IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

Tax Case No.118 of 2018

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

Vs.

Tvl. Suraj Steels,
No.61, Pillayar Koil Street,
Tondiarpet, Chennai - 600 081. … Respondent

PRAYER: The Tax Case has been filed under Section 38 of the TNGST Act, 1959, to revise the order dated 28.05.2014 made in S.T.A.No.43 of 2010, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai as against the order of the Appellate Deputy Commissioner (IT) Appeal dated 29.04.2009 in Appeal No.and year A.P.6/2008 as against the order of the Commercial Tax Officer, Tondiarpet, circle chennai in TNGST No.1201912/2003-04 dated 23.08.2007

For Appellant : Mrs.Narmada Sampath,
Additional Advocate General
for Mr.Haribabu
Additional Government Pleader

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O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

This Tax Case (Revision) Petition has been filed by the State of Tamil Nadu against the order dated 28.05.2014 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in STA No.43 of 2010.

2. The respondent Tvl. Suraj Steels are dealers in Iron and Steel and they are located at No.61, Pillar Koil Street, Tondiarpet, Chennai-81. For the year 2003-2004, the respondents were assessed on a total and taxable turnover of Nil.

3. The place of business was inspected by the Enforcement Wing Officers on 24.01.2004 and they recovered some Slips in the place of business. Based on the slips recovered, the Assessing Officer revised the assessment and consequently, levied tax of Rs.1,58,51,572/- at 2% and Rs.1,44,10,571/- at 1% towards sales, suppression of gold jewellery and the corresponding purchase of bullion. The Assessing Officer has also levied penalty under Section 16 of the TNGST Act. This order was challenged in an appeal before the Appellate Deputy Commissioner (CT-II), Chennai.

4. The appellate authority after perusing the materials on record, found that the Inspecting Officer had recovered 11 Slips, and the assessment proceedings had been reopened on the basis of the said 11 Slips. Out of 11 Slips recovered, 9 Slips were sales estimates, which were duly accounted for by the respondent, and therefore, held that there was no sales suppression. Regarding the other 2 Slips i.e. Slip Nos. 10 and 11. In Slip No.10, the appellate authority found that only details of various jewellery have been noted. The appellate authority found that in Slip No.10, the year had not been mentioned and the Inspecting Officer had inserted the year 2003. Further, the appellate authority found that Slip Nos. 10 and 11 contain only stock details of various gold jewellery and they did not contain any sale element, such as name of the consignor, name of the consignee, items sold, date of sale, mode of payment, etc. The appellate authority, therefore, set aside the revised assessment order.

5. The Department carried the matter in appeal before the Sales Tax Appellate Tribunal. On going through the records, the Tribunal affirmed the order of the appellate authority and came to a conclusion that there is no sales suppression and that the estimation on sale suppression, purchase suppression and the penalty, based on the estimation were not correct. This order is under challenge in the present revision petition.

6. Heard Ms.Narmada Sampath, learned Additional Advocate General along with Mr.Haribabu, learned Additional Government Pleader appearing for the Department.

7. The record discloses that the respondent had stopped the business activity with effect from 31.03.2003 i.e. assessment year 2002-2003. During the year 2003-2004, the respondent would not have carried any business activity. The respondent, therefore did not maintain any books of account except cash book. During the inspection on 24.01.2004, the Officers of the Enforcement Wing recovered 11 Slips, based on which, the revised assessment were made. Regarding Slip Nos.1 to

9, the Inspecting Officers themselves accepted that these estimate slips related to sales transaction of Tvl.Surana Jewellery, a sister concern of the respondent. The Inspecting Officers have found that Tvl.Surana Jewellery have duly raised corresponding sale invoices for the 9 Slips and accounted for, in the books of account. The Inspecting Officers themselves came to the conclusion that there was no sale suppression in these 9 Slips. As far as Slip No.10 is concerned, both authorities have found that there is an insertion of the year 2003. Further, it was found that Slip No.11 contained only stock details and did not contain any sale element, such as name of the consignor, name of the consignee, items sold, date of sale, mode of payment, etc. Similarly, for Slip No.11 also, it was found that this Slip also contains only weight and value of the goods and there are no other details, evincing sale. The appellate authority has also found that Slip Nos. 10 and 11 were written in plain papers and except weight and colour of jewel, no other details were available.

8. During the hearing of the instant Writ Petition, State has filed an additional typed set of papers showing Extract of 'A' Register, sworn statement of the respondent's Assistant Manager, dated 24.01.2007, letter from the Enforcement Wing to the Commercial Tax Officer, enclosing the proposal for revised assessment, the pre-assessment notice and the Extract of D2 Ledger, showing the returns for the year 2003-2004. None of these documents improve the case of the department nor they demonstrate that the findings of the authorities below are on Nil evidence.

9. On a perusal of the records of the case, the order of the appellate authority and the Tribunal, which are the final fact finding authority, it is seen that they have come to the conclusion that Slip Nos. 10 and 11, do not point any sales suppression and that therefore, proceedings cannot be initiated under Section 16(1) of the TNGST Act, for reopening of the completed assessment, so as to include therein any turn over, which had escaped taxation.

10. In our opinion, the forums below have correctly concluded that there is no evidence or materials which would justify initiation of proceedings under Section 16(1) of the TNGST Act and that Slip Nos.10 and 11 do not reflect any sale or purchase transaction or suppression which would enable the department to reopen the assessment. The orders of the authorities below do not require any interference.

11. The Tax Revision Case is accordingly dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Appellate Deputy Commisioner (CT)-ii, Chennai 108.

3. The Commercial Tax Officer,
Tondiarpet Circle, Chennai 600 108.

+1cc to the spl. Government Pleader(Taxes), S.R.No.40228

Tax Case No.118 of 2018

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TR(18/07/2018)