

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.06.2018

ORDER PRONOUNCED ON : 13.06.2018

## CORAM:

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

Tax Case (Revision) No. 87 of 2018

M/s.Rathna Stores (P) Limited,  
No.79, Usman Road,  
T.Nagar, Chennai - 17.

... Petitioner

Vs.

The State of Tamil Nadu, Represented by  
The Joint Commissioner (CT),  
Chennai (Central) Division,  
Chennai - 600 06.

... Respondent

**PRAYER:** Tax Case Revision has been filed under Section 38(1) of the TNGST Act, 1959, to revise the order dated 12.06.2013, made in S.T.A.No.39 of 2011, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.V.Hari Babu  
Additional Government Pleader

- - - - -

## **ORDER**

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

1. The Present revision petition has been filed challenging the order dated 12.06.2013 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, in S.T.A.No.39 of 2011, whereby the Appellate Tribunal allowed the appeal of the Revenue Authorities, set aside the order of the Deputy Commissioner, and restored the order of the Assessing Officer, whereby the Assessing Officer added a sum of Rs.42,24,413/- to the turnover of the Assessee on account of probable suppression of sale.

2. The brief facts of this case are as follows:-

The Appellant Assessee is a dealer in gold and silver jewellery. For the year, 2004-05 the Assessee reported a total and taxable turnover of Rs.4,31,68,855/-. Under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'The Act') the Assessing Officer however assessed that the total and taxable turnover of the Assessee, to be Rs.6,90,96,140/- and Rs.4,50,73,845/- respectively, by his assessment order dated 15.12.2006. During the process of verification of the extracts of the

sales made by Tvl. Lakshmi Stores to the Assessee, it was found that invoice number 47 and 48 both dated 03.12.2004 were related to sales made to the Assessee. The Assessing Officer found that though the Assessee had accounted for invoice number 47, they had failed to do so for invoice No.48. The invoiced amounts for both purchases of gold bullion were Rs.33,25,000/-. The Assessing Officer therefore estimated the value of the sales suppression at the rate of Rs.42,24,413/-, and added an equal amount for probable omission of sales. The Assessing Officer issued notice for the proposed reassessment for a total amount of Rs.84,48,286/- under Section 16(1)(a) of the Act.

3. The Assessee filed objections stating that there was a dispute with respect to the gold bullion, which were sold under invoice No.47, dated 03.12.2004, and that the sales related to invoice No.48 were accounted for in the year 2005-06. The Assessing Officer noted that the Assessee failed to lead any evidence to show that invoice No.48 was accounted for in the year 2005-06. Further, the seller i.e. Tvl. Lakshmi Stores accounted for invoice No.48 in the year 2004-05, and therefore overruled the objections of the Assessee. The Assessing Officer took the view that, since the Assessee's admitted to the sale of the gold bullion in

question they should have accounted for it. The Assessing Officer took the view that the Assessee had not maintained correct and complete accounts of the transactions, and therefore addition of an equal amount to the proved purchase suppression was justified under Section 16(1)(a) of the Act. He therefore issued a demand notice for a total of Rs.1,68,977/- (2% of the additional taxable amount plus 5% surcharge).

4. On appeal, the Deputy Commissioner (Appellate) confirmed the amount imputed by the Assessing Officer because of suppression, on account of the fact that the Assessee had failed to account for invoice No.48. The Deputy Commissioner however noted that the Assessing Officer had added an equal amount as probable omission, merely because the dealer had not kept proper and complete accounts. He noted, that there was no other incriminating material, and therefore deleted the addition of Rs.42,24,413/- to the taxable turnover of the Assessee, which was added on account of probable omission done by the Assessee. In the result, the appeal of the Assessee was partly allowed.

5. The Assessee did not challenge the order of the Deputy Commissioner (Appeal). On the other hand, the State Government preferred

an appeal against the deletion of the amount imputed on account of the probable suppression, contending that the deficit stock of finished goods in the inventory of the Assessee, was proof enough for the award of the probable omission. The Appellate Tribunal took the view that the deficit stock of the Assessee indicates suppression of clandestine purchases, manufacture and the resultant sale of such goods, and therefore the addition of the equal amount as probable omission was just and proper. The Tribunal also noted that the sale suppression amount and the probable omission amount were fairly estimated, and as a result allowed the appeal of the State, setting aside the order of the Deputy Commissioner (Appeals) and restoring the order of the Assessing Officer.

6. The Assessee aggrieved by this order of the Appellate Tribunal has approached this Court filing the instant revision petition invoking this Court's supervisory jurisdiction.

7. We have heard learned counsel for the appellant and the State.

8. The Appellant has challenged the restoration of the order of



the Assessing Officer with regard to the addition of Rs.42,24,413/- on the ground of probable sale suppression. It was contended that the order of the Deputy Commissioner (Appeals) did not require any interference and that the Tribunal ought not to have restored the order of the Assessing Officer. It was further contended that had the Assessee wanted to suppress the sale he would not have shown it for the next assessment year, i.e. 2005-06. The Assessee did not show the transaction in the Assessment year 2004-05 was because of the dispute between the Tvl. Lakshmi Stores and the Assessee. It was therefore submitted that in the facts of the case, since the Assessee had disclosed the transaction for the next Assessment year, there could not be any deliberate suppression.

9. On the other hand, the State Government has supported the judgment of the Sales Tax Appellate Tribunal. The learned counsel appearing for the State contended that the transaction was dated 03.12.2004. Nothing prevented the Assessee from disclosing the sale before 01.04.2005. It was submitted that the Assessee's vendor Tvl. Lakshmi Stores accounted for the relevant invoice in the year 2004-05 itself and therefore the Assessee ought to have accounted for the invoice in the same financial year.

10. It is a settled proposition of law that the Supervisory Jurisdiction of the High Court is limited. The High Court does not sit in appeal over the judgment of the Tribunal. The High Court should not in normal circumstances interfere with the order of the Authorities below it unless and until, its non-interference would amount to a travesty of Justice.

11. The only question which falls for the consideration of this Court, is whether the addition of Rs.42,24,413/- on account of probable suppression was so unreasonable that it requires the interference of this Court.

12. Admittedly the Assessee, failed to account for invoice No.48 dated 03.12.2004 issued by Tvl. Lakshmi Stores to the Assessee. The findings of all three forums below have been that the Assessee did not maintain his accounts properly. The Assessing Officer and the Appellate Tribunal took the view that in the light of the fact that the Assessee clearly did not maintain proper books of accounts, the addition of Rs.42,24,413/- was justified on account of probable submission. The Deputy Commissioner took the view that in the absence of any material to show that there was additional

suppression it was not proper to add Rs.42,24,413/-.

13. A reading of Section 16 of the Act, makes it amply clear that the Assessing Officer had the power to add the amount in dispute, on account of probable omission. The use of the words, “to the best of its judgment” creates a wide discretionary power upon the Assessing Officer, who in the instant case has taken the view that in light of the suppression that was uncovered, it was plausible to assume that the Assessee must have suppressed sales at least worth Rs.42,24,413/-. This view ultimately found favour with the Appellate Tribunal as well.

14. The view taken by the Tribunal is a probable view, and the High Court while exercising its revisionary jurisdiction should not substitute its own view to the view taken by the last fact finding Authority. In light of the above, we are of the view that there is no error in the decisions of the authorities below. The Tribunal has noted the discrepancies in the stock inventory of the Assessee, which justified the addition of Rs.42,24,413/- as probable omission on part of the



Assessee. The amount added as probable suppression and the reasons for the addition are the result of well-reasoned orders and therefore do not necessitate the invocation of the Jurisdiction of this Court.

15. Consequently, the Tax Case Revision is dismissed. Parties to bear their own costs.



asi

Index : Yes  
Internet : Yes  
Speaking Order

To

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

WEB COPY

S.MANIKUMAR, J.

and

SUBRAMONIUM PRASAD, J.

asi



Tax Case (Revision) No. 87 of 2018

WEB COPY

13.06.2018