IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2018

CORAM:

THE HONOURABLE **MR. JUSTICE S.MANIKUMAR**
AND
THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

Tax Case (Revision) No.9 of 2018

Tvl.Saraswathi Agencies
100, Trichy Road, Sulur. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Palladam, Coimbatore District. ... Respondent

Prayer: Tax Case Revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore-18, dated 02.09.2014, passed in S.T.A.No.33 of 2007.

For Petitioner : Mr.R.Asokan

For Respondent : Mr.V.Haribabu
Addl. Government Pleader

O R D E R

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

Tax Case Revision is filed against the order, dated 02.09.2014, passed in S.T.A.No.33 of 2007, by which, the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore-18, on the grounds, inter alia,

(i) The Tribunal has failed to note that the petitioner is not liable to pay the Additional Sales Tax, since the sale turnover of by the two Principals was less than 10 crores, during the assessment year 2003-2004.

(ii) The Tribunal has committed a manifest error in rejecting the letters from the two Principals to that their turnover, including the consignment sale through agents, was less than Rupees 10 crores.

(iii) The Tribunal has failed to note that the sale turnover shown by the Principals was inclusive of the sales through their agents including the petitioner and since their turnover did not exceed Rs.10 crores, neither the Principals nor the petitioner are liable to pay additional sales tax.

(iv) In any event, levy of additional sales tax on the petitioner's turnover is unsustainable, since the sales turnover of the petitioner was already included in the turnover of the Principals.

(v) The other reasons given by the Tribunal for reversing the order of the Appellate Assistant Commissioner are untenable and therefore, the order passed by the Tribunal is liable to be set aside.

2. Short facts leading to the Tax Case Revision are that the Deputy Commercial Tax Officer, Palladam, Assessing Authority, determined the total and taxable turnover of the petitioner-dealer at Rs.25,49,25,355/- and Rs.25,49,25,355/- respectively, as against the reported total and taxable turnover of Rs.25,49,07,857/- and Rs.25,49,25,355/- respectively, vide his order, dated 26.09.2005, under the TNGST Act, 1959, relating to the assessment year 2003-04. Among other things, the Assessing Authority levied Additional Sales Tax of Rs.1,30,450/-.

3. Aggrieved of the order of the Assessing Authority, the petitioner preferred a first appeal before the Appellate Assistant Commissioner (CT), Pollachi, who after hearing both the sides and upon perusal of the records, allowed the appeal.

4. Against which, the State preferred a second appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, contending that Additional Sales Tax of Rs.1,30,450/-, levied on a turnover of Rs.1,30,44,952/- is correct, on the following grounds,

(i) As per the details available at Page No.411 of the assessment file, the agents, viz., Tvl.Guru Oil Mart, Arun Oil Traders, Kaleeswari Oil Stores, Thulasian Feeds (P) Limited and K.M.S.Oil Stores, have not paid the Additional Sales Tax, in their respective assessment circles.

(ii) The petitioner-Dealer, in their letter, have accepted their liability and paid it accordingly and therefore, the plea that the above agents were not liable for payment of Additional Sales Tax, since their taxable turnover had not reached Rs.10 crores, is not acceptable.

(iii) As per explanation 1 to Section 2(1)(aa) of the TNAST Act, 1970, the turnover of agents should be included in the principals' turnover to determine the Additional Sales Tax liability. Therefore, in the absence of proof to show that the above consignment agents have paid the Additional Sales Tax, the principal has to pay Additional Sales Tax on the aggregate taxable turnover of all his agents in the state.

5. The Tribunal, in the above appeal, has framed the following point for consideration,

> "Whether the Additional Sales Tax levied by the Assessing Authority amounting to Rs.1,30,450/- and set aside by the learned first appellate authority is correct or not?"

6. After considering the facts and circumstances of the case and relevant provisions, the Tribunal, vide order, dated 02.09.2014 in S.T.A.No.33 of 2007, held as follows:

> "...The case on hand is the levy of Additional Sales Tax by the Assessing Authority on a turnover of Rs.1,30,44,957/- at 1% and levied tax of Rs.1,30,450/- **on the finding of fact that even though the respondent-dealer were acting as agent of principal-dealers, they were not able to prove the payment of Additional Sales Tax by five principals out of elevan as provided under Section 2 (1(aa)) of the TNAST Act,** 1970. Aggrieved against this levy of Additional Sales Tax, by the Assessing Authority, the dealers had preferred appeal before the Appellate Assistant Commissioner (CT), Pollachi. The learned Appeliate Assistant Commissioner allowed the appeal in favour of the dealer relying upon the returns filed by the respondent (petitioner)-dealer declaring their consignment sale of oil and the judgment reported in

47 STC 121 in the case of **Guduthur Bheemappa v. Commercial Tax Officer I Circle, Bellary (Karnataka).**

7. We have considered the same. **During the subject assessment year 2003-04, a dealer whose taxable turnover is above 10 crores of rupees is liable to pay Additional Sales Tax. This is also applicable to the principal selling or buying goods through agents. In Explanation-I under Section 2 (aa) of TNAST Act, 1970, the taxable turnover in respect of the principal has been defined to include the aggregate taxable turnover of all his agents relating to the sale/purchase of goods of the principal. Hence, it is needless to say that at the time of final assessment of the agents, they have to prove with valid documents that their taxable turnover on behalf of the principal has been included in the taxable turnover of the principal and Additional Sales Tax paid.** In this instant case, originally the Assessing Authority has issued a notice on 6.1.05 (vide page no.453 of the assessment file- TNGST 6241673/2003-04) proposing to levy Additional Sales Tax at 1% on the turnover of Rs.22,00,31,981/- and also proposed to levy penalty. In due response to this notice, the respondent (petitioner)-dealer filed a letter (filed in page no.447 of the assessment file) before the Assessing Authority stating that out of 11 principals, 6 have paid Additional Sales Tax in their assessment circle and for the remaining 5 principals, the

respondent(petitioner)-dealers had stated that they have paid Rs.1,30,450/- on 24.5.05. In the same reply, the respondent(petitioner)-dealer had requested the Assessing Authority to drop the proposed levy of penalty u/s.12(3)(b). To this effect, a letter in Roc.761/2005/ A4 dated 18.5.05 received from the Commercial Tax Officer, Washermenpet-II Assessment Circle, Chennai-81 is found to have been filed in page No.445 with the Additional Sales Tax paid particulars in page No.445. On this, the Commercial Tax Officer Washermenpet-II listed out 9 principals and certified that, out of this, 6 principal-dealers have paid Additional Sales Tax on behalf of the agents and certified that 3 dealers viz., Tvl.Guru Oil Mart, Arun Oil Traders and Kaleeswari Oil Mart, have not reached Rs.10 crores taxable turnover. Then, the Assessing Authority has dropped the levy of Additional Sales Tax on the turnover of Rs.20,69,69,529/-, however, restricted the levy on the turnover of Rs.1,30,44,952/- and levied AST of Rs.1,30,450/- in the original assessment order, dated 26.9.05 (filed in page no.455). **The respondent(petitioner)-dealer had not produced any certificate from the respective assessment circle relating to the principal-dealers, Tvl.Thulsian Foods (P) Limited and Tvl.K.M.S.Oil Stores for the turnover of Rs.29,78,174/- and Rs.5,22,228/- respectively and also not proved that these turnovers are included in the** turnover of the above stated principals and Additional Sales Tax paid nor filed any valid certificate from the Assessment Circle that those principals did not reach the taxable limit for levy of Additional Sales Tax. Generally, in the principal agent relationship, the agent has to issue certificate, obtained from the Assessing Officer, to the principal that he has paid all the taxes on the sales turnover of goods made on behalf of the principal. At the same time, the principal has to issue certificate, from the Assessing Officer, to the agent that such turnover of agent has been included in the turnover of the principal for the purpose of levy of Additional Sales Tax or the Assessing Officer has to issue certificate that the principal has not reached the taxable limit for Additional Sales Tax. However, there were no such proofs filed by the agent-respondent(petitioner)-dealers for the turnover of Rs.35,00,402/-. The letters filed by the above stated principals which are found in the Appeal File (AP.No.167/05) in page no.27 could not be taken as valid proof.

8. From the factual matrix discussed above, the order of the learned Appellate Assistant Commissioner is not found to be correct for the turnover of Rs.35,00,402/- involving a tax of Rs.35,004/- out of the total allowance of learned Appellate Assistant Commissioner. Hence, the

<u>order of the Assessing Authority to the extent of the turnover of Rs.35,00,402/- involving AST of Rs.35,004/- is sustained.</u>

In fine, the State appeal is partly allowed with a direction to levy interest for the sustained portion from the date of original demand.” (emphasis supplied)

7. Aggrieved by the same, the present appeal has been filed by the assessee, raising the following substantial questions of law,

“a) Whether the Tribunal was right in holding that the petitioner is liable to pay Additional Sales Tax when the petitioner's sales turnover has already been included in the turnover of the Principals?

b) Whether the Tribunal was right in rejecting the certificates of the Principals of the petitioner to the effect that their sales turnover, including the sales by the petitioner, was less than Rs.10 Crores as not valid proof?

c) Whether in the facts and circumstances of the case the petitioner is liable to pay Additional Sales Tax on the consignment sales turnover when the same is included in the total turnover of it principals of the petitioner?

d) In the absence of enabling provision for levy of interest on the additional sales tax due, whether the Appellate Tribunal was right in directing to recover the

Additional Sales with interest from the date of the original demand?”

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Assessment year is 2003-04. As per Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, as it stood during the period from 01.04.1998 to 31.10.2001, the dealer was liable to pay additional sales tax under the Tamil Nadu Additional Sales Tax Act, if the taxable turnover of the assessee exceeded Rs.25 crores. Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act has been amended by the Tamil Nadu Act 13 of 2001 with effect from 1.11.2001, by which, the liability for the purpose of additional sales tax was reduced to Rs.10 crores. Thus, on and from 1.11.2001, the liability under the Tamil Nadu Additional Sales Tax Act stood attracted on a dealer, including the principal selling or buying goods, through agents, crossing the taxable turnover of Rs.10 crores. Explanation-I to Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, deals with, 'taxable turnover' and the said explanation is extracted hereunder:

"Explanation-I: 'Taxable turnover' for the purpose of this clause in respect of a principal selling or buying goods through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State."

9. A letter, dated 23.09.2005, has been sent to the Assessing Authority, stating that out of 11 principals, 6 of them have paid Additional Sales Tax, in their assessment circle, and the remaining 5 principals have paid Rs.1,30,450/- on 24.05.2005. The Commercial Tax Officer Washermenpet-II, listed out 9 principals, in which, 6 principal-dealers have paid Additional Sales Tax, on behalf of the agents and certified that 3 dealers viz., Tvl.Guru Oil Mart, Arun Oil Traders and Kaleeswari Oil Mart, have not reached Rs.10 crores taxable turnover. However, the Assessing Authority levied additional sales tax of Rs.1,30,450/-, on the ground that the revision petitioner has not produced any certificate from the respective assessment circle, relating to the principal-dealers, Tvl.Thulsian Foods (P) Limited and Tvl.K.M.S.Oil Stores, for the turnover of Rs.29,78,174/- and Rs.5,22,228/- respectively.

10. Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, has been amended, attracting a dealer, including the principal selling or buying goods through agents, crossing the taxable turnover of Rs.10 crores, liable to pay additional tax. Taxable turnover, as explained in Explanation-I of the abovesaid Section, shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State.

11. We have given our due consideration to the grounds raised, as to how the Tribunal has weighed the evidence required to be produced by the petitioner, to support his case that on their behalf, additional sales tax has been paid by the principal. Appreciation of evidence by the Tribunal and reasons recorded in the order, cannot be said to be perverse. We concur with the same.

12. Hence, all the substantial questions of law are answered against the assessee and in favour of the revenue. Hence, the Tax Case Revision Petition is dismissed. No costs.

(S.M.K., J.) (V.B.S., J.)
15.02.2018

skm/dm

To

The Tamilnadu Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore.

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

skm/dm

Tax Case (Revision) No.9 of 2018

15.02.2018