

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.27 of 2018

The State of Tamil Nadu,  
Represented by the Joint Commissioner (CT),  
Chennai (North) Division,  
Chennai - 600 006

... Petitioner

..Vs..

Tvl.Union Surgicals,  
No.108/77, Nyniappan Naicken Street,  
Chennai - 3

... Respondent

Tax Case Revision filed under Section 60 of the Tamil Nadu Value Added Tax Act, 2006, against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 20th day of December 2013 and passed order in STA No.142 of 2011.

For Petitioner : Mr.V.Hari Babu  
Additional Government Pleader (Taxes)

**ORDER**

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

Instant Tax Case (Revision) is filed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated

<http://www.judis.nic.in> 20.12.2013 made in S.T.A.No.142 of 2011.

2. Short facts leading to the filing of the appeal are that the respondent, Tvl.Union Surgicals, dealers in surgical goods were assessed on a total and taxable turnover of Rs.9,39,65,027/- and Rs.9,38,64,448/- respectively for the year 2009-10 under Section 22 of the VAT Act by the Assistant Commissioner (CT), Park Town I, Assessment Circle, Chennai by proceedings dated 15.10.2010. Further verification of the assessment records revealed that their place of business was inspected by the Enforcement wing officers from 17.07.2010 to 20.07.2010 and the officials noticed that a turnover of Rs.3,06,000/- relating to sale of Hyundai car was not reported and tax not paid alongwith returns. They also noticed stock variation to the tune of Rs.1,85,200/- and by adding GP at 7% sales suppression was arrived at Rs.1,98,164/- taxable at 12.5%. They also found that the dealer have effected interstate sale without C form which they are not eligible for ITC. Assessing officer therefore, reversed the ITC by adopting the formula and also levied penalty under Section 27(3) and 27(4) of the VAT Act by his order dated 23.11.2010.

3. Aggrieved by the revision order of the Assessing Authority the dealer preferred appeal before the Appellate Assistant Commissioner (CT) I, Chennai who inturn, sustained the addition made based on stock variation

noticed, at the time of inspection and deleted the reversal of ITC made by the Assessing Officer and the penalty levied, under Section 27(4) of the Act. He has also modified the appeal relating to sale of car and the penalty levied under Section 27(3) of the Act vide order in AP VAT 8/2011, dated 21.04.2011.

4. Aggrieved against the order of the first appellate authority, the State filed second appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, which vide order in STA No.142/2011 dated 20.12.2013 dismissed the appeal holding that the interstate sales without C form were made out of corresponding interstate purchases.

5. Being aggrieved against the order of the Tribunal, State has filed the instant Tax case (Revision) on the following substantial questions of law.

1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the surgical items purchased from interstate were not the items purchased locally?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the interstate sales without C form were made out of corresponding interstate purchases in the absence of verification of relevant records?

3. Whether on the facts and in the circumstances of the

case, the Tribunal was right in law in deleting the penalty levied both under Section 27(4) and 27(3) of the Act when the dealer had wrongly claimed ITC?

6. On the above substantial questions of law, Mr.V.Haribabu, learned counsel for the appellant submitted that the tribunal has erred in law in observing that surgical items purchased from interstate were not the items purchased locally and also failed to consider that as per Section 19(5)(c) of VAT Act, ITC is not eligible for the sales made on interstate sales without C forms. He further submitted that the finding of the tribunal that the interstate purchases have been sold on interstate sale, without verifying the primary evidence of stock book and without taking into consideration the local purchase of similar goods, is not correct.

7. It is the submission of the learned counsel for the appellant that when stock variation was noticed at the time of inspection, the tribunal ought not to have deleted the penalty levied by the Assessing Officer under Section 27(3) of the Act, on the ground that the dealer had wrongly claimed ITC without effecting reversal as prescribed under the Act. Finally, learned counsel submitted that the order of the tribunal is perverse, illegal and prayed for reversal of the same.

8. Heard Mr.V.Haribabu, learned Additional Government Pleader

(Taxes) appearing for the appellant and the materials available on record.

9. Let us see as to how the appellate tribunal has considered the material facts.

"Admittedly, the revisions under Section 27 for the years 2008-2009 and 2009-2010 were as a consequence of VAT audit conducted by the department. Regarding the reversal of ITC under Section 19(5)(C), the objections were filed by the respondents before the Assessing Officer along with relevant purchase and sale bills claiming that the interstate sales without 'C' forms were effected out of interstate purchases and they have not availed any ITC for these sales. The Assessing Officer after verifying their claim with reference to bills furnished has observed that the interstate sales were effected from both inter and interstate purchases; hence he overruled the objections and confirmed the reversals proposed along with penalty for both years. The Appellate Deputy Commissioner has set aside the reversal as well as penalty by accepting the contention of the dealers based on sale bills furnished before him. The contention of the state is that the Appellate Deputy Commissioner has given his findings without verifying the primary evidence of stock book and without taking into consideration the local purchase of similar goods. Before this Tribunal also, the respondents had furnished details of opening stock, closing stock, purchase and sales for inter and interstate transactions, and also the statement showing interstate sales without 'C' forms with the correlation to the correspondent interstate purchase. Having consideration to both side arguments, we have gone through the details furnished before us, from which we could construed that as

argued by the Authorised Representative, the surgical items purchased from interstate were not the same items purchased locally. Moreover, sale statement clearly shows that the interstate sales without 'C' form were made out of corresponding interstate purchases. Therefore, we feel that the claim of respondents is found to be acceptable based on the facts and as a result, we find no inconsistency in the orders of Appellate Deputy Commissioner in deleting the reversal along with penalty, hence, we are confirming the orders of the Appellate Deputy Commissioner regarding this issue for both the years."

10. Thus, from the above it could be seen that the tribunal has held that surgical items purchased from interstate were not the same items purchased locally. Sale statement substantiated that interstate sales without C-Forms were made of corresponding interstate purchases.

11. Further, with regard to penalty under Section 27(3), the tribunal has held as follows:

"... estimation on the stock difference cannot be said to be due to willful suppression. In the absence of willfulness, there is no error in the order of the Appellate Deputy Commissioner (CT) in deleting penalty under Section 27(3) pertaining to stock difference. Similarly the penalty on the sale of asset modified by the Appellate Deputy Commissioner (CT) was also correct one as per the provisions of the Act since as a result of first appeal order, the tax due

on suppressed turnover confirm is less than 10% of tax paid as per returns. In view of these facts, the orders of Appellate Deputy Commissioner with regard to penalty under Section 27(3) are also confirmed by this Tribunal."

12. Though, Mr.V.Haribabu, learned counsel for the appellant assailed the correctness of the findings on the grounds stated supra, from the material on record, even prima facie perversity is not made out.

13. In **Kuldeep Singh Vs. The Commissioner of Police & Others**, reported in (1999) 2 SCC 10, the Hon'ble Supreme Court, held as follows:-

"A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

14. In **State of NCT of Delhi v. Sanjeev** reported in 2005 (5) SCC

**181 = AIR 2005 SC 2080**, the Hon'ble Supreme Court observed thus,

".....to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards."

15. In **State of A.P., v. Abdul Khuddus** reported in **2007 (15) SCC 261**, the Hon'ble Supreme Court, at Paragraph 12, held that,

"we are unable to sustain the order of the High Court, which had set aside the findings of fact arrived at by the Special Court, which, in our view, were arrived at on consideration of the materials on record and which, by any stretch of imagination, cannot be said to be based on no evidence or surmises or conjectures and therefore, it was not open to the High Court, in the exercise of its writ jurisdiction, to set aside the findings of fact arrived at by the Special Court which were based on sound consideration of the materials on record."

16. In **Arulvelu v. State** reported in **2009 (10) SCC 206**, the Hon'ble Supreme Court, at Paragraph 29, explained what "perverse" means,

"29. In **Kuldeep Singh v. The Commissioner of Police, (1999) 2 SCC 10**, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

30. The meaning of 'perverse' has been examined in **H. B.**

**Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others 1992 Supp (2) SCC 312**, this Court observed as under:

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

17. In **The General Manager (P) Punjab & Sind Bank v. Daya Singh** reported in **(2010) 11 SCC 233**, at Paragraph 24, the Hon'ble Supreme Court, held as follows:

"24. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in **Triveni Rubber & Plastics v. CCE, AIR 1994 SC 1341**. Unless it is found that some relevant evidence

has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in **Arilvelu v. State, 2009 (10) SCC 206**. The decision of the High Court cannot therefore be sustained."

18. In **S.R.Tiwari v. Union of India** reported in **2013 (6) SCC 602**, at Paragraph 30, the Hon'ble Supreme Court, held as follows:

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

19. In the light of the above decisions, the instant Tax Case (Revision) is dismissed. No Costs.

(S.M.K., J.) (V.B.S., J.)

14.03.2018

Index: Yes/No.

Internet: Yes

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

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