional Sales Tax should be made, as per the existed section 2(1)(a) of the Tamil Nadu General Sales Tax Act, 1959.

7. Revision petitioner has further submitted that in a decision in **Tvl.Geethanjali Mills v. Commercial Tax Officer, Sankarankoil [O.P.No.739 of 1999, dated 22.06.1999],** the Special Tribunal held that there is liability to pay Additional Sales Tax upto 31.07.1996, if the taxable turnover exceeds to Rs.10 lakhs. He further submitted that the Tribunal has erred in not considering the fact that the amendment of Section 2(1)(aa), in which, the upper limit of taxable turnover of Rs.100 crores, came into force with effect from 01.08.1996 and the dealer's turnover upto 31.07.1996, exceeded Rs.10 lakhs, which is liable for Additional Sales Tax, as decided by this Court in **Tvl. National Time Co.** reported in **39 VST 247.**

Heard Mr.V.Haribabu, learned Additional Government Pleader (Taxes), and perused all the materials available on record.

8. Before adverting to the rival contentions, let us consider the provision dealing with levy of additional tax, in the case of certain dealers, in Tamil Nadu Additional Sales Act, 1976. In Tamil Nadu Additional Sales Tax Act, 1970, as it was originally enacted, Section 2 was the charging section, imposed a levy of additional tax in the case of certain dealers, whose total turnover for a year exceeded a particular

limit. Thereafter, Section 2(1)(a) was omitted by the Tamil Nadu Amendment Act 37 of 1999. Section 2(1)(aa) was inserted, reproducing the very language of Section 2(1)(a), with slight modification in the quantum of taxable turnover and the rate of tax. Section 2(1)(aa) of the said Amendment Act, is extracted hereunder:

> "The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act),shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover for a year exceeds ten crores of rupees, be increased by an additional tax, calculated at the following rates, namely :-

	Rate of tax
(i) Where the taxable turnover exceeds ten crores of rupees, but does not exceed twenty five crores of rupees :	1% of the taxable turnover
(i-a) Where the taxable turnover exceeds twenty five crores of rupees, but does not exceed fifty crores of rupees :	1.5 percent of the taxable turnover
(ii) Where the taxable turnover exceeds fifty crores of rupees, but does not exceed one hundred crores of rupees :	2 percent of the taxable turnover
(iii) Where the taxable turnover exceeds one hundred crores of rupees, but does not exceed three hundred crores of rupees :	2.5 percent of the taxable turnover
(iv) Where the taxable turnover exceeds three hundred crores of rupees :	3 percent of the taxable turnover

Explanation I : 'Taxable Turnover' for the purpose of this clause in respect of a principal selling or buying goods [...] through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State.

Explanation II : Notwithstanding anything contained in the said Act, for the purpose of this clause, 'turnover' in respect of sugarcane excluding sugarcane setts shall be arrived at by multiplying the total metric tonnes of sugarcane excluding sugarcane setts purchased during the year, by the minimum price fixed under Clause 3 and the additional price determined under Clause 5-A, of the Sugarcane (Control) Order, 1966 and such turnover shall be included in the total turnover of the dealer and the taxable turnover shall be arrived at accordingly for the purpose of this clause.

Explanation III : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 3-G of the said Act shall be the total turnover.

Explanation IV : 'Taxable turnover' for the purpose of this clause does not include the turnover of resale, taxable under Section 3-H of the said Act.

Explanation V : 'Taxable turnover' for the purpose of this clause in respect of a dealer liable to pay tax under Section 7-C of the said Act for the financial years commencing on the 1st day of April 1993, shall be the total value referred to in the said section."

9. By inserting clause (aa) of sub-Section (1) of Section 2 in Act 31/96, a new slab rate is introduced to the dealers (other than a casual trader or agent of a non-resident dealer or a local branch of a firm or company situate outside the State). By the above amendment, the slab rates as existed from 01.04.1993 to 31.07.1996, continue to apply from 01.08.1996 onwards.

10. Order impugned in the instant revision petition is whether, the Tribunal has erred in dismissing the review petition, filed by the State, without considering the principles of law, to be applied, while dealing with a review petition and also on the merits. Reference can be made to few decisions, on the scope of review petition.

(i) In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma** reported in **AIR 1979 SC 1047,** the Supreme Court held that,

> "there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. <u>The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or</u>

could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(ii) In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612,** the Supreme Court, at Paragraphs 14 and 15, held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justiciae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term `mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or

the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

11. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in Appeal No.430 of 2002, dated 14.11.2002, has rightly held that the Additional Sales Tax cannot be levied, since the taxable turnover for the whole year determined was Rs.43,03,53,904/-, which is below Rs.100/- Crores, in a year.

12. In view of the above, the Tax Case Revision is dismissed. No costs.

[S.M.K., J.] [V.B.S., J.]
08.01.2018

Index : Yes
Internet : Yes
dm/skm

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

skm

To

The Joint Commissioner (CT),
State of Tamil Nadu,
Coimbatore.

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