

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/2/2018

C O R A M

The Honourable Mr. Justice S. Manikumar
a n d
The Honourable Mrs. Justice V. Bhavani Subbaroyan

Tax Case (R) Nos. 10 to 12 of 2018
a n d
C.M.P. Nos. 2297 to 2299 of 2018

M/s. Ergomaxx (India) Private Limited
80 Nungambakkam High Street
Chennai 600 034. ... Petitioner/Respondent in all T.C(SR) Cases

Vs

The State of Tamil Nadu
rep by its Joint Commissioner (CT)
Chennai (Central) Division
Chennai 600 006. ... Respondent /Appellant in all TC(R) Cases

Petitions filed under Rule 14 (13) to revise the order dated 20/12/2017, in S.T.A.No.250 of 2014 S.T.A.Nos.251/2014 & S.T.A.Nos.252/2014 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai by the Joint Commissioner CT Chennai Central Division Chennai against the order of the Appellate Deputy Commissioner(CT) III Chennai in A.P. 40/2012 for the assessment year 2006-2009 and 39/2012 dated 03.06.2013 and against the assessment order of the Assistant Commissioner(CT) Nungambakkam, Chennai 34 for Assessment Circle dated 20.01.2012 in VAT 33510461434/2008-2009, 2006-2007, 2007-2008 respectively.

For petitioner... Mr.V.Sundareswaran in all TC(R)
For respondent... Mr.V.Haribabu
Additional Government Pleader
(Taxes) in all TC(R)

C O M M O N O R D E R
(Order of the Court was made by S.Manikumar,J)

Tax Case Revision Petition Nos.10 to 12 of 2018, for the assessment years 2008 - 2009, 2006 to 2007 and 2007 - 2008, respectively, are filed against the orders made in S.T.A.Nos.250 to 252 of 2014, dated 20/12/2017, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. As common facts and questions of law are involved in the instant Tax Case Revisions, they are heard together and disposed of by a common order.

3. Facts of the cases, as culled out from the supporting materials are that the petitioner Ergomaxx (India) Pvt Ltd., Chennai, is a registered dealer in the Books of the Assistant Commissioner (CT) Nungambakkam, Assessment Circle. He is also a dealer registered under the Central Sales Tax Act, 1956. In the course of business, the assessing officer, issued notice, under Section 27 of the Act, which applies to "assessment of escaped turnover and wrong availment of input tax credit". He also proposed to impose penalty, u/s.27(4) of the Act. The petitioner has filed objections to the effect that when the entire ITC amount availed was paid, at the time of VAT Audit, on 28/08/2010, the notice for revision of assessment is without jurisdiction and has to be dropped, moreso, with regard to penalty u/s.27(4), since there being no wrong availment of ITC nor any escaped turnover to invoke sec.27 of the Act. However, the assessing officer rejected the objections and confirmed the proposal vide order dated 20/01/2012.

4. As against the order dated 20/01/2012 appeal was filed before the Appellate Deputy Commissioner contending the reversal of ITC along with penalty was erroneous. The Appellate Deputy Commissioner deleted the penalty. As against the order of the Appellate Deputy Commissioner, the respondent, filed appeals before the Tribunal.

5. On 16/12/17, the appeals were taken up for hearing. The State Representative reiterated the submissions, in the memorandum of grounds of appeal and pleaded that once ITC was wrongly availed, penalty u/s.27(4) is automatic and prayed to allow the appeals.

6. By way of reply, the respondent therein, made the following submissions:- सत्यमेव जयते

(i) The very VAT Audit was without jurisdiction, as there was no authorization, as envisaged under Section 64(4) of the Act.

(ii) when the entire ITC was paid, which amounts to reversal of ITC, on 28/08/2010, there is no escapement of any turnover nor any wrong availment of ITC, to invoke section 27 into service, Reliance was placed on the decision of this Court in 125 STC 505.

(iii) In view of the Amendment Act 5 of 2015, when the very

prohibition u/s.19(5)(c) read with Section 19(2)(v), to avail ITC, on the turnover not covered by Form C has been removed, writ petitioner cannot be mulcted with tax liability and penalty. It is also the contention of the respondent therein/writ petitioner that when reversal of ITC itself is illegal, the consequential penalty has to be deleted. Writ Petitioner has further contended that after the orders were reserved on 16/12/17 and when the counsel for the petitioner requested the Tribunal, to enable the petitioner, to file written submissions, it was refused.

7. Upon hearing the learned counsel for the parties, the Tamil Nadu Sales Tax Appellate Tribunal, vide separate orders in S.T.A.Nos.250 to 252 of 2014, for the assessment years, 2008 - 2009, 2006 to 2007 and 2007 - 2008, passed order. As orders are similar, suffice to extract one such order, for the assessment year 2006 - 07.

"8. In this case the respondent / dealer's business place was audited by the enforcement wing officials during the period from 01.01.2007 to 31.03.2007 on 28.08.2010. During the course of audit it was found that the dealers have effected interstate sales without 'C' form and the Input Tax Credit on corresponding purchases were reversed in monthly returns for Rs.15,644/- instead of Rs.80,949/-. At the time of audit it was noticed by the enforcement wing officers, the respondent/dealer had admitted and paid the difference of Input Tax Credit of Rs.65,305/- on 28.08.2010. In this case the Assessing Officer has issued notice to the dealer, the dealers have received the notice and filed their reply vide their letter dated 18.01.2012 and replied that in respect of reversal of Input Tax Credit of Rs.65,305/-, it has been accepted by the dealer and paid by them on 28.08.2010 at the time of VAT audit. But for VAT audit the wrong claim of Input Tax Credit could not be come out. Hence the Assessing Officer correctly reversed the Input Tax Credit. The Assessing Authority in addition to the tax automatically levied penalty for wrong availment of Input Tax Credit. Hence the Assessing Officer rightly levied penalty under Section 27(4) and the same is in order and sustained. Accordingly the order of the first appellate authority deserves to be set aside.

The Tribunal therefore set aside the

impugned order of the first Appellate Authority dated 03.06.2013 and upheld the orders of the Assessing Officer and allow the STA in favour to the Revenue.

In the result STA 251/2014 stands Allowed."

8. Being aggrieved by the same, instant Tax Case Revision Petition Nos.10 to 12 of 2018 have been filed, on the following substantial questions of law:-

"(i) Whether the order of the Tribunal in allowing the Appeal in favour of the respondent is correct in the eye of law, when penalty u/s.27(4) is not automatic.

(ii) Whether the Tribunal was justified in upholding the order of the assessing officer when the assessing officer neither had any justification or jurisdiction to invoke section 27 of the Tamilnadu Value Added Tax Act, 2006 for recovery of wrongful availment of Input tax credit, more so in view of Tamil Nadu Act.5/15.

(iii) Whether the tribunal misdirected itself and thereby fell into an error in ignoring the payment of input tax credit availed on 28/08/2010 itself, well before the initiation of the assessment proceedings vide notice dated 16/12/2011.

(iv) Whether the Tribunal was correct in ignoring the ratio laid down by the Division Bench of this Hon'ble Court in 125 STC 505, 29 VST 20 and other cases holding that payment of tax before the initiation of assessment proceedings reduces the quantum of penalty.

(v) Whether the Tribunal was justified in totally ignoring the legal submissions made by the Counsel on record on 16/12/2017 by not incorporating the same in the impugned order."

9. Placing reliance on the decision of Chennai Textile Chemicals Private Ltd., Vs. State of Tamil Nadu and Another {2002 (125) STC - 107}, and followed by another, Hon'ble Division Bench of this Court in Lingam & Sons Vs. State of Tamil Nadu, reported in {2010 (29) VST - 20 (Mad)}, and inviting the attention of this Court to Sections 24 (2) and 24 (7) of the Act, Mr.V.Sundareswaran, learned counsel for the petitioner submitted that when returns were submitted by the dealer, for the above said assessment years, the same were accepted by the

Department, under Section 22 (2) of TANVAT Act, 2016 and thus, there was a deemed assessment. Learned counsel for the petitioner further submitted that after the audit conducted under Section 64 (4), of TN VAT Act, 2002, certain defects were noticed by the Department and revision notice was issued.

10. He further submitted that M/s. Ergomaxx (India) Private Limited, the dealer has submitted a detailed reply, and also remitted the tax. Thus, when re-assessment was done, there was no tax payable. According to him, in the cases on hand, there was no determination of tax due under sub-Section 2 of Section 27 and therefore, no penalty can be imposed under sub-Section 27 (4) of the Tamil Nadu VAT Act, 2006. For the above reasons, he prayed for reversal of the orders impugned.

11. Opposing the same, Mr.V.Haribabu, learned Additional Government Pleader (Taxes) submitted that but for the inspection, suppression of tax, and reversal of input credit, would not have come to light and that therefore, there was no error in imposing penalty, under Section 27 (4) of the Tamil Nadu VAT Act, 2006. He further stated that there is no error, in the order of both of the assessing and appellate authorities.

For the above said reason, he prayed that the order of the assessing authority requires to be restored.

12. Heard the learned counsel for the parties and perused the materials available on record.

13. Before advertng to the rival contentions, let us have a cursory look at the provisions of Tamil Nadu VAT, 2006.

Section 64. Maintenance of up-to-date, true and correct accounts and records by dealers-

(1) Every person registered under this Act, every dealer liable to get himself registered under this Act, and every other dealer who is required so to do by the prescribed authority by notice served in the prescribed manner, shall keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed in any of the languages specified in the Eighth Schedule to the Constitution or in English, showing such particulars as may be prescribed and different particulars as may be prescribed for different classes of dealers.

(2) (a) Every registered dealer shall keep at the place of business specified in

the certificate of registration, books of account for the current year. If more than one place of business in the State is specified in the certificate of registration, the books of account relating to each place of business for the current year shall be kept in the place of business concerned.

(b) Every registered dealer shall also ordinarily keep the books of account for the previous five years at such place or places as he may notify to the registering authority. If the registered dealer decides to change the place or places so notified, he shall, before effecting such change, notify the same to the registering authority.

(3) Every registered dealer or person who moves goods in pursuance of a sale or purchase or otherwise from one place to another shall send along with the goods moved a bill of sale or delivery note or such other documents, as may be prescribed.

(4) The Commissioner may order for audit of the business of any registered dealer by an officer not below the rank of [Deputy Commercial Tax Officer]. For the purpose of this section, the selection of dealers for audit shall be made from amongst the dealers.--

(a) who have not filed returns within the prescribed period; or

(b) who have claimed exorbitant amount of refund of tax; or

(c) who have filed returns, but in the opinion of the Commissioner he is not satisfied with the correctness of any return filed, any claim made, deduction claimed or turnover disclosed in any such return; or

(d) on the basis of any other criteria or on a random selection basis by the Commissioner; or

(e) where detailed scrutiny of the case is necessary in the opinion of the Commissioner.

(5) (a) During the course of the audit, the officer may require the dealer,-

(i) to afford him the necessary facility to inspect such books of accounts

or other documents as he may require and which may be available at such place;

(ii) to afford him the necessary facility to check or verify the stock which may be found therein; and

(iii) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceedings under this Act.

(b) The officer conducting the audit shall on no account remove or cause to be removed any books of accounts, other documents or stock.

14. Perusal of the orders, dated 20/1/2012, of the Assistant Commissioner (CT), Nungambakkam Assessment Circle, for the assessment years 2008 - 2009, 2006 - 2007 and 2007 - 2008, shows that Ergomaxx (India) Private Limited, Chennai, the dealer in furniture, at No.80, Nungambakkam High Road, were assessed on the total and taxable turnover, under self-assessment for the assessment years 2008 - 2009, 2006 - 2007 and 2007 - 2008. Business was audited by the Enforcement Wing Officials, for the period from 1/4/2008 to 31/3/2009, 1/1/2007 to 31/3/2007 and 1/4/2007 to 31/3/2008, respectively. During the course of audit, ITC accounts were scrutinised and certain defects were noticed, for which a revision notice, dated 16/12/2011, has been issued for the above said period. However, even before finalisation of reassessment, the dealer has paid the tax and rectified the defects noticed.

15. Section 22 of the TN VAT Act, reads thus:-

"Deemed Assessment and procedure to be followed by the assessing authority.- (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover

submitted in the prescribed manner within the prescribed period.

(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year -

Provided that in respect of such returns submitted for the years 2006-2007,

2007-2008, 2008- 2009, 2009-2010 and 2010-2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012. Prior to the Amendment made by the Fifth Amendment Act 23 of 2012, notified by GO.No.82. as effective from 19th June2012, this sub-section was as under :-

(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

(3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

(3-A) Notwithstanding anything contained in sub-section (2), the casual traders and the dealers in respect of whom the relevant assessment year is the first or the last year of business, shall be assessed on the basis of the scrutiny of the returns with reference to the books of accounts, registers, records and any other document and on such enquiry as the assessing authority may consider necessary".] 1

[(4) If no return is submitted by the dealer for any period of the year or if the return filed is in complete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiries as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year: Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

(5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, one hundred and fifty percent of the difference of the tax assessed and the tax already paid as per the returns: Provided that no penalty under this sub-section shall be imposed after the period of six years from the date of assessment order * unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation.—For the purpose of levy of penalty under this sub-section, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed under sub-section (4):--

(i) Any turnover representing additions to the turnover as per the returns made by the assessing authority without reference to any specific concealment of turnover;

(ii) Any turnover estimated by the assessing authority with reference to any specific concealment of turnover as per the returns;

(iii) Any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration but where such declaration could not be furnished at the time of assessment. Prior to the amendments made from 19th June 2012 by the aforesaid Fifth Amendment Act 23 of 2012, these two sub-sections (4) and (5) were as under, the Explanation below the latter being newly added:--

(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer in the best of its judgment, subject to such conditions as may be prescribed. Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

(5) In addition to the tax assessed under sub-section (4), the assessing

authority shall in the same order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty percent of the tax assessed: Provided that no penalty under this sub-section shall be imposed after the period of five years from the date of assessment order under this Section [xxx]** unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

(6) (a) Any dealer assessed under sub-section (4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for re-assessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted: Provided that no application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be.

(b) If the amount of tax on the basis of the cancelled assessment has already been collected and if the amount of tax arrived at as a result of the fresh assessment is different from it, any amount over paid by the dealer shall be refunded to him without interest, or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(c) Penalty, if any, imposed and collected under sub-section (5), shall be refunded to the dealer without interest on cancellation of the order of original assessment

16. Section 27 speaks about the Assessment of escaped turnover and wrong availment or input tax credit. As per sub-

Section 1 of Section 27, (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary. (b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of [six years from the date of assessment], reassess the tax due after making such enquiry as it may consider necessary.

17. As per sub-Section 2, (2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of [six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such an enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order."

18. In the case on hand, when exercise of reassessment, was resorted, under Section 27 of the Tamil Nadu VAT, 2006, the petitioner had already paid the tax and thus, there was no redetermination of tax, after making an enquiry, as contemplated under sub-Section 1 of Section 27 of the Tamil Nadu VAT Act, 2006, and that is why the appellate authority, vide separate orders, in Appeal Nos.40, 38 and 39 of 2012, respectively, dated 3/6/2013, held as follows:-

Learned Authorised Representative argued that Appellant has Reversed ITC of Turnover not covered by 'C' Form. But there was difference of ITC Rs.63,305/- detected by the Enforcement Wing Officers on 28.10.2010 before passing the self Assessment Order on 25.05.2011.

Assessing Officer has admitted this fact in the order but has not taken credit of the payments and proposed Levy of Penalty under Section 27(3) and 27(4) of the Act on 16.12.11. Subsequently Penalty under Section 27(3) for the Penalty and under Section 27 (4) for Rs.32,653/- was confirmed Penalty being 50% of Tax Assessed. In this regard Appellant has argued that the Learned

Assessing Officer has not detected any suppression but Appellant has voluntarily admitted the ITC reversed and paid tax before passing of Assessment Order. There is no intention to suppress payment of tax. Hence there is difference only in the method of calculation of ITC. Contentions of the Appellant was examined with connected records and found acceptable. In view of the above, Penalty Levied under Section 27(4) Rs.32,653/- is set aside.

In fine, the Appeal stands Allowed."

19. When the correctness of the orders made by the Appellate Deputy Commissioner (CT) - 3, Chennai, were challenged, in S.T.A.Nos.250 to 252 of 2014, upon hearing the learned counsel for the parties, the Tribunal, reversed the issue in favour of the revenue.

20. In Chennai Textile Chemicals Private Ltd., Vs. State of Tamil Nadu and Another, reported in 107, a Hon'ble Division Bench of this Court, at paragraph No.21, held as follows:-

"Even though in a given case or more than one case, the quantum of turnover suppressed or the tax sought to be avoided also, at times, may be one and the same, if the particular assessee, at the time of final assessment, found to have otherwise paid any amount already before such final assessment, sufficient to go to reduce the tax liability ultimately determined, the imposition of penalty to that extent is reduced. This again, in our view, proceeds upon an intelligible differentia or reasonable basis of classification that the State has not ultimately lost its legitimate due and it had the benefit of the same, in some form or other, from the assessee concerned and, therefore, it was not necessary to once-over-again penalise him."

21. In Lingam and Sons Vs. State of Tamil Nadu , {(2010) 29 VST 20 (DB-Mad), this Court, on the facts and circumstances of the case, held thus,

"2. The assessee therein had been assessed on a total and taxable turnover of Rs.4,59,306/- and 4,27,133/- respectively, as against the reported total and taxable turnover of Rs.3,73,805 and 2,91,632/- respectively, for the year 1996 - 97, based

on the defects noticed at the time of checking of accounts. Upon scrutiny, it was noticed that the assessee had not accounted for certain inter-state purchases of granite tiles affected to the extent of Rs.1,35,500. While making assessment, the assessing officer, brought the sales of granite tiles at Rs.1,35,500/- by adding the lorry freight and gross profit on the purchase of granite tiles. The assessing Officer also levied penalty under Section 12 (3) of the Act.

3. Aggrieved by the order of the assessing officer, the petitioner filed an appeal before the Appellate Assistant Commissioner (CT) who dismissed the appeal. Still aggrieved, the assessee filed an appeal before the STAT. Confirming the levy of penalty, the STAT has dismissed the appeal.

4. In this revision, the only issue relates to levy of penalty under Section 12 (3) of the Act. The question falling for consideration is that when the entire amount of tax was paid by the petitioner by cheque, dtd January 7, 1998 before completion of assessment, whether levy of penalty under Section 12 (3) of the Act is in order.

5. Mr.V.Sundareswaran, learned counsel for the petitioner, contended that the petitioner had made payment by way of cheque No.697629 dated January 7, 1998, even prior to the passing of the order and while so, in view of the decision in Chennai Textile Chemicals Private Ltd., Vs, State of Tamil Nadu, reported in {(2002) 125 STC 107 (Mad)}, the levy of penalty was not warranted. It was further submitted that even though payment of entire amount was brought to the notice of the AAC (CT) and also the Tribunal, the authorities have not kept in view the payment made by cheque dated January 7, 1998.

6. We have heard Mr.Haja Nazirudeen, Special Government Pleader (Taxes). Drawing our attention to the order of the AAC (CT), learned Special Government Pleader submitted that if the presentation of cheque No.697629 on January 7, 1998 is true, then the petitioner could have pointed out the same before the assessing officer. It was further submitted that as seen from the assessment order and the order of the AAC (CT), the petitioner has not produced any material to

show that cheque was presented prior to passing of the order.

7. In the typed set of papers, the letter of the petitioner, dated January 7, 1998 enclosing cheque No.697629 dated January 7, 1998 for Rs.14,905 has been filed. Before us, the learned counsel for the petitioner has also produced bank statement of accounts of the petitioner indicating encashment of cheque No.697629 for Rs.14,905 on January 10, 1998. As per the assessment order, January 8, 1998, the balance tax payable was only Rs.10,332/- whereas even on January 7, 1998, the petitioner has given cheque bearing No.697629 for Rs.14,905. Even though the cheque for Rs.14,905 was encashed on January 10, 1998, it relates back to the date of cheque.

In Chennai Textile Chemicals Private Ltd., Vs. State of Tamil Nadu {(2002) 125 STC 107, the Division Bench of this Court held as under:-

"21. .. Even though in a given case or more than one case, the quantum of turnover suppressed or the tax sought to be avoided also, at times, may be one and the same, if the particular assessee, at the time of final assessment, found to have otherwise paid any amount already before such final assessment, sufficient to go to reduce the tax liability ultimately determined, the imposition of penalty to that extent is reduced..."

Since cheque bearing No.697629 dated January 7, 1998 for Rs.14,905 was given by the assessee even on January 7, 1998, as per the above decision, levy of penalty under Section 12 (3) of the Act is not justified. Both the AAC (CT) and the STAT have not taken note of the payment of the amount by way of cheque dated January 7, 1998 and therefore, the impugned orders cannot be sustained.

In the result, the orders passed by the Appellate Assistant Commissioner (CT) and Sales Tax Appellate Tribunal are set aside and the revision is allowed. No costs."

22. In Lingam's case, contention of the learned counsel for the petitioner therein was that even prior to the passing of the reassessment order, tax was paid, by way of cheque and even though, payment of tax was brought to the notice of the Appellate Assistant Commissioner (CT) and the Tribunal, both the

authorities, levied penalty.

23. In the reported case, per contra, the learned Special Government Pleader (Taxes) submitted that if cheques were already submitted, the same could have been brought to the notice of the assessing Officer. Further contention has been made that there was no material to substantiate the cheque was presented prior to the passing of the order. After considering the amount, date mentioned in the cheque, Bank's statement of the petitioner therein, indicating that even before the assessment order, amount has already been encashed by the Assessing Officer, before conclusion, on the notice, and placing reliance on the decision of the Hon'ble Division Bench of this Court in Chennai Textile Chemicals Private Ltd., Vs. State of Tamil Nadu and Another, reported in {2002 (125) STC - 107}, and Lingam & Son's case, reported in {(2010) 29 VST 20 (DB-Mad)}, Tribunal has held that levy of penalty under Section 12 (3) of the then Tamil Nadu General Sales Tax Act, as not justified.

24. On consideration of the material on record, it could be seen that tax has been paid, even before the reassessment, under Section 27 (2) of the TANVAT Act, 2002. Though the Assistant Commissioner (CT), assessing Officer, has imposed the penalty, under Section 27 (4) of the TANVAT Act, the same has been reversed on appeal, by the Appellate Deputy Commissioner (CT), Chennai. We have given our consideration to the decisions relied on by the petitioner. We find and hold that the decisions relied on by the learned counsel for the Tax Case Revision petitioner, applies to the cases on hand.

25. Though Mr.V.Haribabu, learned Additional Government Pleader (Taxes), learned counsel for the revenue submitted that but for the deduction during audit inspection, the same would not have come to light and therefore, imposition of penalty was justified, in the light of the above discussion and decisions, we are not inclined to accept the same. Petitioner has made out a case on the substantial questions of law raised and accordingly, answered in favour of the assessee.

26. In the result, these Tax Case Revision Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

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

2. The Joint Commissioner (CT)
The State of Tamil Nadu
Chennai (Central) Division
Chennai 600 006.

3. Appellate Deputy Commissioner CT III
Chennai 6.

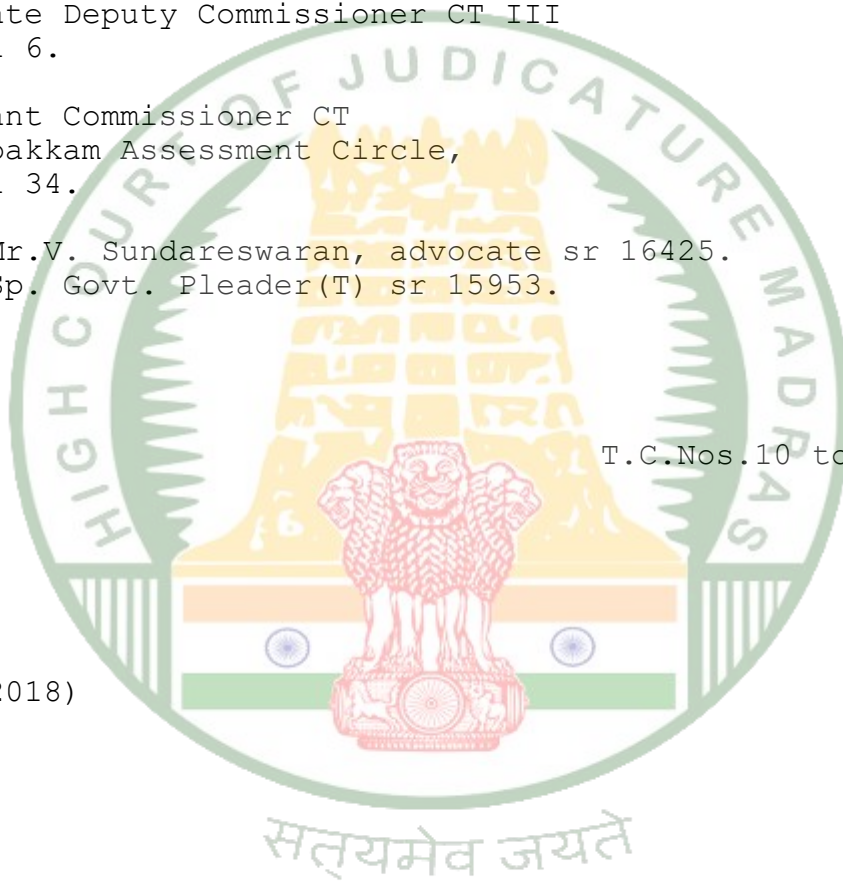
4. Assistant Commissioner CT
Nungambakkam Assessment Circle,
Chennai 34.

+1 CC to Mr.V. Sundareswaran, advocate sr 16425.

+1 Cc to Sp. Govt. Pleader(T) sr 15953.

T.C.Nos.10 to 12 of 2018

RSY(CO)
SP(11/04/2018)



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