In the High Court of Judicature at Madras

Dated : 03.9.2018

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case No.136 of 2018

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

Vs

Tvl.S.S.Spinning Mills, Coimbatore. ...Respondent

TAX CASE under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 14.5.2013 made in C.T.S.R.A.No.1 of 2011 to review the order of the sales Tax Appellate Tribunal,(Additional Bench); Coimbatore, dated 22/03/2011 made in CTSA.No.138/2009 relating to the assessment year 2003-2004.

against the order of the Appellate Assistant Commissioner (CT),Pollachi, dated 15/06/2007 made in Appeal No,58/2007.

against the order of the Commercial Tax Officer, Tirupur (south),dated 31/01/2007 madr in TNGST.2323523/2003-2004.

For Petitioner : Mr.V.Haribabu, AGP

Order of the Court was made by T.S.SIVAGNANAM,J

This tax case by the State is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSRA.No.1 of 2011 dated 14.5.2013.

2. The review application was filed by the State before the Tribunal seeking to review its earlier order in Appeal No.138 of 2009 dated 22.3.2011 and it has been dismissed by order dated 14.5.2013. Aggrieved by that, the Revenue is before this Court.

3. The above tax case has been filed raising the following substantial question of law:-

> "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 registration certificate of the selling dealer was cancelled with effect from 31.3.2002 ?"

4. The learned Additional Government Pleader has vehemently contended that the burden of proof that the selling dealer's registration certificate was valid always rests upon the assessee in terms of Section 10 of the Tamil Nadu General Sales Tax Act, 1959 and that the Assessing Officer levied tax under Section 7A of the said Act for not having proved the earlier sufferance of tax.

5. The registration certificate of the selling dealer was cancelled with effect from 31.3.2002. Therefore, the purchases effected by the respondent from M/s.Vijayalakshmi Engineering Works from 01.4.2002 are to be treated as purchases effected from unregistered sources only. Unfortunately, the Revenue was not able to produce any document before the First Appellate Authority or before the Tribunal in the first round of litigation namely in Appeal No.138 of 2009 that the selling dealer's registration certificate was cancelled. Thus, the Tribunal, in its order dated 22.3.2011, upheld that the order passed by the Appellate Deputy Commissioner, who had observed that the Assessing Officer had not placed any evidence for holding that the selling dealer's registration certificate was cancelled or in other words, they were unregistered dealers. After the appeal filed by the Revenue was dismissed on 22.3.2011, the review application was filed by the Revenue before the Tribunal raising a contention that the burden of proof was on the selling dealer. The Tribunal took up the case for consideration firstly with regard to the maintainability of the review application on the grounds raised by the Revenue.

6. In our considered view, the Tribunal rightly took note of the statutory provisions namely Section 36(6)(a) and (b) of the said Act and Rule 29(2)(a) of the Tamil Nadu General Sales Rules, 1959 as well as the decision of the Division Bench of this Court in the case of Tamil Nadu Iron And Steel Co. Vs. State Of Tamil Nadu [reported in (1980) 46 STC 293] and dismissed the review application. It is settled legal principle that a review application is not an appeal in disguise. Therefore, the Revenue has miserably failed in not referring to any documents or evidence to substantiate the finding that the selling dealer's registration certificate has been cancelled.

7. Furthermore, we notice that on facts, the Appellate Authority as well as the Tribunal, in the first round of litigation, pointed out that the respondent - assessee produced bills to show that the goods purchased by them were tax suffered goods. Thus, if the Assessing Officer was of the view that the selling dealer's registration certificate was no longer valid, then, he should have called for a report from the concerned

Assessing Officer, before whom, the selling dealer was registered. However, by referring to the order passed by the Authorities, the Assessing Officer took a decision in the matter before holding that the assessee's purchases were from unregistered dealers. Thus, the belated attempt of the Revenue to raise a contention was rightly negatived by the Tribunal on the ground of jurisdiction. For the above reasons, we find that there is no error in the order passed by the Tribunal.

8. In the result, the above tax case is dismissed and the substantial question of law raised for consideration is answered in favour of the assessee and against the Revenue.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

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

RS

TC.No.136 of 2018

GP(CO)
RMP(24/09/2018)