IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.(R).No.48 of 2018

The State of Tamil Nadu,
represented by the Deputy Commissioner (CT),
Salem Division, Salem. .. Petitioner

Vs.

Tvl.Arihant Plastic House,
11-A, Venkatakrishna Street,
Shevapet, Salem-2. .. Respondent

Prayer: Tax Case Revision is filed under Section 38 (1) of Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB) Coimbatore, dated 27.06.2003 in Coimbatore Tribunal State Appeal No.450/2001.

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 Tamil Nadu Sales Tax Appellate Tribunal (AB) Coimbatore, dated 27.06.2003 in

Coimbatore Tribunal State Appeal No.450/2001, which pertains to the assessment year 1995-96.

2. A Hon'ble Division Bench of this Court in **State of Tamil Nadu v. Arihant Plastic House** reported in **(2010) 27 VST 192 (Madras)** has considered a challenge to a common order, dated 27.06.2003 in Coimbatore Tribunal State Appeal No.460/2001, which pertains to the assessment year 1993-94. Facts deduced from the above reported case, is extracted hereunder:

> "2. Short facts are that for the assessment year 1993-94, the respondent herein placed all the records and accounts books relating to its transactions before the Assessing Officer including the turnover concerning the sale of 'Monafilament Niwar'. The Assessing Officer after perusing the relevant accounts books passed the order of assessment wherein the turnover relating to the sale of 'Monafilament Niwar' was excluded inasmuch as by a Circular of the Commissioner of Commercial Taxes issued in D.Dis.Act Cell V/17554/93 dated 31.3.1993, the said item was exempted from payment of tax. Thereafter, the Assessing Officer is stated to have re-opened the assessment by invoking Section 16(1)(a) of the TNGST Act, by assessing the turnover relating to the sale of 'Monafilament Niwar' under the head of 'escaped assessment'. The Appellate Assistant Commissioner (CT), Salem in Appeal No.566 of 1998 passed an order dated 14.05.1999, holding

that such an attempt of the Assessing Officer for making a re-assessment by invoking Section 16(1)(a) of the Act, was not permissible inasmuch as the concept of escapement from assessment cannot be applied to the case on hand. The Appellate Tribunal having confirmed the said view of the Appellate Assistant Commissioner in the order impugned in this revision, the State has come forward with this revision."

3. Considering the facts and circumstances of the case, a Hon'ble Division Bench of this Court has dismissed the tax case revision, as follows:

"3. We heard Mr.Haja Naziruddin, learned Special Government Pleader for Taxes and having bestowed our serious consideration to the relevant provision and the facts placed before us, we are of the view that the Assessing Officer had no jurisdiction to invoke Section 16(1)(a) of the Act, in the facts and circumstances of the case. As rightly held by the lower appellate authority as well as the Tribunal, the question of escapement of assessment would have arisen if at all the assessee namely, the respondent had either deliberately or inadvertently not placed the entire transactions before the Assessing Officer and thereby the Assessing Officer had no opportunity to consider any particular item of turnover, which would fall within the ambit of escapement from assessment. In the case on hand, it was admitted that the entire sales turnover relating to

'Monafilament Niwar' was made available by the assessee before the original authority, who with his eyes wide-open thought it fit at that point of time that the said item was exempted from tax by virtue of the Circular instructions issued by the Commissioner of Commercial Tax dated 31.03.1993. The issue cannot therefore be brought under the concept of 'escapement assessment', for which alone invoking of Section 16(1)(a) of the Act, is permissible under the provisions of the Act.

4. In such circumstances, we do not find any merit to entertain this tax revision inasmuch as we do not find any question of law involved in this revision. The revision fails and the same is accordingly dismissed."

4. Following the abovesaid decision, this Tax Case Revision is dismissed. No costs.

[S.M.K., J.] [V.B.S., J.]
19.03.2018

Index : Yes
Internet : Yes
dm/skm

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AND
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skm

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